

245 VA291



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 920639

TECHDYN SYSTEMS CORPORATION,

Appellant,

v.

WHITTAKER CORPORATION,

Appellee.

**JOINT APPENDIX
VOLUME VI**

Garry R. Boehlert
Benjamin T. Riddles, II
Douglas C. Proxmire
**WATT, TIEDER, KILLIAN
& HOFFAR**
7929 Westpark Drive
Suite 400
McLean, VA 22102
(703) 749-1000

Counsel for Appellant

Peter B. Work
Janis Orfe
Amy J. Mauser
CROWELL & MORING
1001 Pennsylvania Ave. NW
Washington DC 20004
(202) 624-2500

Counsel for Appellee

William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Rd
Suite 500
Fairfax, VA 22030
(703) 934-1174

Counsel for Appellee

TABLE OF CONTENTS

Page

VOLUME I

A. Basic Initial Pleadings as Finally Amended

1. TechDyn's Amended Motion for Judgment; dated August 21, 1990..... 0001
2. Whittaker's Amended Counterclaim; dated March 5, 1990..... 0016
3. TechDyn's Answer and Affirmative Defenses to Whittaker's Amended Counterclaim; dated November 6, 1990..... 0077

B. Final Judgment and Memoranda or Opinions Related Thereto

1. Final Judgment Order; dated January 31, 1992.... 0082
2. Opinion Letter by The Honorable J. Howe Brown; dated January 14, 1992..... 0086
3. Letter by The Honorable J. Howe Brown re TechDyn's Motion for Reconsideration; dated November 25, 1991..... 0088
4. Order Vacating and Setting Aside October 31, 1991 Order of Final Judgment; dated November 21, 1991..... 0089
5. Judgment Order; dated October 31, 1991..... 0090

C. Assignments of Error

1. Assignments of Error 1, 2, and 5 through 8..... 0093

D. Testimony and Other Incidents of the Case Germane to the Questions Presented

1. Transcripts of Testimony and Proceedings:
 - a. Leo S. Morrison, Jr. - July 1, 2 & 3, 1991.. 0094

VOLUME II

- b. Donald Ellis - July 3 & 8, 1991..... 0359
- c. Rufus Thornton - July 8 & 9, 1991..... 0562

d.	John Michitson - July 9, 1991.....	0635
e.	Greg Crider - July 9, 1991.....	0684
f.	Herbert Rountree - July 9, 1991.....	0722

VOLUME III

g.	William C. Hise - July 10, 1991.....	0786
h.	Max Steven Rosen - July 10, 1991.....	0885
i.	Edward H. Ripper - July 10, 1991.....	0894
j.	Scott Douglas Gray - July 10, 1991.....	0927
k.	Whittaker's Motions to Strike - July 11, 1991.....	0976
l.	Michael Perry McCune - July 11, 1991.....	1018
m.	Marie Raymond - July 11 & 15, 1991.....	1101

VOLUME IV

n.	Alfred Johnson - July 15, 1991.....	1146
o.	Gerald J. Thompson - July 16, 1991.....	1274
p.	Joel H. Sells - July 16, 1991.....	1307
q.	Claudia Justis - July 16, 1991.....	1319
r.	Rufus Thornton - Recalled - July 16, 1991...	1372
s.	Max Steven Rosen - Recalled - July 17, 1991.....	1409
t.	Thomas A. Brancati - July 17, 1991.....	1423
u.	Steven Jones - July 17, 1991.....	1485

VOLUME V

n.	Marie Raymond - Recalled - July 17 & 18, 1991.....	1493
w.	Jack R. Cannady - July 18, 1991.....	1604
x.	Marie Raymond-Recalled - July 18, 1991.....	1635

	<u>Page</u>
y. Jack R. Cannady-Recalled - July 18, 1991....	1668
z. Joseph A. Nocera - July 18, 1991.....	1686
aa. Proceedings of July 29, 1991.....	1709
bb. Proceedings of July 30, 1991.....	1817
cc. Proceedings of August 1, 1991.....	1835
2. Proffers of Evidence	
a. Plaintiff's Objections and Proffered Testimony in Opposition to Trial Court's Ruling Precluding and Striking Plaintiff's Evidence (re: TechDyn's Claim for Lost Profits); dated July 17, 1991.....	1840

VOLUME VI

E. Other Pleadings

1. Whittaker's Memorandum of Law in Support of Whittaker Corporation's Motion to Strike Evidence Relating to Count One of TechDyn Systems Corporation's Amended Motion for Judgment; dated July 10, 1991.....	1886
2. TechDyn's Motion to Strike Counts One and Two of Defendant's Amended Counterclaim for Defendant's Failure to Give Proper Notice Under the Contract; dated July 22, 1991.....	1890
3. TechDyn's Motion to Strike and for Summary Judgment on Defendant's Damages for Failing to Apportion Liability, for Being Speculative and Uncertain and for Seeking Costs Not Recoverable in Virginia; dated July 22, 1991.....	1895
4. Whittaker's Memorandum in Support of Whittaker Corporation's Renewed Motion to Strike the Evidence Relating to Count One of TechDyn Systems Corporation's Amended Motion for Judgment; dated July 23, 1991.....	1906
5. TechDyn's Motion to Set Aside the Jury's August 1, 1991 Verdict on Count I and Count III of Defendant's Amended Counterclaim; dated August 21, 1991.....	1912

6. Whittaker's Motion to Set Aside the Jury's Verdict as to TechDyn Systems Corporation's Count One Because TechDyn Allegedly Failed to Provide any Basis for Allocating Responsibility for its Unreimbursed Delay Costs Among Whittaker and Non-Whittaker Causes (without Appendix of Evidence); dated August 21, 1991.....	1927
7. TechDyn's Opposition to Defendant's Motions to Set Aside the Verdict for Plaintiff on Count 1 of Plaintiff's Motion for Judgment and Defendant's Motion for a New Trial on the Quantum of Damages Under Count One of Defendant's Counterclaim; dated September 5, 1991.....	1943
8. Whittaker Corporation's Opposition to TechDyn Systems Corporation's Post-Verdict Motion; dated September 5, 1991.....	1965
9. TechDyn's Motion for Reconsideration; dated November 8, 1991.....	1974
10. TechDyn's Memorandum of Points and Authorities in Support of its Motion for Reconsideration; dated November 14, 1991.....	1976
11. Whittaker's Opposition to TechDyn Systems Corporation's Motion for Reconsideration; dated November 14, 1991.....	2257
12. Whittaker Corporation's Supplemental Opposition to TechDyn's Motion for Reconsideration; dated December 9, 1991.....	2263
13. TechDyn's Response to Whittaker's Supplemental Opposition to TechDyn's Motion for Reconsideration; dated December 11, 1991.....	2279
14. TechDyn's Notice of Appeal; dated February 3, 1991	2291
15. Jury Instructions	
a. Jury Instructions 12, 68, 68(a), 76, 76(a) and 76.5.....	2293
b. Plaintiff/Appellant's Proposed Jury Instructions LL and NN.....	2299
c. Defendant/Appellee's Proposed Jury Instructions 31, 32 and 33.....	2301

16. Verdict Forms

- a. Verdict Form for Count 1 of TechDyn's Action Against Whittaker..... 2304
- b. Verdict Forms for Counts 1 and 3 of Whittaker's Action Against TechDyn..... 2305

VOLUME VII

F. Exhibits that Reasonably Can Be Reproduced

1. Plaintiff/Appellant's Exhibits Admitted into Evidence:

11	Memorandum to Moeller from Johnson re assessment of ICCE program.....	2307
22A-1	Subcontract 125-001 between TechDyn and 4C; Cover Page, Table of Contents and pages 1 to 63.....	2318
22A-2	Subcontract 125-001; Tab 3 (Modification No. 3); 2-page letter dated Nov. 27, 1985; 95-page System Specification for ICCE; 44-page Statement of Work for ICCE.....	2364
22A-4	Supply Line Item Data Sheets.....	2521
32	Raymond letter to Hatchett 1/16/86 re ICCE Contract signature.....	2538
65	Minutes of Interim IADS Working Group Meeting #18; Agenda Item 2 - Test Status/System Trouble Reports.....	2539
66	Bohler letter to Rosen 2/9/89 re status of System Trouble Reports.....	2547
85A	Chart of ICCE Project.....	2548
152	Air Force ICCE RFP to TechDyn; March 20, 1985 (2 page letter).....	2549
153	Four-page Hise letter to Sutherland 3/23/85, re RFP, plus Statement of Work for Front-End Effort.....	2551
161	Two-page Yenowine letter to Sutherland 4/30/85; re RFP, plus Attachment I, Statement of Work....	2596
181	Raymond telex to Yenowine 9/13/85, re confirmation of price for CLINS.....	2670

	<u>Page</u>
210	Raymond letter to Yenowine 2/5/86, re RCE Specification..... 2671
378	Bohler letter to Hise 7/8/88, re WES work stoppage on RCE..... 2696
385	Bohler letter to Hise 7/18/88, re WES request to TechDyn to remove test bed..... 2698
394	Bohler letter to Hise 8/5/88, re WES demand that TechDyn immediately remove test bed..... 2699
413	Rosen letter to Bohler 1/12/89, re 10 day Cure Notice to WES for RCE..... 2700
416	Rosen letter to Bohler 1/23/89, re Partial Termination for Default to WES for RCE..... 2702
426	Rosen letter to Bohler 3/3/89 with attachment re ICCE program meeting with ESD re WES inaccuracies..... 2704
501-505	TechDyn's Proposals (cover pages only)..... 2711
506A	RFP Routing Slips and attachments..... 2718
572	McKenna letter to Hise 4/3/90, re Formal Verification Test Report results; first 8 pages..... 2728
646	Smith letter to Hise 10/16/86, comments to PDFA B5 specification updates, with attachments..... 2736

VOLUME VIII

852	Smith letter to Hise 10/22/86, re Software Quality Assurance meeting - 4C's methods lacking..... 2741
912	Summary of Damages - related to Alaska & PACAF options..... 2742
950	Summary of Damages - claim amounts..... 2743
951	Summary of Whittaker-caused PDFA Damages..... 2744
952	Calculation of TechDyn's Delay Damages Attributable to Whittaker..... 2745
953	Calculation of TechDyn's Delay Damages Per Day.. 2746
954	Summary of TechDyn's Recorded Time-Related Costs..... 2747

955	TechDyn's Program Management Direct Labor Costs.....	2748
956	TechDyn's Systems Engineering & Testing Labor Costs.....	2751
957	TechDyn's Logistics Direct Labor Dollars.....	2754
958	TechDyn's Field Maintenance Direct Labor Dollars.....	2757
959	TechDyn's Contract Management Direct Labor Dollars.....	2760
960	TechDyn's Cost Analysis Direct Labor Dollars....	2763
961	TechDyn's Secretarial Direct Labor Costs.....	2766
962	TechDyn's Time-Related Travel Costs.....	2770
963	TechDyn's Time-Related Consultant Costs.....	2783
964	TechDyn's Time-Related Contract Labor Costs.....	2787
965	TechDyn's Time-Related Other Direct Costs.....	2790
966	TechDyn's Budget Time-Related Costs for Contract Modifications.....	2792
967	Summary of Time-Related Costs for RCE Reprocurement.....	2793
968	Calculation of Excess On-Site Overhead.....	2794
968A	TechDyn's Control Budget for Job 125.....	2795
969	TechDyn's Calculation of Actual On-Site Overhead Rate 1986-1991.....	2796
970	TechDyn's On-Site Overhead Costs 1986-1990.....	2797
971	TechDyn's Calculation of Actual General and Administrative Costs Rate 1986-1991.....	2798
972	TechDyn's General & Administrative Costs 1986-1990.....	2799
973	TechDyn's Summary of Claim Costs for Relocation of Test Bed.....	2800
974	TechDyn's Calculation of Claim Costs for Test Bed Relocation.....	2801

	<u>Page</u>
975	TechDyn's Labor, Consultant & Travel Costs to Relocate Test Bed..... 2802
976	Invoice for Test Bed Rental..... 2803
977	Summary of Damages for Replacement of Keyboard and Printer..... 2806
978	Purchase Order/Subcontract for Keyboard and Printer..... 2807
979	Calculation of Interest on Delay Damages..... 2809
980	Calculation of Interest on Damages Associated with Relocation of Test Beds..... 2810
981	Calculation of Interest on Damages Associated with Replacement of Keyboard and Printer..... 2811
982	Summary of Pre-termination and Reprocurement Costs for the Remote Control Element..... 2812
983	Direct Labor and Consulting Costs related to RCE Reprocurement..... 2813
984	Travel Costs for Remote Control Element Reprocurement..... 2815
985	Rosen letter to VEDA 7/19/89, re RCE work..... 2816
986	Materials Costs for Remote Control Element Reprocurement..... 2818
987	Calculation of Interest on RCE Damages..... 2819
988	Summary of TechDyn's Time-Related Costs and Delay Claim..... 2820
1010	Smith letter to Hise 6/17/86; B level specification delays..... 2821
1017	Hise letter to Raymond 11/5/86, TechDyn's Show Cause Notice to 4C..... 2823
1030	Hise letter to Lamberth 9/15/87, re outstanding STRs and Test Readiness Review, with attachment..... 2824
1036	Raymond letter to Hise 11/2/87, re open STRs, with attachments..... 2826
1043	Rosen letter to Raymond 4/26/88, re SQT Report for PDFa not accepted, with attachment..... 2880

VOLUME IX

1046	Rosen letter to Bohler 7/11/88 re TAF Certification Status of Trouble Reports, with attachment.....	2890
1049	Rosen letter to Bohler 1/24/89 with attachment re status of STRs.....	2894
1073	Rosen letter to Raymond 9/13/89, re correction of STRs, with attachment.....	2896
1098	Rosen letter to Raymond 3/3/90; comments from Technical Order Validation of PDFA O&M manual, with attachment.....	2900
1131	Hise letter to Glowacki 8/10/90 with attachment; response to Cure Notice/agreements reached between TechDyn and WES.....	2903
1136	Rosen letter to Raymond 9/17/90; deficiencies related to RSSF software acceptance test.....	2906
1141	Rosen letter to Raymond 10/16/90 with attachment; delivery of ICCE software and PCA software.....	2908
1251	Whittaker News Release 10/3/85; re 4C merger with Whittaker.....	2912
1252	Raymond letter to Hise 10/29/85; 4C acquired by Whittaker, Hatchett now president.....	2913
1253	Raymond letter to Yenowine 2/9/87; 4C proposal delayed due to recent merger.....	2914
1254	Raymond letter to Yenowine 2/19/87; responses to correspondence delayed due to reorganization....	2915
1256	Raymond letter to Yenowine 2/26/87; critical design review response delayed due to reorganization; working on C5 specs.....	2916
1257	Raymond letter to Yenowine 2/26/87; responses to open action items delayed due to management changes.....	2917
1258	Raymond letter to Fourney 3/6/87; responses to open action items delayed by reorganization.....	2918
1259	Raymond letter to Fourney 3/20/87; responses to status delayed by reorganization.....	2920
1260	Raymond letter to Fourney 5/6/87; 4C name change.....	2921

1261	Raymond letter to Fourney 8/26/87; change in program management for subcontract.....	2928
1264	Raymond letter to Rosen 7/5/88; merger of WCCS with WES.....	2929
1265	Bohler memo to TDS 8/24/88; change of address...	2930
1266	Three-page Raymond letter to Hise 8/26/88; novation/change of name agreements.....	2931
1373	Bohler letter to Hise 7/21/88; WES stoppage of work.....	2934
1560	Yenowine letter to Raymond 7/9/85; test bed facilities.....	2935
1601	Raymond transmittal of Monthly Program Schedule.....	2936
1616	Hise letter to Raymond 1/9/91 with attachment; Technical Order Verification stopped due to many problems with O&M manual.....	2941
1634	Khan letter to Raymond 3/6/91 with attachment; WES to complete manuals as required by contract.....	2944
1635	Khan letter to Raymond 3/6/91 with attachment; WES directed to forward software items immediately.....	2947

2. Plaintiff/Appellant's Exhibits Refused:

901	TechDyn Revenues Chart.....	2951
2006	Subcontract Changes Clause.....	2952

3. Defendant/Appellee's Exhibits Admitted into Evidence:

3N	Hise letter to S. Smith, 5/19/86; re technical manuals and provisioning requirements.....	2955
4H	Paschall letter to Morrison, 5/21/86; comments from program management review.....	2956
10G	Bohler letter to Hise, 8/5/88; WES stoppage of work; responses to TechDyn's contentions.....	2958

10L	Rosen letter to Bohler, 7/26/88; response to WES stoppage of RCE work.....	2963
20K	Rosen letter to Bohler, 1/12/89; Bohler letter to Rosen, 1/18/89; 10 day Cure Notice for RCE and response.....	2965
20NN	Ellis memorandum to Morrison, 1/11/89; no adverse action by ESD if WES RCE efforts terminated.....	2975
23F	Rosen letter to Chilson, 10/27/89; request Government define software test procedures.....	2976
30G	Letter of 7/18/89 from Rosen to Bohler; Subcontract/SOW requirements.....	2977
41N	Excerpt from Al Johnson's notes, 7/25/85.....	2978
42D	Fourney letter to Raymond, 4/30/87; items needed for claim negotiations.....	2979
43E	Hatchett memorandum to Freitag, 12/22/86; contract status/stoppage of progress payments due to unsatisfactory performance.....	2983
48E	Hise letter to Raymond, 11/20/86; stoppage of progress payments due to delays by 4C.....	2985
53	Excerpts from TechDyn Claims 01 and 02, 2/10/87 and 4/25/88.....	2986
60K	Rosen memorandum to Hise, 3/27/89; meeting minutes discussing Partial Default Termination of WES.....	3196
61B	Morrison letter to Johnson, 1/7/88; cost control and reduction on ICCE project.....	3206
108	Summary of Whittaker's Counterclaims.....	3208
108A	Amended Summary of Whittaker's Counterclaims....	3209

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION,

Plaintiff,

v.

WHITTAKER CORPORATION,

Defendant.

AT LAW NO. 94114

**MEMORANDUM OF LAW IN SUPPORT OF WHITTAKER CORPORATION'S
MOTION TO STRIKE EVIDENCE RELATING TO COUNT ONE OF
TECHDYN SYSTEMS CORPORATION'S AMENDED MOTION FOR JUDGMENT**

In Count One of its Amended Motion for Judgment, TechDyn alleges that Whittaker breached its ICCE subcontract with TechDyn by failing to perform its obligations in a timely manner. As a result of Whittaker's alleged breaches, TechDyn claims that it has incurred unreimbursed costs and the loss of new or other business and profits.

Viewing the evidence in the light most favorable to TechDyn, no reasonable juror could find that Whittaker was the sole cause of the damages that TechDyn claims in Count One. Thus, the burden [wa]s on [TechDyn] to present evidence which [would] show 'within a reasonable degree of certainty' the share of damages for which [Whittaker] [wa]s responsible.'" Hale v. Fawcett, 214 Va. 583,

202 S.E.2d 923, 925 (1974). TechDyn failed to satisfy this burden.^{1/} Accordingly, TechDyn's Count One should not be submitted to the jury, and TechDyn's evidence on that count should be stricken.

Under similar circumstances, the Virginia Supreme Court has repeatedly found that the granting of a motion to strike is appropriate. For instance, in Hale v. Fawcett, the Virginia Supreme Court explained:

Here we have a case in which there is evidence of damages from separate causes, as to a portion of which defendant cannot be held responsible. No evidence was produced to enable the jury to form a reasonable estimate of what portion of the damage was caused by cattle entering through the narrow opening between the cattle guard and the gate post and what portion was caused by cattle entering through and over the division fence. Since the plaintiff did not prove with reasonable certainty that part of damages for which the defendant could be held responsible, the proof was too uncertain to allow a jury to apportion part or all the proved damages to the acts for which the defendant was responsible. Hence the issue should not have been submitted to the jury. Summary judgment should have been entered for the defendant.

202 S.E.2d at 925 (emphasis added). Accord Medcom, Inc. v. C. Arthur Weaver Co., Inc., 232 Va. 80, 348 S.E.2d 243, 247 (1986) ("The trial court ruled that Medcom's evidence relating to these

^{1/} Even if TechDyn had offered evidence that permitted the jury to apportion TechDyn's claimed damages between Whittaker and non-Whittaker sources, that evidence would have to be stricken because Whittaker was never afforded access to it during discovery. To the contrary, during discovery, TechDyn consistently asserted that Whittaker was responsible for all of the damages claimed in Count One.

two elements of damage was insufficient to create a jury issue, and we agree. Although '[p]roof of absolute certainty as to the amount of loss or damage is not essential,' a claimant must prove 'with reasonable certainty the amount of damages and the cause from which they resulted'); Carr v. Citizens Bank and Trust Co., 228 Va. 644, 325 S.E.2d 86, 90 (1985) ("[T]here was no evidence of the damages solely attributable to Carr's obtaining the injunction. Therefore, the court erred in overruling defendants' motion to strike the evidence and improperly allowed the jury to assess their liability without evidence to justify the award"); Cooper v. Whiting Oil Co., Inc., 226 Va. 491, 311 S.E.2d 757, 761 (1984) (holding that "trial court correctly granted the motion to strike the plaintiffs' evidence" where plaintiffs failed "to produce evidence to show within a reasonable degree of certainty the share of damages for which the defendant is responsible").

For the foregoing reasons, Whittaker's motion to strike TechDyn's evidence on Count One of its Amended Motion for Judgment should be granted, and summary judgment should be entered in Whittaker's favor on Count One.

Respectfully submitted,

DEFENDANT, WHITTAKER CORPORATION

BY: Peter B. Work / ajm
Peter B. Work
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 624-2500

and

William L. Carey / ajm
William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, VA 22030
(703) 352-4300

July 10, 1991

FILED
20 JUL 22 AM 9:30
WARREN E. BARRY
CLERK OF CIRCUIT COURT

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION

Plaintiff,

v.

AT LAW NO. 94144

WHITTAKER CORPORATION

Defendant.

PLAINTIFF'S MOTION TO STRIKE COUNTS ONE AND
TWO OF DEFENDANT'S AMENDED COUNTERCLAIM
FOR DEFENDANT'S FAILURE TO GIVE
PROPER NOTICE UNDER THE CONTRACT

COMES NOW, Plaintiff, TechDyn Systems Corporation (hereinafter "TechDyn") and sets forth herein its Motion and Points and Authorities in support of its Motion to Strike Counts One and Two of Defendant Whittaker Corporation's (hereinafter "Whittaker"), Amended Counterclaim for failure to give proper notice under the contract.

I. WHITTAKER'S ACTION MUST BE DISMISSED FOR FAILURE TO GIVE
TECHDYN PROPER AND TIMELY NOTICE OF ITS CLAIMS

Clause 2-33 of the Subcontract incorporates by reference specific Federal Acquisition Regulations ("FAR") identified in Attachment I to the Subcontract. That clause states:

Attachment I contains FAR Clauses that are set forth in the Prime Contract and are applicable to this Subcontract as appropriate. These clauses have the same

force and effect as though set forth in full text.

One of the FAR clauses incorporated into the Subcontract is the "Changes" clause (i.e., FAR 52.243-1).

Whittaker has asserted in its Counterclaim that all of its claims have been asserted against TechDyn "in accordance with FAR 52.243-1(b)" (Amended Counterclaim, Paragraph 28) and that TechDyn's breach consists of an alleged breach of FAR 52.243-1(b) (Amended Counterclaim, Paragraph 30).

FAR 52.243-1, identified in Attachment I and made a part of the Subcontract, governs Whittaker's right to recover for contract changes. That clause states in pertinent part:

(c) The Contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order.

At trial, Whittaker failed to present any evidence that it provided a "proposal for adjustment" within 30 days of the order(s) that Whittaker contended constituted changes to the contract. Accordingly, Whittaker's action must be dismissed.

FAR 52-243-1, the "CHANGES" clause incorporated into the Subcontract, clearly requires a contractor to "submit a proposal for adjustment under this clause within 30 days from the date of receipt of the written order." A contractor who fails to provide a proposal for adjustment or at least notice of intent to file a proposal as required by FAR 52.243 can not recover under that clause. John Murphy Construction Co., AGBCA No. 418 79-1 BCA ¶13,868 (1979) Singer Co., Librascope Division v. United States,

215 Ct.Cl 281 568 F.2d 695, 711 (1977). Thus, a contractor must provide timely notice under FAR 52.243-1 to recover under that clause.

Similarly, in Virginia, courts have strictly construed notice requirements in contracts. In McDevitt & Street Co. v. Marriott Corp., 713 F.2d 906, 919 (E.D. Va. 1989), the Court ruled that a contractor's failure to comply with a seven day written notice requirement barred that contractor's claim for extra costs attributable to changed work. The Court stated: "By the terms of the contract, therefore, McDevitt's failure to give such notice bars this claim for additional compensation." The Court reasoned that by failing to give notice "McDevitt effectively precluded Marriott from re-examining its drawings and perhaps selecting less costly alternatives." 713 F.Supp. at 919. Thus, McDevitt was denied recovery on its changes claim for failing to give proper notice.

Simply stated, a party to a contract may not recover if it fails to comply with the contract's notice requirement and notice is a condition precedent to recovery. In Dan River, Inc. v. Commercial Union Insurance Co. 317 S.E.2d 485, 488, (Va. 1984) the Supreme Court of Virginia held:

Consequently, we hold the trial court properly ruled the notice was untimely. The insured failed substantially to comply with the contract's notice requirement, a condition precedent to coverage.

317 S.E.2d at 488.

Thus, as a matter of federal contract law and Virginia law, the failure to comply with the subcontract's notice requirements precludes recovery under the CHANGES clause or any other clause of the contract.

In this case, Whittaker has failed to present any evidence that it provided timely notice in response to any order from TechDyn or the Air Force which allegedly constituted a change to the Subcontract. Accordingly, TechDyn respectfully requests that Whittaker be denied recovery for any alleged violation of FAR 52.243-1 under Count I or Count II.

DATED: July 22, 1991.

Respectfully submitted,

TECHDYN SYSTEMS CORPORATION

By: Garry R. Boehlert/KCP
Garry R. Boehlert

By: Benjamin T. Riddles, II

WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102

(703) 749-1000

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Plaintiff's Motion to Strike Counts One and Two of Defendant's Amended Counterclaim for Defendant's Failure to Give Proper Notice Under the Contract was sent via hand-delivery this 22nd day of July, 1991, to:

Peter B. Work, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

and

William Carey, Esquire
Miles & Stockbridge
11350 Random Hills Road, Suite 500
Fairfax, VA 22030

Garry R. Boehlert/HCCP
Garry R. Boehlert

FILED

63 JUL 22 AM 9:38

WARREN E. BARRY
CLERK OF COURT

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION

Plaintiff,

v.

WHITTAKER CORPORATION

Defendant.

AT LAW NO. 94144

PLAINTIFF'S MOTION TO STRIKE AND FOR SUMMARY JUDGMENT
ON DEFENDANT'S DAMAGES FOR FAILING TO APPORTION
LIABILITY, FOR BEING SPECULATIVE AND UNCERTAIN
AND FOR SEEKING COSTS NOT RECOVERABLE IN VIRGINIA

COMES NOW, Plaintiff, TechDyn Systems Corporation (hereinafter "TechDyn") and sets forth herein its Motion to Strike Defendant, Whittaker Corporation's (hereinafter "Whittaker"), claimed damages for failing to apportion liability, for being speculative and uncertain, and for seeking costs not recoverable in Virginia.

I. WHITTAKER CANNOT RECOVER AGAINST TECHDYN BECAUSE WHITTAKER
FAILED TO PROVE WHAT PORTION OF ITS ALLEGED DAMAGES WERE
CAUSED BY TECHDYN

At trial, Whittaker asserted that the Air Force, the Mitre Corporation (hereinafter "Mitre"), and TechDyn allegedly caused Whittaker to perform extra work for which Whittaker now seeks damages.

However, Whittaker failed to apportion (or even attempt to apportion) liability among the Air Force, Mitre and TechDyn for causing Whittaker's alleged extra work and damages.

Page 62 of the TechDyn/Whittaker Subcontract defines the role of the Mitre Corporation in the ICCE project. The Subcontract expressly states that Mitre's participation in the project cannot be the basis of damages for Whittaker. The Subcontract states in pertinent part:

3. 52.295-9501 TECHNICAL REVIEW

A. The Government has contracted with The MITRE Corporation for the services of a technical group which, under the program management of the Electronic Systems Division, is responsible to the Government for overall technical review of certain Government programs, including the efforts under this contract.

B. Explanation of MITRE Role.

1. Technical Review is defined as the process of continually reviewing the technical efforts of contractors. It does not include any modification realignment or redirection of contractor efforts under this contract; such action may be effected only by the prior written direction of the Contracting Officer.

2. The purpose of the review is to:

a. Evaluate from a technical standpoint whether system concept and performance can be expected to be achieved on schedule and within cost.

b. Assure that the impact of new data, new developments and modified requirements is properly assessed and exploited..

c. Assure that The MITRE Corporation has available data on the status and technology of Government programs and projects to enable it to carry out its inter-system integration responsibilities to the Government.

3. The MITRE Corporation has agreed not to engage in the manufacture or the production of hardware, to abide by FAR Subpart 9.5 entitled, "Organizational Conflicts of Interest", to refrain from disclosing proprietary information to unauthorized personnel, and not to compete with any profit-seeking concern.

C. The Contractor agrees to cooperate with The MITRE Corporation by engaging in technical discussions with MITRE personnel, and permitting MITRE personnel access to information and data relating to technical matters (including cost and schedule) concerning this contract to the same degree such access is accorded Government project personnel.

D. It is expressly understood that the operation of this clause will not be the basis for an equitable adjustment.
(Emphasis added).

Plainly, under the foregoing clause, TechDyn cannot be held liable for any damages to Whittaker caused by Mitre's acts or omissions. At trial, Whittaker failed to provide evidence that will allow the jury to apportion with any degree of certainty the damages allegedly caused by the Air Force, Mitre and TechDyn. Such lack of evidence is fatal to Whittaker's case.

It is well established in Virginia that when there is evidence of damages from more than one cause, the claimant must prove with a reasonable degree of certainty the share of damages caused by the party from which it seeks recovery. Hale v.

Fawcett, 202 S.E.2d 923 (Va. 1974). When the claimant fails to provide a basis to apportion the damages, the claimant may not recover. In Hale v. Fawcett, 202 S.E.2d 923, 925 (Va. 1974), the Court set forth this well settled principle:

When there is evidence of damage from several causes, as to a portion of which a defendant cannot be held liable, the burden is on a plaintiff to present evidence which will show "within a reasonable degree of certainty" the share of damages for which a defendant is responsible. Smith v. The Pittston Company, 203 Va. 711, 715, 127 S.E.2d 79, 82 (1962); Heldt v. Tunnel District, 196 Va. 477, 484, 84 S.E.2d 511, 515 (1954); Panther Coal Co. v. Looney, 185 Va. 758, 771-772, 40 S.E.2d 298, 304-305 (1946).

* * *

Since the plaintiff did not prove with reasonable certainty that part of damages for which the defendant could be held responsible, the proof was too uncertain to allow a jury to apportion part of all the proved damages to the acts for which the defendant was responsible. Hence the issue should not have been submitted to the jury. Summary judgment should have been entered for the defendant.

202 S.E.2d at 925.

Similarly, in Carr v. Citizens Bank and Trust Company, 325 S.E.2d 86 (Va. 1985), the Virginia Supreme Court again held that where loss results from more than one cause, the claimant's case will be dismissed unless the claimant can show within a reasonable degree of certainty the amount chargeable against a particular defendant. At trial, Whittaker has testified that the Air Force, Mitre and TechDyn caused the damages for which

Whittaker seeks recovery. However, Whittaker failed to produce evidence that provides any basis to apportion responsibility among these parties. Importantly, the Subcontract expressly provides that TechDyn cannot be held liable for extra costs caused by the role of Mitre in the Subcontract. Thus, TechDyn cannot be held liable for any of Whittaker's damages that may have been caused by Mitre.

Because Whittaker has asserted that Mitre was a contributing cause of the damages it allegedly suffered, and because as a matter of contract TechDyn cannot be held liable for those damages, Whittaker's failure to provide a basis to apportion the cause of damage among the Air Force, Mitre and TechDyn is fatal to Whittaker's action. Hale v. Fawcett, supra.

II. WHITTAKER'S DAMAGES ARE NOT RECOVERABLE FROM TECHDYN BECAUSE WHITTAKER'S DAMAGES ARE SPECULATIVE AND UNCERTAIN

At trial, Whittaker failed to produce adequate evidence to support its claimed damages. Whittaker's entire damage presentation is set forth on a one-page summary of damages (Defendant's Exhibit 108) asking for \$4,617,931 from TechDyn.

At trial, Mr. Cannady's testimony regarding damages was based entirely on uncorroborated out-of-court estimates of damages prepared by others. In Virginia, fact witnesses such as Mr. Cannady cannot express an opinion as to damages unless that position is based on first-hand knowledge. Friend, The Law of

Evidence in Virginia, §208, p. 523 (3rd Ed. 1988); Kerr v. Clinchfield Coal Corporation, 192 S.E. 741, 743 (Va. 1937)..

Also, Whittaker's corporate representative, Marie Raymond, identified the individuals that prepared Whittaker's estimates of damage to include Joe Emerald for field engineering, Nanette Johnson, Bonnie Ellis and others (Tr. p. 2686) in addition to (Tr. p. 2805-7):

1. Logistics - Steve Jones
2. Remote Control Element - Ken Turi
3. Updated Data Terminal Sets - Arnold Durtsche
4. Cables and Packaging - Craig Smith
5. Administrative and Interest - Jack Cannady
6. Software - Claudia Justis

Of the foregoing individuals, only Steve Jones, Jack Cannady and Claudia Justis testified at trial.

It is well settled in Virginia that a claimant must prove its damages with sufficient exactitude. Trial Handbook for Virginia Lawyers, Damages §36.6 pg. 464 (1986). If damages are speculative and uncertain, they are not recoverable. In Barnes v. Graham Virginia Quarries, Inc., 204 Va. 414, 132 S.E.2d 395, 397-8 (1963), the Supreme Court of Virginia stated:

The damages recoverable in any case must be susceptible of ascertainment with a reasonable degree of certainty, or, as the rule is sometimes stated, must be certain both in their nature and in respect of the cause from which they proceed. Damages which are uncertain, contingent, or speculative cannot be recovered either in actions ex contractu or actions ex delicto. As between possible methods by which a loss may be computed, the law prefers that which leads to certain, and not speculative, results. A reason given

for the rule is that uncertain or speculative damages are not susceptible of the exactness of proof that is required to fix a liability.

The damages recovered in any case must be shown with reasonable certainty both as to their nature and in respect of the cause from which they proceed. No recovery can be had where it is uncertain whether the plaintiff suffered any damages, unless it is established with reasonable certainty that the damages sought resulted from the act complained of. Hence, no recovery can be had where resort must be had to speculation or conjecture for the purpose of determining whether the damages resulted from the act of which complaint is made or from some other cause, or where it is impossible to say what, if any, portion of the damages resulted from the fault of the defendant and what portion from the fault of the plaintiff himself.

132 S.E.2d at 397-8.

Similarly, in Dillingham v. Hall, 365 S.E.2d 738, 739 (Va. 1988), the Supreme Court of Virginia reversed an award of damages because the claimant failed to make an intelligent presentation of its damages. In so ruling, the Court stated:

A plaintiff's burden of proving the elements of damages with reasonable certainty requires him to furnish evidence of sufficient facts and circumstances to permit the fact-finder to make at least "an intelligent and probable estimate" of the damages sustained. Gwaltney v. Reed, 196 Va. 505, 507-08, 84 S.E.2d 501, 502 (1954).

365 S.E.2d at 739.

Simply stated, Whittaker has failed to establish evidence of any facts or circumstances that permits the jury to make an intelligent and probable estimate of Whittaker's damages.

Whittaker's damage presentation is a one-page summary of damages which totals Whittaker's damages at \$4,617,931. Whittaker failed to put into evidence any financial records to corroborate (in even the broadest way) its claim of damages. Moreover, Whittaker failed to produce as witnesses six of nine Whittaker people that admittedly prepared the damage estimates which form Whittaker's claim (Ken Turi, Craig Smith, Arnold Durtsche, Joe Emerald, Nanette Johnson, and Bonnie Ellis). Thus, Whittaker relies on hearsay and unsupported estimates to seek a substantial portion of Whittaker's damages. In Sampson v. Sampson, 275 S.E.2d 597, 601 (Va. 1981), the Court said: "... Where some part of the damage award was based upon inadmissible hearsay evidence, it was proper for the trial court to set aside the verdict." Under the foregoing facts and law, Whittaker's claim for damages must be stricken as speculative and uncertain. At the very least, those portions of Whittaker's claim related to the Remote Control Element, Updated Data Terminal Sets, and Cables and Packaging must be stricken as unsupported and unsupportable hearsay.

III. WHITTAKER MAY NOT RECOVER ITS ADMINISTRATIVE COSTS ASSOCIATED WITH PREPARING AND PROSECUTING ITS CLAIMS AGAINST TECHDYN

In this action, Whittaker seeks damages of \$4,617,931 from TechDyn. Included in that amount, Whittaker seeks \$500,000 for alleged "administrative costs". However, in response to a question from Whittaker's own lawyer, Ms. Raymond admitted: "That means the preparation of the claim and the process of

trying to get it resolved." (Tr. p. 2806). There is no provision in the Contract, nor any evidence presented to this Court that justifies the award of attorneys' fees, settlement costs or administrative costs in this action.

It is well settled in Virginia that attorneys' fees and other settlement expenses are not recoverable absent a specific contractual or statutory provision allowing the award of such fees and costs. In Lannon v. Lee Conner Realty Corp., 385 S.E.2d 380, 383 (Va. 1989), the Virginia Supreme Court reaffirmed the principle that attorneys' fees and settlement expenses may not be awarded without specific contractual or statutory authority. In Lannon, the Court held:

Notwithstanding federal decisions to the foregoing effect, which rest upon the inherent powers of the court, we have consistently adhered to the "American rule": ordinarily, attorneys' fees are not recoverable by a prevailing litigant in the absence of a specific contractual or statutory provision to the contrary. Gilmore v. Basis Industries, 233 Va. 485, 490, 357 S.E.2d 514, 517 (1987). Because that was the rule in effect at the time of entry of the final decree, the chancellor erred in awarding attorneys' fees.

Accordingly, we will vacate the award of attorneys' fees, reverse the decree, and remand the cause for hearing on the exceptions to the commissioner's report filed on behalf of Mrs. Lannon and lodged with the clerk of the trial court. (Emphasis added).

385 S.E.2d at 383.

In Ranger Construction Co. v. Prince William County, 605 F.2d 1298, 1301-02 (4th Cir. 1979) the Court disallowed all expenses associated with preparing and presenting claims and litigation.

In the instant action, Whittaker has failed to present any evidence which would allow this Court to award attorneys' fees, settlement expenses or other administrative costs. Accordingly, this Court must strike Whittaker's \$500,000 demand for "administrative costs."

IV. BY WHITTAKER'S OWN ADMISSION, WHITTAKER IS NOT ENTITLED TO RECOVER ADDITIONAL PROGRESS PAYMENTS

At trial, Whittaker produced no evidence that it has submitted progress payment requests that have not been paid by TechDyn. In fact, at trial, Ms. Raymond admitted that the maximum amount that Whittaker can recover under the progress payment clause of the Contract is 80% (Tr. p. 2693). Ms. Raymond also admitted that Whittaker was paid 80% of the Contract value in December of 1988 (Tr. p. 2694). Furthermore, when asked "And has Whittaker submitted any invoices to TechDyn for progress payments since then?", Ms. Raymond answered: "I don't believe so." Simply put, TechDyn has paid Whittaker all monies which Whittaker can recover under the law and the Subcontract prior to Contract completion. Accordingly, Whittaker's demand for progress payments and interest in the amount of \$373,812 must be dismissed.

DATED: July 22, 1991.

Respectfully submitted,

TECHDYN SYSTEMS CORPORATION

By: Garry R. Boehlert /ccp
Garry R. Boehlert

By: Benjamin T. Riddles, II

WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Plaintiff's Motion to Strike and For Summary Judgment on Defendant's Damages for Failing to Apportion Liability, for Being Speculative and Uncertain and For Seeking Costs Not Recoverable in Virginia was sent via hand-delivery this 22nd day of July, 1991 to:

Peter B. Work, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

and

Brian F. Kenney, Esquire
Miles & Stockbridge
11350 Random Hills Road
Suite 500
Fairfax, VA 22030

Garry R. Boehlert /ccp
Garry R. Boehlert

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION,

Plaintiff,

v.

WHITTAKER CORPORATION,

Defendant.

AT LAW NO. 94144

**MEMORANDUM IN SUPPORT OF WHITTAKER CORPORATION'S RENEWED
MOTION TO STRIKE THE EVIDENCE RELATING TO COUNT ONE OF
TECHDYN SYSTEMS CORPORATION'S AMENDED MOTION FOR JUDGMENT**

In Count One of its Amended Motion for Judgment, TechDyn alleges that Whittaker breached its ICCE subcontract with TechDyn by failing to perform its contractual obligations in a timely manner thereby delaying completion of the ICCE program. As a result of Whittaker's alleged breaches, TechDyn claims that it has incurred unreimbursed costs.^{1/}

The testimony at trial unmistakably establishes that multiple sources caused delay in the ICCE program's completion. One of the many examples of such testimony occurred during the cross-examination of Rufus Thornton during which Mr. Thornton testified

^{1/} TechDyn also claims that as a result of its breaches it lost new or other business and profits; however, the evidence with respect to that claim was stricken by the Court at the close of TechDyn's case-in-chief.

that the delay in the ICCE program's completion was not attributable to any one source:

BY MR. BOEHLERT:

Q. Have you been able to form a conclusion as to the principal cause for delay in this project?

A. That's very broad. There are -- I think I've made it clear to counsel for defense and yourself as well that there is no one thing that caused delay.

Trial Transcript at 2297 (emphasis added).

Yet, even though the evidence at trial was manifestly clear that multiple sources delayed the ICCE program's completion, TechDyn did not come forward with a shred of evidence to meet its burden of "present[ing] evidence which would show 'within a reasonable degree of certainty' the share of damages for which [Whittaker] [wa]s responsible." Hale v. Fawcett, 214 Va. 583, 202 S.E.2d 923. 925 (1974).^{2/} TechDyn has not done so because its

2/

Even assuming TechDyn had offered evidence that permitted a jury to apportion TechDyn's claimed damages between Whittaker and non-Whittaker sources, that evidence would have to be stricken because Whittaker was never afforded access to such information during discovery despite its repeated requests for it. See, e.g., Whittaker's First Set of Interrogatories, Interrogatory No. 12 (asking TechDyn to "identify with specificity, by amount and date incurred, each item of" TechDyn's alleged unreimbursed damages); Whittaker's Third Set of Interrogatories, Interrogatory No. 1 (asking TechDyn to "identify and explain each action by Whittaker which extended TechDyn's completion of the ICCE Project and specify the amount of delay attributable to each such action"); Whittaker's December 14, 1990 questions (asking (1) "What delays are attributed to what breaches?" (2) When did the delay periods associated with particular breaches occur?" (3) How was TechDyn damaged by the delay periods associated with particular breaches?"). To the contrary, in response to

Footnote continued on next page...

theory of time-related damages seeks compensation for all costs and overhead for which it has not been previously compensated by the Air Force.^{3/} Thus, there is simply no basis for the jury "to apportion part or all [of TechDyn's] proved damages to the acts for which [Whittaker] was responsible." 202 S.E.2d at 925. Accordingly, TechDyn's evidence with respect to its claim for unreimbursed costs under Count One must be stricken, and summary judgment should be entered for Whittaker on that claim.

Under similar circumstances, the Virginia Supreme Court has repeatedly found that the granting of a motion to strike is appropriate. For instance, in Hale v. Fawcett, the Virginia Supreme Court explained:

Here we have a case in which there is evidence of damages from separate causes, as to a portion of which defendant cannot be held responsible. No evidence was produced to enable the jury to form a reasonable estimate of what portion of the damage was caused by cattle entering through the narrow opening between the cattle guard and the gate post and what portion was caused by cattle entering through and over the division fence. Since the plaintiff did not prove with reasonable certainty that part of damages for which the

Footnote continued...

Whittaker's numerous requests for such information during discovery, TechDyn consistently asserted that Whittaker was responsible for all of the damages claimed in Count One.

3/ This became patently obvious during the cross-examination of TechDyn's expert Greg D. Crider, who was called by TechDyn to explain TechDyn's delay claim. When Mr. Crider was asked when Whittaker-caused delays occurred, he was unable to state with any degree of precision when they took place. Instead, he testified that Whittaker-caused delays "would occur throughout the entire period of the contract." Trial Transcript at 1465.

defendant could be held responsible, the proof was too uncertain to allow a jury to apportion part or all the proved damages to the acts for which the defendant was responsible. Hence the issue should not have been submitted to the jury. Summary judgment should have been entered for the defendant.

202 S.E.2d at 925 (emphasis added). Accord Medcom, Inc. v. C. Arthur Weaver Co., Inc., 232 Va. 80, 348 S.E.2d 243, 247 (1986) ("The trial court ruled that Medcom's evidence relating to these two elements of damage was insufficient to create a jury issue, and we agree. Although '[p]roof of absolute certainty as to the amount of loss or damage is not essential,' a claimant must prove 'with reasonable certainty the amount of damages and the cause from which they resulted'"); Carr v. Citizens Bank and Trust Co., 228 Va. 644, 325 S.E.2d 86, 90 (1985) ("[T]here was no evidence of the damages solely attributable to Carr's obtaining the injunction. Therefore, the court erred in overruling defendants' motion to strike the evidence and improperly allowed the jury to assess their liability without evidence to justify the award"); Cooper v. Whiting Oil Co., Inc., 226 Va. 491, 311 S.E.2d 757, 761 (1984) (holding that "trial court correctly granted the motion to strike the plaintiffs' evidence" where plaintiffs failed "to produce evidence to show within a reasonable degree of certainty the share of damages for which the defendant is responsible").

For the foregoing reasons, Whittaker's motion to strike TechDyn's evidence pertaining to Count One of its Amended Motion

for Judgment should be granted, and summary judgment should be entered in Whittaker's favor on Count One.

Respectfully submitted,

DEFENDANT, WHITTAKER CORPORATION

BY: Peter B. Work
Peter B. Work
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 624-2500

and

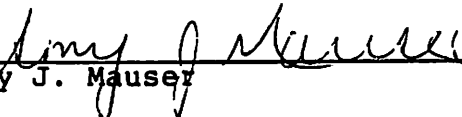
William L. Carey
William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, VA 22030
(703) 352-4300

July 23, 1991

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Memorandum
In Support Of Whittaker Corporation's Renewed Motion To Strike The
Evidence Relating To Count One Of TechDyn Systems Corporation's
Amended Motion For Judgment was served by hand this 23rd day of
July 1991 upon:

Garry Boehlert, Esq.
Watt, Tieder, Killian & Haffar
Suite 400
7929 Westpark Drive
McLean, Virginia 22101



Amy J. Mauser

FILED

AUG 21 PM 3:39

WALTER E. BROWN
CLERK-CIRCUIT COURT
FAIRFAX COUNTY VA

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION

Plaintiff,

v.

WHITTAKER CORPORATION

Defendant.

AT LAW NO. 94144

PLAINTIFF'S MOTION TO SET ASIDE THE JURY'S
AUGUST 1, 1991 VERDICT ON COUNT I AND COUNT III
OF DEFENDANT'S AMENDED COUNTERCLAIM

COMES NOW, Plaintiff, TechDyn Systems Corporation (hereinafter "TechDyn") pursuant to Virginia Code §§8.01-383.1 and 8.01-430 and sets forth herein its Motion to Set Aside the Jury's August 1, 1991 Verdict for Defendant, Whittaker Corporation (hereinafter "Whittaker"), on Count I and Count III of Whittaker's Counterclaim. The basis for TechDyn's Motion is set forth below.

I. AS A MATTER OF LAW THIS COURT MUST SET ASIDE THE JURY'S
AUGUST 1, 1991 VERDICT ON COUNTS I AND III OF DEFENDANT'S
AMENDED COUNTERCLAIM

When a jury reaches a verdict that is contrary to the evidence or is without evidence to support it, the trial court will set aside the verdict. Virginia Code §8.01-430 empowers the trial court with the right to set aside the jury's verdict when

the court can decide the case on its merits. The statute states in pertinent part:

When the verdict of a jury in a civil action is set aside by a trial court upon the ground that it is contrary to the evidence, or without evidence to support it, a new trial shall not be granted if there is sufficient evidence before the court to enable it to decide the case upon its merits, but such final judgment shall be entered as to the court shall seem right and proper.

Based upon the foregoing, the Supreme Court of Virginia has recognized that a jury verdict that is inconsistent or irreconcilable with the evidence presented at trial should be set aside, and a verdict on the merits entered. Dewald v. King, 354 S.E.2d 60, 63 (Va. 1987); Roanoke Hospital Association v. Doyle & Russell, Inc., 214 S.E.2d 155, 161-2 (Va. 1975).

In addition to setting aside the verdict, the trial court will reduce the verdict when the jury awards the same sum twice or awards an excessive amount. Virginia Code §8.01-383.1 enables the trial court to require a party to remit that portion of the verdict which is deemed excessive or duplicative. The foregoing statute and the cases interpreting that statute give the trial judge broad discretion to amend an improper jury award. For example, in Smithey v. Refining Company, 122 S.E.2d 872, 877, the Supreme Court of Virginia stated:

The law has wisely placed in the hands of the trial judge the power to exercise his sound discretion in supervising the verdicts of juries to prevent miscarriages of justice. The law intends that this

power should be exercised, and that the judge should be more than a mere referee between litigating parties.

122 S.E.2d at 877.

Accordingly, as a matter of law, this Court may set aside or reduce the verdicts for Whittaker under Count I and Count III of Whittaker's counterclaim.

A. THE VERDICT FOR WHITTAKER ON COUNT I MUST BE SET ASIDE BECAUSE WHITTAKER FAILED TO PROVE WHAT PORTION OF ITS ALLEGED DAMAGES WERE CAUSED BY TECHDYN

At trial, Whittaker asserted that the Air Force, the Mitre Corporation (hereinafter "Mitre"), and TechDyn allegedly caused Whittaker to perform extra work for which Whittaker now seeks damages.

However, Whittaker failed to apportion (or even attempt to apportion) liability among the Air Force, Mitre and TechDyn for causing Whittaker's alleged extra work and damages.

Page 62 of the TechDyn/Whittaker Subcontract defines the role of the Mitre Corporation in the ICCE project. The Subcontract expressly states that Mitre's participation in the project cannot be the basis of damages for Whittaker. The Subcontract states in pertinent part:

3. 52.295-9501 TECHNICAL REVIEW

A. The Government has contracted with The MITRE Corporation for the services of a technical group which, under the program management of the Electronic Systems Division, is responsible to the Government for overall technical review of certain Government programs, including the efforts under this contract.

B. Explanation of MITRE Role.

1. Technical Review is defined as the process of continually reviewing the technical efforts of contractors. It does not include any modification realignment or redirection of contractor efforts under this contract; such action may be effected only by the prior written direction of the Contracting Officer.

2. The purpose of the review is to:

a. Evaluate from a technical standpoint whether system concept and performance can be expected to be achieved on schedule and within cost.

b. Assure that the impact of new data, new developments and modified requirements is properly assessed and exploited.

c. Assure that The MITRE Corporation has available data on the status and technology of Government programs and projects to enable it to carry out its inter-system integration responsibilities to the Government.

3. The MITRE Corporation has agreed not to engage in the manufacture or the production of hardware, to abide by FAR Subpart 9.5 entitled, "Organizational Conflicts of Interest", to refrain from disclosing proprietary information to unauthorized personnel, and not to compete with any profit-seeking concern.

C. The Contractor agrees to cooperate with The MITRE Corporation by engaging in technical discussions with MITRE personnel, and permitting MITRE personnel access to information and data relating to technical matters (including cost and schedule) concerning this contract to the same degree such access is accorded Government project personnel.

D. It is expressly understood that the operation of this clause will not be the basis for an equitable adjustment. (Emphasis added).

Plainly, under the foregoing clause, TechDyn cannot be held liable for any damages to Whittaker caused by Mitre's acts or omissions. At trial, Whittaker failed to provide evidence that allowed the jury to apportion with any degree of certainty the damages allegedly caused by the Air Force, Mitre and TechDyn. Such lack of evidence was fatal to Whittaker's case and is grounds to set aside the \$422,676 jury verdict which Whittaker obtained on Count I of its Counterclaim.

It is well established in Virginia that when there is evidence of damages from more than one cause, the claimant must prove with a reasonable degree of certainty the share of damages caused by the party from which it seeks recovery. Hale v. Fawcett, 202 S.E.2d 923 (Va. 1974). When the claimant fails to provide a basis to apportion the damages, the claimant may not recover. In Hale v. Fawcett, 202 S.E.2d 923, 925 (Va. 1974), the Court set forth this well settled principle:

When there is evidence of damage from several causes, as to a portion of which a defendant cannot be held liable, the burden is on a plaintiff to present evidence which will show "within a reasonable degree of certainty" the share of damages for which a defendant is responsible. Smith v. The Pittston Company, 203 Va. 711, 715, 127 S.E.2d 79, 82 (1962); Heldt v. Tunnel District, 196 Va. 477, 484, 84 S.E.2d 511, 515 (1954); Panther Coal Co. v. Looney, 185 Va. 758, 771-772, 40 S.E.2d 298, 304-305 (1946).

* * *

Since the plaintiff did not prove with reasonable certainty that part of damages for which the defendant could be held responsible, the proof was too uncertain to allow a jury to apportion part of all the proved damages to the acts for which the defendant was responsible. Hence the issue should not have been submitted to the jury. Summary judgment should have been entered for the defendant.

202 S.E.2d at 925.

Similarly, in Carr v. Citizens Bank and Trust Company, 325 S.E.2d 86 (Va. 1985), the Virginia Supreme Court again held that where loss results from more than one cause, the claimant's case will be dismissed unless the claimant can show within a reasonable degree of certainty the amount chargeable against a particular defendant. At trial, Whittaker has testified that the Air Force, Mitre and TechDyn caused the damages for which Whittaker seeks recovery. However, Whittaker failed to produce evidence that provided any basis to apportion responsibility among these parties. Importantly, the Subcontract expressly provides that TechDyn cannot be held liable for extra costs caused by the role of Mitre in the Subcontract. Thus, as a matter of law, TechDyn could not be held liable for any of Whittaker's damages that may have been caused by Mitre.

Because Whittaker asserted that Mitre was a contributing cause of the damages it allegedly suffered, and because as a matter of contract TechDyn cannot be held liable for those damages, Whittaker's failure to provide a basis to apportion the cause of damage among the Air Force, Mitre and TechDyn was fatal

to Whittaker's action. Hale v. Fawcett, supra. Therefore, the jury's verdict in the amount of. \$422,676 for Whittaker under Count I of its Counterclaim must be set aside as contrary to the evidence.

B. THE VERDICT FOR WHITTAKER UNDER COUNT I AND COUNT III
MUST BE SET ASIDE AS CONTRARY TO THE EVIDENCE BECAUSE
WHITTAKER'S DAMAGES ARE SPECULATIVE AND UNCERTAIN

At trial, Whittaker failed to produce adequate evidence to support its claimed damages. Whittaker's damage presentation is set forth on a one-page summary of damages (Defendant's Exhibit 108(a); a copy of which is attached hereto as Exhibit 1) asking for \$3,182,492 from TechDyn.

At trial, Mr. Cannady's testimony regarding the Whittaker damages that the Court allowed to go to the jury was based entirely on uncorroborated out-of-court estimates of damages prepared by others. In Virginia, fact witnesses such as Mr. Cannady cannot express an opinion as to damages unless that position is based on first-hand knowledge. Friend, The Law of Evidence in Virginia, §208, p. 523 (3rd Ed. 1988); Kerr v. Clinchfield Coal Corporation; 192 S.E. 741, 743 (Va. 1937).

Also, Whittaker's corporate representative, Marie Raymond, identified the individuals that prepared Whittaker's estimates of damage to include Joe Emerald for field engineering, Nanette Johnson, Bonnie Ellis and others (Tr. p. 2686) in addition to (Tr. p. 2805-7):

1. Logistics - Steve Jones
2. Remote Control Element - Ken Turi
3. Updated Data Terminal Sets - Arnold Durtsche
4. Cables and Packaging - Craig Smith
5. Administrative and Interest - Jack Cannady
6. Software - Claudia Justis

Of the foregoing individuals, only Steve Jones, Jack Cannady and Claudia Justis testified at trial.

It is well settled in Virginia that a claimant must prove its damages with sufficient exactitude. Trial Handbook for Virginia Lawyers, Damages §36.6 pg. 464 (1986). If damages are speculative and uncertain, they are not recoverable. In Barnes v. Graham Virginia Quarries, Inc., 204 Va. 414, 132 S.E.2d 395, 397-8 (1963), the Supreme Court of Virginia stated:

The damages recoverable in any case must be susceptible of ascertainment with a reasonable degree of certainty, or, as the rule is sometimes stated, must be certain both in their nature and in respect of the cause from which they proceed. Damages which are uncertain, contingent, or speculative cannot be recovered either in actions ex contractu or actions ex delicto. As between possible methods by which a loss may be computed, the law prefers that which leads to certain, and not speculative, results. A reason given for the rule is that uncertain or speculative damages are not susceptible of the exactness of proof that is required to fix a liability.

The damages recovered in any case must be shown with reasonable certainty both as to their nature and in respect of the cause from which they proceed. No recovery can be had where it is uncertain whether the plaintiff suffered any damages, unless it is established with reasonable certainty that the damages sought resulted from the act complained of. Hence, no recovery can

be had where resort must be had to speculation or conjecture for the purpose of determining whether the damages resulted from the act of which complaint is made or from some other cause, or where it is impossible to say what, if any, portion of the damages resulted from the fault of the defendant and what portion from the fault of the plaintiff himself.

132 S.E.2d at 397-8.

Similarly, in Dillingham v. Hall, 365 S.E.2d 738, 739 (Va. 1988), the Supreme Court of Virginia reversed an award of damages because the claimant failed to make an intelligent presentation of its damages. In so ruling, the Court stated:

A plaintiff's burden of proving the elements of damages with reasonable certainty requires him to furnish evidence of sufficient facts and circumstances to permit the fact-finder to make at least "an intelligent and probable estimate" of the damages sustained. Gwaltney v. Reed, 196 Va. 505, 507-08, 84 S.E.2d 501, 502 (1954).

365 S.E.2d at 739.

Simply stated, Whittaker has failed to establish evidence of any facts or circumstances that permitted the jury to make an intelligent and probable estimate of Whittaker's damages. Whittaker's damage presentation is a one-page summary of damages which totals Whittaker's damages at \$3,182,492. Whittaker failed to put into evidence any financial records to corroborate (in even the broadest way) its claim of damages. Moreover, Whittaker failed to produce as witnesses six of nine Whittaker people (Ken Turi, Craig Smith, Arnold Durtsche, Joe Emerald, Nanette Johnson, and Bonnie Ellis) that admittedly prepared the damage estimates

which form Whittaker's claim. Thus, Whittaker relied on hearsay and unsupported estimates to seek its damages. In Sampson v. Sampson, 275 S.E.2d 597, 601 (Va. 1981), the Court said: "... Where some part of the damage award was based upon inadmissible hearsay evidence, it was proper for the trial court to set aside the verdict." Under the foregoing facts and law, the verdict for Whittaker under Counts I and III of its counterclaim must be set aside because Whittaker's damages were impermissibly uncertain, speculative, unsupported, and improperly based on hearsay.

C. WHITTAKER'S RECOVERY UNDER COUNT I AND COUNT III WAS DUPLICATIVE, THEREFORE WHITTAKER'S VERDICT UNDER COUNT III MUST BE SET ASIDE OR THE RECOVERY UNDER COUNT I MUST BE REDUCED

In reaching its verdict for Whittaker under Count I and Count III of Whittaker's counterclaim, the jury awarded Whittaker \$422,676 under Count I and \$142,000 under Count III. However, Whittaker sought recovery for the same item of damage, compensation for the alleged breach of the Remote Control Element, under both Count I and Count III. Accordingly, Whittaker's recovery under Count I must be reduced by at least \$142,000 or Whittaker's recovery under Count III must be set aside entirely.

It is well settled that a jury verdict may be amended or modified when the verdict allows for a double recovery of the same item of damage. J.W. Creech, Inc. v. Norfolk Air Conditioning Corporation, 377 S.E.2d 605, 610 (Va. 1989). In J.W. Creech, Inc., the Supreme Court affirmed the trial judge's

decision to reduce the jury verdict to prevent duplicative recovery. In so ruling the court stated:

The court concluded that an injustice would result if Norfolk Air were permitted to retain the sum it had, in effect, collected for Creech's account. The court set aside the verdict to the extent of the disputed sum, subtracted \$2,788.81 from the principal amount found by the jury to be due Norfolk Air and entered judgment for the balance.

* * *

The jury not having the benefit of the undisputed facts, had by its verdict caused Norfolk Air to receive double payment for the item in question.

377 S.E.2d at 610.

Similarly, many other cases have found that the trial court has the discretionary power to grant remittur or set aside a verdict where a party's recovery does not comport with the evidence. Ford Motor Co. v. Bartholomew, 224 Va. 421, 435, 297 S.E.2d 675, 682 (1982); Bassett Furniture v. McReynolds, 216 Va. 897, 912, 224 S.E.2d 323, 332 (1976); Smithey v. Refining Company 203 Va. 142, 148, 122 S.E.2d 872, 877 (1961). Thus, when a jury verdict allows a party to recover twice for the same item of damage the trial judge may reduce or set aside the verdict to prevent an unjust recovery.

In this case, the verdict for Whittaker under Counts I and III of Whittaker's counterclaim awards Whittaker twice for the same item for damage. At trial, Whittaker relied upon a one page summary (Defendant's Exhibit 108a; Exhibit 1) to set forth the

damages Whittaker claimed against TechDyn. Under Count I of Whittaker's Counterclaim, Defendant's Exhibit 108a sought \$426,531 in damages under the category of Remote Control Element losses. During trial, Whittaker presented no testimony or other evidence that assessed the amount of Whittaker's Remote Control Element damages. The jury awarded Whittaker \$422,676 of damages on Count I.

The jury also awarded Whittaker \$142,000 under Count III. Count III seeks recovery of damages attributable to the loss of the Remote Control Element work. Again, the only evidence presented at trial to assess the cost of Whittaker's alleged losses related to Remote Control Element work was Exhibit 108(a). That exhibit stated that under Count I, Whittaker's losses attributable to Remote Control Element work were \$426,531. Whittaker presented no other evidence of its damages attributable to the loss of Remote Control Element work. The jury verdict for Whittaker under Count III was \$142,000 (which is one third of Whittaker's claimed Remote Control Element damages under Count I). Thus, the verdict under Count I and Count III of Whittaker's counterclaim grant Whittaker recovery for the same item of damage, Whittaker's loss of the Remote Control Element work. Accordingly, this court must either reduce Whittaker's recovery under Count I by \$142,000 or set aside the verdict on Count III as being contrary to the evidence.

D. CONCLUSION

For the reasons set forth herein, TechDyn respectfully requests this Court set aside the verdicts for Whittaker under Count I and Count III of Whittaker's counterclaim. Alternatively, this Court must reduce Whittaker's recovery by \$142,000 to prevent a double recovery under Count I and III related to the Remote Control Element of the project.

DATED: August 21, 1991

Respectfully submitted,
TECHDYN SYSTEMS CORPORATION

By: 

Garry B. Boehlert

By: 

Douglas C. Proxmire

WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Plaintiff's Motion to Set Aside Verdict on Count I and Count III of Defendant's Counterclaim was mailed via first-class mail this 21st day of August, 1991, to:

Peter B. Work, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

and

William Carey, Esquire
Miles & Stockbridge
11350 Random Hills Road
Suite 500
Fairfax, VA 22030



Garry R. Boehlert

SUMMARY OF WHITTAKER'S COUNTERCLAIMS

COUNT ONE

Compensation For Added Work
Performed And TechDyn Breaches

Software	\$1,408,720
Testing	224,314
Logistics	733,036
Remote Control Element	426,531
Data Terminal Sets	36,158
Cabling and Packaging	20,000
TechDyn's Performance Shortcomings	<u>-----</u>
 TOTAL	 <u>\$2,848,759</u>

COUNT FOUR

Invoiced But Unpaid Progress Payments

Unpaid Mod 3 Progress Payments	\$ 219,839
Unpaid Front-End Progress Payments	<u>113,927</u>
 TOTAL	 <u>\$ 333,766</u>

1926



RECEIVED

AUG 21 1991

WILLIAM T. TILGER,
KILLIAN & HOFFAR

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION,

Plaintiff,

v.

WHITTAKER CORPORATION,

Defendant.

AT LAW NO. 94144

MOTION OF WHITTAKER CORPORATION TO SET ASIDE THE JURY'S
VERDICT AS TO TECHDYN SYSTEMS CORPORATION'S
COUNT ONE BECAUSE TECHDYN FAILED TO PROVIDE ANY BASIS
FOR ALLOCATING RESPONSIBILITY FOR ITS UNREIMBURSED
DELAY COSTS AMONG WHITTAKER AND NON-WHITTAKER CAUSES

Whittaker respectfully asks the Court, pursuant to § 8.01-43 of the Virginia Code, to set aside the jury's verdict on TechDyn's Count One and enter a judgment for Whittaker, because TechDyn failed to sustain its legal burden of providing the jury with a reasonably certain basis for allocating responsibility for TechDyn's unreimbursed delay costs among Whittaker causes and proven non-Whittaker causes.

TechDyn's Count One, as it went to the jury, demanded an award of the following damages:

Delay.	\$2,919,748
Excess Overhead.	262,409
Relocation of Test Beds.	56,598
Replacement of Keyboard and Printer. .	1,856
Total	<u>\$3,240,611</u>

Pl. Exh. 951. The "delay" element of this demand -- representing 90% of the total -- purportedly consisted of TechDyn's unreimbursed "time-related" costs on the ICCE program from the August 1985 start of TechDyn's performance of its prime contract through May 1991.^{1/} Tab 1.^{2/} TechDyn did not break down these unreimbursed delay costs in terms of what caused them to be incurred or what work they represented, and TechDyn prevented any scrutiny of the costs by refusing to produce its underlying accounting records in response to repeated Whittaker discovery requests and discovery motions.^{3/}

In returning a verdict for TechDyn on its Count One, the jury awarded \$2,101,000 of the \$3,240,611 that TechDyn demanded and

1/ TechDyn defined its "time-related costs" as encompassing (1) direct labor, (2) on-site overhead, (3) travel, (4) consultants, (5) contract labor, (6) other direct costs, and (7) general and administrative expenses.

2/ The Appendix to this motion, and Whittaker's accompanying motion for a new trial on the quantum of damages under Whittaker's Count One, contains supporting transcript excerpts and exhibits at the indicated tabs.

3/ The hearsay (and double hearsay) exhibits comprising "TechDyn's Damages Book" and purportedly depicting TechDyn's unreimbursed delay costs were admitted into evidence over Whittaker's repeated objections.

denied the remaining \$1,139,611. Tab 2. The threshold question to be asked in assessing the validity of this award is: "WHAT EVIDENCE IN THE RECORD ENABLED THE JURY TO DERIVE THESE PARTICULAR NUMBERS FROM THE WHITTAKER AND PROVEN NON-WHITTAKER CAUSES OF TECHDYN'S UNREIMBURSED DELAY COSTS?" Because the answer, unequivocally, is that "THE RECORD CONTAINS NO SUCH EVIDENCE," the jury's verdict must be set aside and judgment entered for Whittaker.

A. Applicable Legal Principle

Under Virginia law, where there are multiple, concurrent, or excusable causes of damage, a plaintiff is entitled to an award only if it presents evidence showing, within a reasonable degree of certainty, the share of damage for which the defendant was responsible. It is legally impermissible for a jury to allocate responsibility for damage among various causes on the basis of speculation, conjecture, whim, or some other uncertain premise. Thus, unless the plaintiff sustains its burden of providing a reasonably certain basis for allocating responsibility for damage, it is not entitled to receive any award.

The existence and applicability of these principles have been established in a line of decisions of the Supreme Court of Virginia, starting with Hale v. Fawcett, 214 Va. 583, 202 S.E.2d 923 (1974). In Hale, the Court expressed the rule as follows:

When there is evidence of damage from
several causes, as to a portion of which

a defendant cannot be held liable, the burden is on a plaintiff to present evidence which will show "within a reasonable degree of certainty" the share of damages for which a defendant is responsible. [Citations omitted.]

* * * *

Here we have a case in which there is evidence of damages from separate causes, as to a portion of which defendant cannot be held responsible. No evidence was produced to enable the jury to form a reasonable estimate of what portion of the damage was caused by cattle entering through the narrow opening between the cattle guard and the gate post and what portion was caused by cattle entering through and over the division fence. Since plaintiff did not prove with reasonable certainty that part of damages for which the defendant could be held responsible, the proof was too uncertain to allow a jury to apportion part or all of the proved damages to the acts for which the defendant was responsible. Hence the issue should not have been submitted to the jury. Summary judgment should have been entered for the defendant.

202 S.E.2d at 925 (emphasis added).

A more recent case in the Hale line is Carr v. Citizens Bank and Trust Co., 228 Va. 644, 325 S.E.2d 86, 90 (1985), where the Supreme Court provided this statement of the applicable rule:

The plaintiff has the burden of proving with reasonable certainty the amount of damages and the cause from which they resulted; speculation and conjecture cannot form the basis of the recovery [Citations omitted.] Where the loss results from several causes, the plaintiff must show within a reasonable degree of certainty the amount chargeable against a

particular defendant. [Citations omitted.] If the proof is too uncertain to allow a jury to apportion the part for which the defendant is responsible, the issue should not be submitted to the jury.

(Emphasis added.) The Supreme Court in Carr went on to say that the trial court had committed reversible error in permitting the case to go to the jury, given the plaintiff's failure to provide the jury with a reasonably certain basis for allocating responsibility for damage among multiple causes:

In this case, the court instructed the jury that it must determine whether the injunction order was the natural and proximate cause of an alleged decrease in the amount the Bank received upon foreclosure, and, if so, the amount of the decrease. But there was no evidence of the damages solely attributable to Carr's obtaining the injunction. Therefore, the court erred in overruling defendant's motion to strike the evidence and improperly allowed the jury to assess their liability without evidence to justify the award.

325 S.E.2d at 90 (emphasis added). Accord Medcom, Inc. v. C. Arthur Weaver Co., Inc., 232 Va. 80, 348 S.E.2d 243, 247 (1986) ("The trial court ruled that Medcom's evidence relating to these two elements of damage was insufficient to create a jury issue, and we agree. Although 'proof of absolute certainty as to the amount of loss or damage is not essential,' a claimant must prove 'with reasonable certainty the amount of damages and the cause from which they resulted'"); Cooper v. Whiting Oil Co., Inc., 226 Va. 491, 311 S.E.2d 757, 761 (1984) ("trial court correctly

granted the motion to strike the plaintiffs' evidence where plaintiffs failed "to produce evidence to show within a reasonable degree of certainty the share of damages for which the defendant is responsible").^{4/}

B. Evidentiary Basis for Whittaker's Motion

Prior to trial, TechDyn consistently responded to Whittaker's several Hale v. Fawcett motions by representing to the Court that

^{4/} The Court rejected Whittaker's request for an instruction incorporating the language of Hale v. Fawcett (as well as Whittaker's requests for instructions on concurrent and excusable causes of delay). Tab 3. From appearances, the less explicit instruction that the Court did give on multiple causes of damage, Tab 4, was not understood by the jury.

In rejecting Whittaker's explicit Hale v. Fawcett instruction, which required "TechDyn to prove within a reasonable degree of certainty the amount of delay for which Whittaker was responsible," the Court explained that it "remembered the Supreme Court didn't like that language, 'reasonable certainty to a jury.'" Tab 5. Quite the contrary, as Whittaker observed at the time, an instruction containing such language has been given by a Virginia trial court without the Supreme Court expressing any disapproval. See Sachs v. Hoffman, 224 Va. 545, 299 S.E.2d 694, 697 (1983) ("[The trial judge] approved an instruction to which no error is assigned. The judge told the jury that the standard of proof was reasonable certainty, and he explained that this standard applies when 'the damages complained of . . . may have resulted from either of two causes, for one of which the defendant may have been responsible and for the other of which he was not'"); see also Emroch, Byrne, and Herbert, Virginia Jury Instructions, § 23.06 (2d Ed. 1990) ("If you believe from a preponderance of the evidence that damage to the plaintiff resulted from two causes, for one of which the defendant is responsible, the burden is upon the plaintiff to produce evidence to prove within a reasonable degree of certainty the share of damages for which the defendant is responsible. And unless the plaintiff has proven within a reasonable degree of certainty the share of damages for which the defendant is responsible, you shall return your verdict in favor of the defendant"). Tab 6.

it would prove that all of TechDyn's unreimbursed delay costs were attributable solely to Whittaker.^{5/} At trial, however, TechDyn's own officials conceded that there were many, frequently concurrent, causes of the unreimbursed delay costs claimed in Count One and that some of these causes could not be attributed to Whittaker. This testimony was, of course, legally binding on TechDyn under the doctrine of Massie v. Firmstone.^{6/} But despite the concessions of its own officials, TechDyn provided no basis at all -- much less a reasonably certain basis -- for the jury to allocate responsibility for TechDyn's unreimbursed delay costs among Whittaker and non-Whittaker causes. In particular, TechDyn was content to leave it to the jury to speculate about what portions of these costs were attributable to conceded and proven non-Whittaker causes.^{7/} When asked on cross examination for an

5/ See, e.g., TechDyn's Opposition to Whittaker's Motion for Summary Judgment and Motion to Strike 6 (November 15, 1990) ("TechDyn does not seek damages from Whittaker attributable to sources other than Whittaker."); TechDyn's Opposition to Whittaker's Motion for Summary Judgment 5 (March 20, 1991) ("TechDyn is seeking damages because of Whittaker's acts and omissions Whittaker is simply wrong when it states that TechDyn has calculated its damages on a total cost basis.").

6/ 134 Va. 450, 114 S.E. 652 (1922). See Travis v. Bulifant, 226 Va. 1, 306 S.E.2d 865, 866 (1983) ("No rule is more firmly established in Virginia than that of Massie v. Firmstone. . . . 'No litigant can successfully ask a court or jury to believe that he has not told the truth. His statements of facts and the necessary inferences therefrom are binding upon him. He cannot be heard to ask that his case be made stronger than he makes it, where, as here, it depends upon facts within his knowledge as to which he testified'").

7/ The grant of Whittaker's requests for a clear Hale v. Fawcett
(continued)

identification of what specific delay periods TechDyn was asking the jury to attribute to Whittaker causes, as distinguished from non-Whittaker causes, the sponsors of TechDyn's damages exhibits (Messrs. Hise and Gray) repeatedly declined to provide that information. Tab 7.

Prominent among the non-Whittaker causes of TechDyn's unreimbursed delay costs which were either conceded by TechDyn's officials -- or found by the jury -- were the very causes that TechDyn's ICCE Project Engineer, Mr. Thorton, identified in response to questions from TechDyn's own counsel as the three principal delay factors in the ICCE program. Tab 8.

Mr. Thorton's three principal delay factors are discussed below.

1. Remote Control Element (RCE)

One of Mr. Thorton's three principal delay factors was TechDyn's reprocurement of the RCE and the impact of that reprocurement effort on TechDyn's ability, over the period from January 1989 through March 1991, to complete its manuals, drawings, installation, and on-site system testing. Tab 9. TechDyn assigned some of the costs associated with this reprocurement to Count Two, but it included other reprocurement-related costs -- such as the

(footnote continued)

instruction and for instructions on concurrent and excusable causes of delay would likely have prevented such speculation.

costs of redoing the CFA manuals and drawings -- as unreimbursed delay costs under Count One. Tab 10. Because the jury found that TechDyn's default termination of Whittaker on the original RCE was invalid, Whittaker could not, as a matter of law, be held responsible for any delay costs associated with the reprocurement.^{8/} Yet, TechDyn provided no basis for the jury to identify and eliminate the reprocurement-related costs that TechDyn included as unreimbursed delay costs under Count One.

8/ Where, as here, a default termination is declared invalid and automatically converted under the terms of the standard Federal Default Terminations Clause (which TechDyn incorporated in the ICCE subcontract) into a termination for convenience, the party whose work has been terminated cannot, as a matter of law, be held responsible for any costs, including delay costs, associated with the reprocurement efforts. See Defense Technologies, Inc., GSBICA Nos. 9570, 9571, 90-1 BCA ¶ 22,406 at 112,552 (1989) (explaining that if contractor is successful in converting a termination for default to a termination for convenience, "the spectre of potential liability for excess reprocurement costs would be eliminated"); Fillip Metal Cabinet Co., GSBICA No. 7695, 87-2 BCA ¶ 19,822, at 100,290 (1987) ("The Government, by rejecting all of appellant's attempts to find out what the Government thought the specification meant, made it impossible for appellant to perform under its Contract. It follows that the default termination was improper. [Citations omitted.] It is converted to a termination for the convenience of the Government. The Government will bear all costs incurred on reprocurement and appellant is entitled to its costs"); L-K Maintenance, DOT BCA Nos. 1560, 1749, 87-1 BCA ¶ 19,578, at 99,013 (1987) ("Since the termination for default cannot stand, there is no basis on which respondent may claim its reprocurement and administrative costs associated therewith from L.K."); and Xplo Corp., DOT CAB Nos. 1289, 1458, 86-3 BCA ¶ 19,125, at 96,680 (1986) ("We convert the termination for default to one for convenience. The Coast Guard therefore has no basis for the assessment of excess reprocurement costs against Xplo.").

2. Modified Data Terminal Set (DTS)

The second of Mr. Thorton's three principal delay factors was the DTS which the Air Force was modifying in the (unrelated) Peace Shield program.

Tab 11. The modified DTS was to be available for use in the ICCE program in June 1986. It did not become available, however, until June 1987.

Tab 12. Thereafter, as Mr. Thorton testified, there was a need for Whittaker to modify its RADIL software to accommodate the DTS modifications.

Tab 13. All of this, Mr. Thorton acknowledged, precluded conduct of software qualification testing until the late fall of 1987 -- a full year after the date contemplated in TechDyn's original prime contract schedule.

Tab 14. Even TechDyn's President, Mr. Morrison, conceded that the Air Force -- not Whittaker -- was responsible for this DTS-related delay. Tab 15. Yet, TechDyn provided no basis for the jury to identify and eliminate the DTS-related costs that TechDyn included as unreimbursed delay costs in Count One.

3. Software Development

The last of Mr. Thorton's three principal delay factors was software development. As Mr. Morrison

conceded, TechDyn asserted (and collected on) a \$1.7 million claim against the Air Force based in part on the premise that the TechDyn/Whittaker proposal team had relied on the Air Force's representations (a) that the ICCE program was to be a "Non-Developmental Item/Commercial Off-the-Shelf project," and (b) that "essentially acceptable software associated with the RADIL existed, and with relatively minor modification would satisfy ICCE project requirements." Tab 16. These representations proved incorrect, as Messrs. Morrison and Thorton acknowledged. In fact, Mr. Thorton conceded that the "ICCE software effort turned into a true development effort" which caused the expansion and extension of every element of the ICCE program. Tab 17. Notwithstanding these conceded facts, TechDyn provided no basis for the jury to identify and eliminate the Air Force-caused software development costs that TechDyn included as unreimbursed delay costs in Count One.

Apart from Mr. Thorton's three principal delay factors, TechDyn officials conceded that there were other causes of TechDyn's unreimbursed delay costs for which Whittaker could not be held responsible. TechDyn provided no basis, however, for the jury to identify and eliminate the costs associated with these causes that TechDyn included as unreimbursed delay costs in Count

One. The following additional, non-Whittaker causes of TechDyn's unreimbursed delay costs are illustrative examples:

- o Provisioning -- Mr. Morrison conceded that the Air Force had greatly expanded the level of provisioning required of TechDyn (and Whittaker) for the ICCE program, that this element of added work had not been dealt with in the settlement of TechDyn's initial claim against the Air Force, and that the cost to TechDyn alone of accommodating the Air Force's added provisioning requirements represented a "significant component" of the difference between TechDyn's initial \$1.7 million claim for which it was compensated, and a \$6.6 million revision to that claim. Tab 18. Yet, TechDyn provided no basis for the jury to identify and eliminate the added provisioning costs that TechDyn included as unreimbursed delay costs in Count One.
- o Management Oversight -- Mr. Morrison conceded that, despite the Air Force's insistence that TechDyn "essentially eliminate" all management oversight money from its proposal, TechDyn had been "jerked all over the place over all these years trying to be responsive to the Air Force" in its demand that TechDyn perform management oversight responsibilities. Tab 19. Yet, TechDyn provided

no basis for the jury to identify and eliminate the added management oversight costs that TechDyn included as unreimbursed delay costs in Count One.

- o Software Testing -- Mr. Thorton conceded that, whereas Whittaker had demonstrated "essentially acceptable" software under the single contractual software test in December 1987, the Air Force had continued to conduct -- and insist on Whittaker's and TechDyn's participation in -- additional software testing for several years after that date. Tab 20. Yet, TechDyn provided no basis for the jury to identify and eliminate the added software testing costs that TechDyn included as unreimbursed delay costs in Count One.
- o Logistics -- Mr. Thorton conceded that the Air Force had insisted, throughout the program, on a level of detail in logistics submissions that exceeded the scope of TechDyn's prime contract. Tab 21. Yet, TechDyn provided no basis for the jury to identify and eliminate the added logistics costs that TechDyn included as unreimbursed delay costs in Count One.
- o TechDyn's Internal Inefficiencies -- Messrs. Morrison and Thorton conceded that TechDyn had experienced internal inefficiencies in the ICCE

program, including incompetent program managers, continuous turnover at all key functional positions, and the unavailability of TechDyn personnel to perform TechDyn's contract work.

Tab 22. Yet, TechDyn provided no basis for the jury to identify and eliminate costs associated with these internal inefficiencies that TechDyn included as unreimbursed delay costs in Count One.

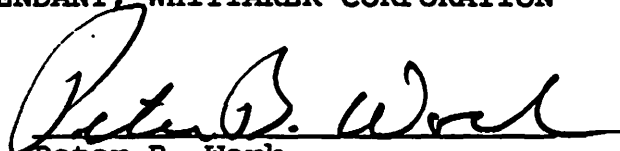
CONCLUSION

TechDyn can no longer rely on the position it took prior to trial in fending off Whittaker's challenge under Hale v. Fawcett to TechDyn's claim for unreimbursed delay costs. TechDyn's own officials testified -- and the jury found -- that there were non-Whittaker causes which contributed to these costs. Because TechDyn failed at trial to sustain its Hale v. Fawcett burden of providing a reasonably certain basis for the jury to identify and eliminate costs associated with proven non-Whittaker causes that TechDyn included as unreimbursed delay costs in Count One, TechDyn is barred from receiving any recovery. The jury's verdict under TechDyn's Count One -- incomprehensibly awarding \$2,101,000 and denying \$1,139,611 -- must therefore be set aside and judgment entered for Whittaker.

Respectfully submitted,

DEFENDANT, WHITTAKER CORPORATION

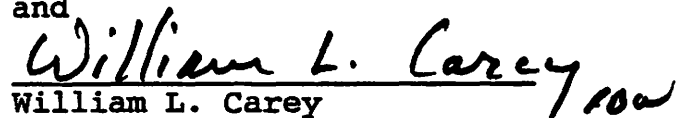
BY:



Peter B. Work
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 624-2500

and

BY:



William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, VA 22030
(703) 352-4300

Dated: August 21, 1991

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Whittaker Corporation's Motion to Set Aside the Jury's Verdict as to TechDyn Systems Corporation's Count One Because TechDyn Failed to Provide Any Basis for Allocating Responsibility for Its Unreimbursed Delay Costs Among Whittaker and Non-Whittaker Causes was hand delivered this 21st day of August, 1991, to:

Garry Boehlert, Esq.
Watt, Tieder, Killian & Hoffar
7929 Westpark Drive
Suite 400
McLean, VA 22102


Peter B. Work

FILED

SEP -5 PM 1:23

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

WARREN E. BARRY
CLERK OF COURT
FAIRFAX COUNTY VA

TECHDYN SYSTEMS CORPORATION

Plaintiff,

v.

WHITTAKER CORPORATION

Defendant.

AT LAW NO. 94144

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTIONS
TO SET ASIDE THE VERDICT FOR PLAINTIFF ON COUNT 1
OF PLAINTIFF'S MOTION FOR JUDGMENT AND DEFENDANT'S
MOTION FOR A NEW TRIAL ON THE QUANTUM OF DAMAGES
UNDER COUNT ONE OF DEFENDANT'S COUNTERCLAIM

COMES NOW, Plaintiff, TechDyn Systems Corporation (hereinafter "TechDyn") and sets forth herein its opposition to Defendant, Whittaker Corporation's (hereinafter "Whittaker"), motion to set aside the jury verdict for TechDyn on Count 1 of TechDyn's Motion for Judgment and Whittaker's motion for a new trial on the quantum of damages under Count I of Whittaker's Counterclaim. For the reasons set forth below, this Court must deny Whittaker's Motions.

I. WHITTAKER'S MOTIONS MUST FAIL BECAUSE THE JURY'S VERDICT OF \$2,101,000 FOR TECHDYN UNDER COUNT 1 OF THE MOTION FOR JUDGMENT AND OF \$422,676 FOR WHITTAKER UNDER COUNT I OF WHITTAKER'S COUNTERCLAIM ARE SUPPORTED BY CREDIBLE EVIDENCE

A. The Jury's Verdict May Not Be Set Aside When There Is Credible Evidence Which Supports The Verdict

Whittaker moves to set aside the jury's verdict for TechDyn under Count I of TechDyn's Motion for Judgment because

Whittaker alleges that TechDyn failed to prove Whittaker caused TechDyn's damages "within a reasonable degree of certainty". Further, Whittaker moves for a new trial on the issue of damages under Count I of Whittaker's Counterclaim because allegedly "the jury could not have understood" that Whittaker did not have a cause of action against the Air Force. Whittaker makes these arguments despite the voluminous evidence submitted to the jury establishing that Whittaker caused TechDyn's losses on this project and that Whittaker's own losses on this project, if any, were principally caused by Whittaker's own actions, failures and inefficiencies. Furthermore, this Court instructed the jury (tab 25 of Whittaker's motion) that Whittaker could recover from TechDyn damages allegedly caused by the Air Force. This Court must reject Whittaker's motions because a jury verdict cannot be altered when credible evidence exists to support it.

In Virginia, the Courts closely guard the sanctity of the jury's verdict. It is well settled that the trial court may not make changes to the substance of a jury's verdict, but only to the form. In Zedd v. Jenkins 194 Va. 704, 74 S.E.2d 791, 793 (1953), the Supreme Court of Virginia stated:

It is the duty of a trial judge to correct formal mistakes in a verdict, but this power to correct is limited to mere matters of form, and does not include the right to change the substance of a jury's finding.

74 S.E.2d at 793.

A trial judge may not set aside a jury verdict because the trial judge would have found differently. A jury verdict may only be overturned if that verdict has no basis in the evidence:

(T)he trial judge may not substitute his conclusion for that of the jury merely because he would have voted for a different verdict if he had been on the jury.

Parker v. Davis, 221 Va. 299, 269 S.E.2d 377, 381 (1980).

The standard adopted in the Commonwealth for testing a jury verdict is whether that verdict is supported by any credible evidence. In T.M. Graves Construction Company v. National Cellulose Corp., 226 Va. 164, 306 S.E.2d 898, 901 (1983), the Supreme Court of Virginia reversed the trial court's order setting aside a jury verdict and reinstated the verdict because credible evidence existed that supported the jury's verdict. In so ruling, the court held:

The reason for the rule that a trial court when considering a motion to set aside a verdict, must consider all the evidence is simple and straightforward: the trial court, in ruling on such a motion, must place itself in the jury's shoes. It must see what the jury saw so that it can decide whether any credible evidence exists to support the jury's verdict.

* * *

In keeping with our discussion in the previous section, if we find any credible evidence in the record that supports the jury verdict, then the verdict must be reinstated and judgment entered thereon.

306 S.E.2d at 901.

Plainly, a jury verdict may not be altered or stricken unless there is no credible evidence to support it. Accordingly, if there is any evidence that supports the verdict for TechDyn under Count 1 of the Motion for Judgment or that supports Whittaker's damages under Count I of the Counterclaim, Whittaker's motions must fail.

B. Ample Evidence Exists Which Supports A Jury Verdict For TechDyn Of \$2,101,000 And A Jury Verdict For Whittaker Of \$422,676

There is ample evidence in the record that supports TechDyn's recovery of \$2,101,000 under Count 1 of TechDyn's Motion for Judgment and limits Whittaker's recovery under Count I of Whittaker's Counterclaim to \$422,676. In fact, there is ample evidence in the record that would have supported a jury finding that TechDyn was entitled to an even larger recovery, and Whittaker was entitled to no recovery from TechDyn. The following examples of credible evidence in the record provide abundant support for the jury's verdict for TechDyn and the limited verdict for Whittaker:

- 1) Plaintiff's Exhibit 161, the April 30, 1985 Request for Proposal sent by TechDyn to Whittaker, set forth the documents upon which Whittaker should base its bid. Prominently identified in Exhibit 161 was JCS-Pub-10, the document identifying the software upgrades Whittaker was required to perform. During trial, Whittaker (Claudia Justis) admitted it did not have JCS-Pub-10 when it submitted its \$5,271,888 proposal to TechDyn (Exhibit 181). Thus, Whittaker admitted that it bid the project ignorant of the scope of the task to be performed.
- 2) Whittaker (Mike McCune) also admitted that Whittaker did not have the software which

was the subject of the contract when it submitted its \$5,271,888 proposal to TechDyn (Exhibit 181). Thus, the jury had evidence that Whittaker bid this project without the critical information necessary to accurately assess the current state of the software which the contract required Whittaker to upgrade.

- 3) Plaintiff's Exhibit 11, a March 9, 1988 memo from Whittaker's witness, Al Johnson, blamed Whittaker's poor understanding of MIL-STD-490 and Whittaker's inadequate B-Level and C-Level specifications for delays in project performance. Mr. Johnson's writing stated in pertinent part:

I do not feel that MIL-STD 490, although called out in the contract, was given much attention in the analysis of work packages required during the costing phase of 4C. Because of this several errors were made:

- The totality of design documentation was grossly under-estimated. Cost and schedule, therefore, had to be adversely affected from the outset.
- Quality assurance provisions in the program organization were late in being established. This was particularly evident in the software area.
- In order to gain time B-level specifications were submitted as strawman documents with the hope of getting approval of their format. This caused the government to doubt that WCCS/4C had personnel experienced in the development of specifications IAW the MIL-STD.

- ° WCCS/4C stated that a Computer Program Development Plan was in existence, however, it could not produce the document when a Software Quality Assurance Audit team requested it.

Mr. Johnson then observed that these errors "... led to more management oversight by ESD..." Thus, the heightened Air Force scrutiny which Whittaker alleged delayed performance was caused by Whittaker's failure to understand MIL-STD-490.

- 4) Plaintiff's Exhibit 1006, February 2, 1986 Air Force letter to TechDyn, establishes that Whittaker's work was deficient in the following areas: a) Whittaker failed to submit a computer program Development Plan; b) Whittaker failed to trace requirements between the different levels of specifications; c) Whittaker failed to advise the Government the number of tools used in the software development and which were deliverable under the contract; d) Whittaker failed to submit checklists and schedules to ensure Software Quality Assurance Procedures were in effect; e) Whittaker failed to produce a standard method of tracking staff performance. The Air Force letter concluded with the observation that the Government wanted a disciplined approach to software development and modifications and Whittaker was not meeting its obligations.
- 5) Plaintiff's Exhibit 1010, a June 17, 1986 letter from the Air Force to TechDyn, stated that Whittaker's "late delivery and inadequacy of the initial draft "B" level specifications has caused a lengthy review and revision process." These project delays, in turn, adversely impacted TechDyn.
- 6) Plaintiff's Exhibit 852, an October 22, 1986 letter from the Air Force to TechDyn, reviewed Whittaker's software quality assurance procedures and criticized Whittaker's quality control. Whittaker's failure to monitor quality control delayed

the project. The letter stated: "We understand the methods used by 4C in the quality assurance and configuration control functional areas. We are seriously concerned with the lack of quality control in the engineering branch."

- 7) Plaintiff's Exhibit 1030, a September 15, 1987 letter from the Air Force to TechDyn, identified Whittaker's failure to pass the Computer Program Test and Evaluation ("CPT&E") on schedule which delayed the project. The Air Force stated:

Since the partial conduct of the CPT&E which began on 24 Aug 1987, the Government has reviewed the readiness and configuration of the software under test. As was demonstrated by the fact that the CPT&E could only be partially conducted, it is clear that the software requires recoding to fully meet system requirements. The known problems have been documented as system trouble reports (STRs), a large number of which remain open.

* * *

Given the above concerns, the Government cannot agree to continuation of CPT&E until all STRs involving the software are satisfactorily resolved.

* * *

The Air Force then said:

Request TechDyn forward a copy of this letter to the senior management of Whittaker Corporation. Request TechDyn response by 18 Sept 1987 including an assessment by Whittaker management and their "get well" plan.

Thus, once again, Whittaker's failure to perform delayed the project.

- 8) Plaintiff's Exhibit 1043, the Air Force's April 20, 1988 letter to TechDyn, identified the Air Force's rejection of Whittaker's inadequate Software Qualification Test which delayed the project. The Air Force letter stated:

The Government has reviewed the subject ICCE/CENTAF SQT Report for the Processing and Display Functional Area (PDFA), including the ICCE SQT Report Supplement dated 1 March 1988. The government does not accept this document.

- 9) Plaintiff's Exhibit 1046, the Air Force's July 5, 1988 letter to TechDyn, identified numerous System Trouble Reports ("STRs") which arose from Whittaker's failure to pass the Tactical Air Force ("TAF") Certification Test. Whittaker's failure to pass the test delayed the completion of the project. The Air Force stated:

The first attachment provides a list of all STRs from the TAF Certification Test identified as "In Scope", "Out Scope" and "Required for TAF Certification" and which were agreed upon as in scope at the reference TIM.

- 10) Plaintiff's Exhibit 1373, Whittaker's July 21, 1988 letter to TechDyn, set forth Whittaker's instruction to TechDyn that Whittaker was stopping work on the project. Plaintiff's Exhibit 394, Whittaker's August 5, 1988 letter to TechDyn, set forth Whittaker's order that TechDyn remove its equipment from Whittaker's facility or begin paying rent at a rate of \$20,000. These letters were supplemented by the testimony of Don Ellis and Leo Morrison which established that Whittaker's stopping work and ordering the removal of TechDyn test bed equipment delayed performance of the project and caused serious project inefficiencies.
- 11) Plaintiff's Exhibit 65, excerpts from Test Plan Working Group meeting minutes, established that Whittaker failed to timely

perform work on the outstanding System Trouble Reports that were within the scope of the contract. Whittaker's failure to timely perform that work further delayed the project. Exhibit 65 states in pertinent part:

The subcontractor stated that TAF CERT STR's have not been worked on to date. The subcontractor acknowledges that the STR's from the March 1988 correspondence are within the scope of the current contract.

- 12) Plaintiff's Exhibit 66, Whittaker's February 9, 1989 response to the Air Force's demand that Whittaker complete open System Trouble Reports ("STR's"), established that Whittaker admitted that it could not close out STR's without test bed equipment -- (i.e., equipment which Whittaker ordered removed in July 21, 1988 (Exhibit 1373). Thus, Whittaker admitted that its own act of ordering test bed removal caused project delay. Whittaker stated:

WES does not consider it prudent to proceed on STR corrections without a Conus Test Bed for verification purposes.

- 13) Plaintiff's Exhibit 572. The Air Force's April 3, 1990 letter to TechDyn, established that again in the fall of 1989, Whittaker had failed to correct the outstanding STRs and that 23 new problems arose. Whittaker's failure to correct these STR's again delayed project progress.
- 14) Plaintiff's Exhibit 1141. The Air Force's October 9, 1990 letter to TechDyn, explained Whittaker's failure to deliver adequate support software necessary for the completion of the project and required by the contract. Simply stated, the project could not be completed until Whittaker delivered the support software. The Air Force letter stated:

Thus far at the 4702 CSS, the previously delivered software has been found to be missing essential components necessary to accomplish this build on a day-by-day basis. A successful software PCA can not be conducted on a partial, incomplete set of delivered software.

- 15) Plaintiff's Exhibit 1635. The Air Force's February 20, 1991 letter to TechDyn, set forth the Air Force's opposition to Whittaker's contention that it had completed its support software obligations and reaffirmed that the contract required Whittaker to provide a "complete set of all the software required to perform a complete build of the ICCE executable software from source". Thus, the Air Force could not consider the project complete until Whittaker completed all support software responsibilities.

- 16) Plaintiff's Exhibit 1098. The Air Force's February 26, 1990 letter to TechDyn, sets forth the Air Force's concerns that because of Whittaker's failure to timely provide the PDFA O&M manual the project was being delayed. The Air Force stated:

We are concerned that given the lack of progress on the PDFA O&M manual since the 80% audit that the contractor will have difficulty in meeting the Feb 91 contract delivery date. The manual is in the critical path leading to M-Demo, Training, Verification, and therefore all installation activities (emphasis added).

- 17) Plaintiff's Exhibit 1607. The Air Force's December 5, 1990 letter to TechDyn sets forth the Air Force's rejection of Whittaker's PDFA Operation and Maintenance Manual and Whittaker's System Operation and Maintenance Manual did not meet contractually prescribed standards. Again, the project could not be completed until Whittaker completed this work.

- 18) Plaintiff's Exhibit 1616. The Air Force's January 4, 1991 letter to TechDyn again described the Air Force's frustration at Whittaker's failure to provide adequate manuals and its impact on the project. The Air Force advised:

The verification of the PDFA O&M Manual and the System Level Manual was stopped for various reasons and was not taken lightly by the Government. Every effort to continue was taken, but the problems encountered were too great to continue.

- 19) Plaintiff's Exhibit 1634. The Air Force's February 27, 1991 letter to TechDyn, again set forth the Air Force's frustration with Whittaker's total failure to provide the required manuals. The Air Force stated:

The Government agrees that every effort must be made to complete this program in a timely manner. We feel that we have gone the extra mile already, and now; it is time for WES to complete the manuals as required by the contract.

- 20) In addition to the many exhibits entered into evidence, the record is replete with testimony from TechDyn personnel (Leo Morrison, William Hise, Don Ellis, Rufus Thornton and Max Rosen) that detailed a multitude of Whittaker failures and inefficiencies throughout the project. Moreover, Whittaker's own witnesses (Mike McCune, Steve Jones, Claudia Justis, Al Johnson, Marie Raymond and Thomas Brancati) supplemented the record with testimony supporting the jury finding that TechDyn was delayed by Whittaker and Whittaker problems arose from its own inability to competently manage the project.

In light of the foregoing, there is no doubt that the jury had abundant credible evidence to award TechDyn \$2,101,000 for

Whittaker's breaches of its PDFA obligations and to limit Whittaker's recovery to \$422,676 for the alleged added work performed on the project. Accordingly, Whittaker's motion to set aside TechDyn's verdict under Count 1 of its Motion for Judgment and for a new trial on Whittaker's damages under Count I of Whittaker's Counterclaim must be denied.

C. TechDyn Produced Ample Evidence Allowing The Jury To Determine The Share Of Damage Whittaker Inflicted Upon TechDyn

In its Motion to set aside the verdict for TechDyn under Count 1, Whittaker argues that the verdict for TechDyn can not stand because "there were non-Whittaker causes which contributed" to TechDyn's claimed damages. Whittaker contends that under the law of Virginia, once Whittaker alleged or proved that other causes for TechDyn's damage may have existed, TechDyn was precluded from any recovery from Whittaker. Whittaker's motion is meritless in law and fact.

Whittaker's misplaced reliance on Hale v. Fawcett, 214 Va. 583 (1974) cannot be reconciled with the law of this Commonwealth. In a case strikingly similar to the facts at bar, Pebble Building Co. v. G. J. Hopkins, Inc., 223 Va. 188, 288 S.E.2d 437, 438 (1982), the Supreme Court rejected defendant's reliance on Hale v. Fawcett to attempt to upset a verdict for the plaintiff on a delay claim. In Pebble Building Co., the defendant's relied on Hale v. Fawcett to argue that the verdict improperly imposed damages on the defendant for delays not shown

by the evidence to be solely attributable to the defendant. In rejecting the defendant's argument, the Court held:

There was abundant evidence to sustain the finding that Pebble caused the delays for which damages were awarded Hopkins. For example, the record shows that progress was retarded by incompetence of one of Pebble's job superintendents, by Pebble's frequent replacement of its supervisors, and by Pebble's failure to properly coordinate the work of the various subcontractors, including Hopkins.

This case is unlike Hale v. Fawcett, 214 Va. 583, 202 S.E.2d 923 (1974), upon which defendants heavily rely. There, this Court reversed a judgment in favor of the plaintiff in a negligence action when there was evidence of damages from separate causes, as to a portion of which defendant was not responsible. The Court held the plaintiff failed to prove with reasonable certainty the share of the damage for which defendant could be held liable. But here, Hopkins proved with sufficient certainty that failures of commission and omission of Pebble resulted in the delays for which plaintiff was awarded damages. Thus, there is no merit to defendants' claim that Hopkins' evidence failed to allocate the damages between extra work caused by Pebble and extra work resulting from delays alleged not to be Pebble's responsibility.

288 S.E.2d at 438.

Similar to Pebble Building Co., TechDyn presented abundant evidence sustaining the jury's verdict. Specifically, Techdyn proved that progress on the project was delayed by Whittaker's incompetence, by frequent replacement of key people, and by Whittaker's failure to understand and/or honor its contractual responsibilities (See Section B, supra). The simple fact that

Whittaker presented evidence challenging TechDyn's evidence does not allow the court to deprive the jury of the right to weigh the evidence and determine the cause and the amount of damage suffered by TechDyn.

Whittaker's argument is further refuted by the Court's holding in Sachs v. Hoffman, 224 Va. 545, 299 S.E.2d 694, 696 (1983). In Sachs, the defendant's misguided reliance on Hale v. Fawcett was again rejected by the Supreme Court of Virginia. In rejecting the defendant's contention that a plaintiff cannot recover because its losses may be attributable to more than one source, the court stated:

As Sachs interprets this testimony, the rental loss was the result of different but interdependent causes. In such case, he says, a plaintiff is not entitled to any recovery unless he proves the amount of damages attributable to each cause. he relies on Hale v. Fawcett, 214 Va. 583, 202 S.E.2d 923 (1974), and Barnes V. Quarries, Inc., 204 Va. 414, 132 S.E.2d 395 (1963). Sachs misconceives the rationale in those cases. In both, our decisions were based upon the plaintiff's failure to produce evidence sufficient to establish specific causal connection between the defendant's conduct and the damage alleged. Here, Harding's testimony expressly identified the damage Sachs did to the building as a proximate cause of the loss of rentals. See Pebble Bldg. Co. v. Hopkins, Inc. 223 Va. 188, 288 S.E.2d 437 (1982).

299 S.E.2d at 696.

Under the Supreme Court's construction Hale v. Fawcett, a plaintiff must only produce evidence sufficient to establish a causal connection between the defendant's conduct and the damage.

As detailed in Section B, supra, there can be no issue that TechDyn produced sufficient evidence to establish a causal connection between Whittaker's conduct and TechDyn's damage. The record is full of evidence of Whittaker breaches and resultant TechDyn damages. Plainly, the jury judiciously considered and acted on this credible evidence.

Despite the un rebuttable evidence that Whittaker delayed TechDyn and inflicted damage upon TechDyn, Whittaker claims that because some evidence allegedly exists which indicated that a non-Whittaker generated cause might have impacted TechDyn, TechDyn cannot recover against Whittaker. Once again, in Sachs, the Supreme Court of Virginia expressly rejected this very argument:

But, Sachs argues, even if the evidence was sufficient to show that he was responsible for part of the loss, it was insufficient to enable a jury to determine the portion attributable to the condition of the building. This argument raises the pivotal issue.

* * *

In all relevant particulars, Smith parallels this case. Like Pittston, Sachs was responsible for only one of the apparent causes of the damage suffered. Here, as in Smith, absolute certainty was not attainable because it was impossible to establish a table of ratios of cause and effect by which liability could be ratably allocated with categorical verity. And, just as Smith was not required to bear an impossible burden of proof, the Hoffmans were not. While the trial judge initially questioned the import of Harding's testimony, he approved an instruction on damages to which no error is assigned. The judge told the jury that

the standard of proof was reasonable certainty, and he explained that this standard applies when "the damages complained of ... may have resulted from either of two causes, for one of which the defendant may have been responsible and for the other of which he was not".

The quantum of the verdict indicates that the jurors understood and followed that instruction. Evidence of losses other than the loss of rentals supports more than half the \$40,000 the jury awarded. The total rental loss, based upon Harding's uncontradicted evaluation of \$16,000 per annum, was nearly \$48,000. The reasonable inference is that the jury weighed all the causative factors mentioned by Harding and concluded that only a portion of the total loss was fairly attributable to the cause for which Sachs was responsible.

We cannot say as a matter of law that the evidence was insufficient to enable the jury to allocate liability for the rental loss with a reasonable degree of certainty, and we uphold the trial court's ruling against Sachs' motion to strike Harding's testimony.

299 S.E.2d at 698-7.

Similarly, in National Energy Corp. v. O'Quinn, 223 Va. 83, 286 S.E.2d 181 (1982), the Supreme Court held that when damages arise from multiple causes it is for the jury to determine the part attributable to the defendant and the part attributable to other causes. The Supreme Court ruled:

When damages are occasioned by a combination of causes originating from different sources, the jury must determine from the evidence the part attributable to the defendant and the part traceable to other causes.

286 S.E.2d at 185 (emphasis added).

In this case, TechDyn fully met its burden of proof. TechDyn produced credible evidence establishing that Whittaker caused TechDyn damage. The jury weighed that evidence and determined the part attributable to Whittaker. See also, Hampton Roads Sanitation District v. McDonnell, 234 Va. 235, 360 S.E.2d 841, 845, (1987); Finley Inc. v. Waddell, 207 Va. 602, 609-10, 151 S.E.2d 347, 353 (1966); Smith v. The Pittston Company, 203 Va. 711, 715, 127 S.E. 79, 82 (1962).

TechDyn produced voluminous evidence through trial exhibits, TechDyn witnesses, and through cross-examination of Whittaker's witnesses to prove that Whittaker caused all of TechDyn's damage. Should the court observe that evidence existed establishing other causes of TechDyn damage, there can be no question that TechDyn produced sufficient evidence that permitted the jury to determine Whittaker's share of damage. In fact, TechDyn's delay damages were presented in the form of a daily rate. Therefore, it was easy for the jury to determine the number of days of Whittaker caused delay and to attach damages to that delay. Moreover, this Court granted Whittaker's proffered instruction based on Hale v. Fawcett, that if the jury found multiple causes for an item of damage, the party claiming damage was required to prove with reasonable certainty the share of damage for which the party was responsible.

The verdict of \$2,101,000 for TechDyn demonstrates that the jury properly weighed the evidence and this Court's instructions. Consistent with the well-settled law of the

Commonwealth, the jury considered the evidence, TechDyn's claimed damages (\$3,240,611) under Count 1, and determined that Whittaker was responsible for a portion of TechDyn's damage (\$2,101,000). The jury's verdict for TechDyn under Count 1 of TechDyn's Motion for Judgment must stand.

D. Whittaker's Motion For A New Trial On Damages Must Be Denied Because It Is Based Entirely On Unfounded Speculation Of What The Jury Allegedly Understood

Whittaker's motion for a new trial on damages is premised entirely on Whittaker's speculation that the jury was confused over Whittaker's ability to proceed directly against the Air Force. Whittaker's argument is entirely unsubstantiated by the record, is contrary to the law, and consists of unfounded speculation by Whittaker. Whittaker has not asserted a valid basis for a new trial in this action. Whittaker's motion must be denied.

As this Court is aware, Defendant's exhibit 108(a) sought damages for all of Whittaker's damages, including, but not limited to, its RCE demands. There is nothing in the record to suggest that Whittaker's recovery under Count I was not for all of Whittaker's claimed damages, including, but not limited to, Whittaker's alleged RCE damages. To speculate otherwise, and to assert that the jury misunderstood the Court's instructions or the law, is not a proper basis for a new trial.

In Fuller v. Commonwealth, 190 Va. 19, 55 S.E.2d 430 (1949), the Court held that matters that relate to the thought process of juries, or to the conduct of their deliberations,

cannot be used to impeach a verdict. In so holding, the Court said:

Moreover, as Mr. Wigmore says, "it is today universally agreed that, on a motion to set aside a verdict and grant a new trial, the verdict cannot be affected, either favorably or unfavorably, by the circumstances (among others): that one or more of the jurors misunderstood the judge's instruction." Wigmore on Evidence, 3d Ed., Vol. 8, § 2349, p. 669. See also, 53 Am. Jur., Trial, § 1106, p. 771.

55 S.E.2d at 436.

Similarly, citing Clark, supra, the Virginia Circuit Court Judges' Benchbook, Michie Publishing, 1991, §VII, page 147, states the following:

2. **Intrinsic error cannot be used to impeach**
Matters that relate directly to the thought process of the jurors, or to the conduct of their deliberations, cannot be used to impeach the verdict.
3. **Scope of intrinsic error rule**
The prohibition applies to such matters as:
 - a. The juror's secret motives,
 - b. Misunderstanding the instructions of the court,
 - c. The effects of the evidence,
or
 - d. The measure of damages.

(Emphasis added).

In the instant case, this Court plainly instructed the jury (see tab 25 of Defendant's post-trial exhibits) that Whittaker had a right to be compensated for added work TechDyn caused Whittaker to perform if "... that added work, whether

originating with the Air Force or TechDyn, caused Whittaker to incur added costs." Plainly, this Court cannot now speculate whether the jury understood that instruction while granting judgment for the defendant Whittaker for almost a half of a million dollars.

In Phillips v. Campbell, 200 Va. 136, 104 S.E.2d 765 (1958), the Court held that the Court could not resort to such intrinsic "error" to set aside a verdict even though it was supported by affidavits of discharged jurors. In the instant case, Whittaker has offered no such affidavits. At most, Whittaker has asserted (without affidavit) its self-serving speculation that Whittaker received \$422,676, and not a higher amount, because: "... the jury did not understand that Whittaker had no means of obtaining compensation from the Air Force and that its sole recourse was against TechDyn." Such rank speculation does not, and cannot, serve as a basis for a new trial.¹ Clark, Phillips, supra. Accordingly, Whittaker's request for a new trial on damages must be denied.

¹/ Moreover, Whittaker's motion must be denied because the legal basis of the motion (i.e. Whittaker could not have proceeded against the Air Force) is flatly refuted by Whittaker's own cited case, Erickson Air Crane Co. of Washington v. United States, 731 F.2d 810, 813 (Fed. Cir. 1984). In Erickson, the Court stated: "Aggrieved subcontractors have the option of enforcing their subcontract rights against the prime contractor in appropriate proceedings, or of presenting a claim against the government through and in right of the prime contractor's contract, with the prime contractor's consent and cooperation."

II. CONCLUSION

For the reasons set forth herein, This Court must deny Whittaker's motions to set aside the verdict for TechDyn under Count 1 of TechDyn's Motion for Judgment and for a new trial on the quantum of damages under Count I of Whittaker's counterclaim.

DATED: September 5, 1991.

Respectfully submitted,

TECHDYN SYSTEMS CORPORATION

By: 

Barry R. Beshlert

By: 

Douglas C. Proxmire

WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

Counsel for Plaintiff

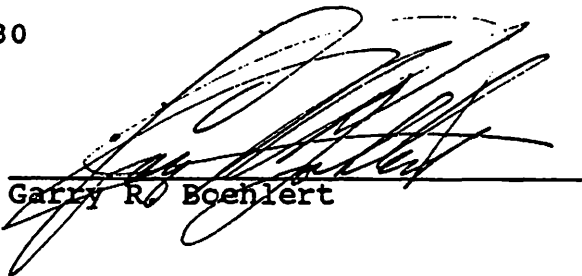
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Plaintiff's Opposition to Defendant's Motions to Set Aside the Verdict for Plaintiff on Count 1 of Plaintiff's Motion for Judgment and Defendant's Motion for a New Trial on the Quantum of Damages Under Count One of Defendant's Counterclaim was hand-delivered this 5th day of September, 1991, to:

Peter B. Work, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

and

William L. Carey, Esquire
Miles & Stockbridge
11350 Random Hills Road
Suite 500
Fairfax, VA 22030



Garry R. Boehlert

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION,

Plaintiff,

v.

WHITTAKER CORPORATION,

Defendant.

AT LAW NO. 94144

WHITTAKER CORPORATION'S OPPOSITION TO
TECHDYN SYSTEMS CORPORATION'S POST-VERDICT MOTION

Whittaker Corporation opposes the three arguments comprising
TechDyn Systems Corporation's post-verdict motion as follows:

- A. Opposition to TechDyn's Argument that Whittaker
Failed To Apportion Its Damages Among TechDyn,
the Air Force, and Mitre

Like Whittaker, TechDyn bases its motion to set aside on the
fundamental legal principle established in Hale v. Fawcett and its
progeny.^{1/} Unlike Whittaker, however, TechDyn fails to

^{1/} As discussed in Whittaker's August 21, 1991 motion to set
aside the jury's verdict as to TechDyn's Count One, Hale v.
(continued)

demonstrate a basis in the trial record for its reliance on the Hale v. Fawcett principle.

TechDyn argues, without any citation to the record, that:

At trial, Whittaker asserted that the Air Force, Mitre Corporation, and TechDyn allegedly caused Whittaker to perform extra work for which Whittaker now seeks damages. However, Whittaker failed to apportion (or even to attempt to apportion) liability among the Air Force, Mitre and TechDyn for causing Whittaker's alleged extra work and damages.

TechDyn Motion at 3. The stated premise for this argument is simply wrong. Throughout the trial, Whittaker's position in argument and testimony was that all added work, whether Air Force-originated or TechDyn-initiated, was passed onto Whittaker by TechDyn. Whittaker introduced this position in its opening statement as follows:

To sum it up, the Air Force, with which TechDyn had a prime contract, principally caused the growth of the ICCE program by converting it from an off-the-shelf program into a developmental program and causing TechDyn to perform additional work, principally in the software area, which TechDyn then passed on to Whittaker to perform, and Whittaker did perform it.

(footnote continued)

Fawcett established that where there are multiple, concurrent, or excusable causes of damage, a plaintiff is not entitled to any damage award if it fails to present evidence showing, within a reasonable degree of certainty, the share of damage for which the defendant was responsible.

Trial Tr. 83.^{2/}

As for Mitre, Whittaker witnesses testified without contradiction that Mitre's role was limited to providing technical guidance to the Air Force. The following testimony of Claudia Justis is illustrative:

Q. Now, again, based on your personal observations, if you had them, what was Mitre's position during the course of this period of requirements definition with respect to whether or not Whittaker was bound to simply do what the contract stated or beyond the contract?

A. Mitre provided only technical guidance for the people at ESD. And they stated two or three times in meetings that they didn't care what we were under contract for, they didn't care what the contract said, that is what you must do. So their role was clearly one of technical advice to ESD without knowledge of what the contract stated.

Trial Tr. at 2210-11 (emphasis added).^{3/}

^{2/} See also McCune Testimony, Trial Tr. at 1602-03 (TechDyn was present at all meetings with the Air Force as prime contractor).

^{3/} TechDyn attempts to obscure the lack of evidence supporting its position on Mitre's role by citing a standard contract clause required by the ESD-issued supplement to the Federal Acquisition Regulation and incorporated in both the ICCE prime contract and the ICCE subcontract. TechDyn Motion at 3-4. The clause merely provides that "the Contractor agrees to cooperate with the Mitre Corporation" and that "the operation of this clause will not be the basis for an equitable adjustment." Obviously, this language has no bearing on whether Mitre directly caused Whittaker to perform any added work, and it does not change the evidence that Mitre's role in the ICCE program was exclusively that of a technical advisor to the Air Force.

Besides ignoring the trial record, TechDyn's apportionment argument disregards the acknowledged contractual relationships among the parties to the ICCE program. As a matter of law, the absence of privity between the Air Force and Whittaker precluded any direct cause of action against the Air Force and limited Whittaker to an action against its prime contractor, TechDyn. Erickson Air Crane Co. of Washington, Inc. v. United States, 731 F.2d 810, 813 (Fed. Cir. 1984). In these circumstances there was no legal requirement for Whittaker to apportion its added work claim:

Concerning the apportionment issue, the district court held Drywall's [the subcontractor's] failure to apportion fatally defective, citing United States ex rel. Gray-Bar Electric Service Co. v. J.H. Copeland & Sons Constr., Inc., 568 F.2d 1159 (5th Cir.), cert. denied, 436 U.S. 957 (1978). In that case, although both the government and the [prime] contractor caused a portion of the damages, the court held that the plaintiff [subcontractor] need not apportion because an equitable adjustment clause in the general contract made the government liable to the contractor for damages caused by the government. Id. at 1162. The general contract in this case contained a similar provision, and, contrary to the statement of the district judge, Drywall produced evidence at trial tending to prove that the subcontract, as in Gray-Bar, incorporated that provision. Thus, the district court erred in directing a verdict in favor of the defendants [prime contractor] on this [apportionment] issue.

United States v. Aetna Casualty and Surety Co., 725 F.2d 650, 651 (11th Cir. 1984).

B. Opposition to TechDyn's Argument that Whittaker Failed to Provide the Jury with an "Intelligent and Probable Estimate" of Its Damages

Citing the fact that the Court admitted only a "one-page summary" of Whittaker's claim (while declining to admit the four volumes of calculations and supporting materials that actually comprised that claim), TechDyn argues that Whittaker "failed to establish evidence of any facts or circumstances that permitted the jury to make an intelligent and probable estimate of Whittaker's damages." TechDyn Motion at 9.^{4/}

Once again, TechDyn ignores the trial record. No fewer than four Whittaker fact witnesses -- Mses. Raymond and Justis, and Messrs. Cannady and Jones -- testified in detail about the extensive roles they personally played in the development of Whittaker's claims, and their testimony specifically supported each of the claim numbers in Whittaker's written summary.^{5/} In addition, one of Whittaker's experts -- Mr. Nocera -- validated

^{4/} Whittaker naturally takes exception to the Court's decision not to admit Whittaker's contemporaneous claim while admitting TechDyn's hearsay "Damages Book" that was prepared solely in connection with the litigation and was based on accounting records that TechDyn failed to produce during discovery.

^{5/} Trial Tr. at 2646, 2656, 2685-88, 2778-86, 2803-07 (Ms. Raymond); 2233-37 (Ms. Justis); 2752-74, 2809-15 (Mr. Cannady); 2526-30 (Mr. Jones).

the methodology that Whittaker used in developing its claims.^{6/} Considering this testimony at the conclusion of Whittaker's case-in-chief, the Court denied the very argument that TechDyn is now reiterating:

I further deny TechDyn's motion not to allow [Whittaker's] damage evidence to go to the jury because it's based on hearsay or not proper experts or that kind of thing. The people who testified were not independent experts. They were the people who developed figures in the process of managing Whittaker's business and their development of cost figures was not materially different than TechDyn's development of cost figures and I think both of them should go to the jury so I deny those motions.

Trial Tr. at 2693-94. TechDyn has shown no reason why the Court should change this conclusion.

C. Opposition to TechDyn's Argument that the Jury Awarded Whittaker Duplicative Damages

As does Whittaker in its motion for a new trial on the quantum of its compensatory award, TechDyn interprets the jury's awards to Whittaker as wholly or largely representing compensation for the Remote Control Element ("RCE") and as providing no compensation for Whittaker's performance of Air Force-initiated added work.^{7/} With this interpretation as its premise, TechDyn

^{6/} Trial Tr. at 2833-52 (Mr. Nocera).

^{7/} As discussed in its August 21, 1991 motion for a new trial, Whittaker interprets the jury's awards as representing
(continued)

argues that the jury's awards to Whittaker of \$422,676 under Count One and \$142,000 under Count Three are duplicative and that the aggregate award should be reduced by \$142,000. TechDyn Motion at 10.

How TechDyn arrives at the conclusion that the jury's awards are duplicative is not evident in its motion. What is evident is that TechDyn ignores, among other things, the fact that prejudgment interest is an element of the termination for convenience costs to which Whittaker is entitled based on the jury's finding that TechDyn's default termination was improper. Whittaker asked for prejudgment interest but did not include any such interest in the \$426,531 that it claimed as termination for convenience costs on the original contract work, and the TechDyn-initiated added work that Whittaker performed prior to the January 1989 default termination. The \$142,000 figure represents an appropriate interest increment to the \$426,531 that Whittaker claimed. Given this logical explanation for the jury's awards based on its finding that TechDyn's default termination was improper, the awards should stand.^{8/}

(footnote continued)

termination for convenience costs on the RCE (including compensation for original contract work and TechDyn-initiated added work, plus interest) and possibly some modest compensation for other TechDyn-initiated added work. It seems clear that the jury awarded Whittaker no compensation for the Air Force-initiated added work that TechDyn passed onto Whittaker and that Whittaker performed.

8/

See, e.g., Caldwell v. Seaboard System Railroad, Inc., 238 Va. 148, 380 S.E.2d 910, 914 (1989) (explaining that in
(continued)

CONCLUSION

For the reasons stated above, TechDyn's post-verdict motion should be denied.

Respectfully submitted,

DEFENDANT, WHITTAKER CORPORATION

BY: Peter B. Work /ajm
Peter B. Work
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 624-2500

and

BY: William L. Carey /ajm
William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, VA 22030
(703) 352-4300

Dated: September 5, 1991

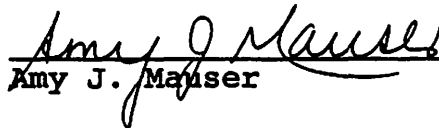
(footnote continued)

considering a request for remittitur the facts must be viewed in the light most favorable to the party who has recovered a jury verdict), cert. denied, 110 S. Ct. 1169 (1990).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Whittaker Corporation's Opposition to TechDyn Systems Corporation's Post-Verdict Motion was hand delivered this 5th day of September, 1991, to:

Garry Boehlert, Esq.
Watt, Tieder, Killian & Hoffar
7929 Westpark Drive
Suite 400
McLean, VA 22102



Amy J. Manser

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION

Plaintiff,

v.

WHITTAKER CORPORATION

Defendant.

AT LAW NO. 94144

PLAINTIFF'S MOTION FOR RECONSIDERATION

COMES NOW, Plaintiff, TechDyn Systems Corporation (hereinafter "TechDyn"), pursuant to Rule 1:1 of the Rules of the Supreme Court of Virginia, and respectfully requests that this Court modify and vacate that portion of its October 31, 1991 Order which grants judgment for Defendant Whittaker Corporation on Count I of TechDyn's Amended Motion for Judgment. That portion of the Court's Order is contrary to both the record in this case and well-established Virginia law. Accordingly, TechDyn respectfully requests that the jury's verdict of \$2,101,000 for TechDyn on Count I be reinstated and entered as the judgment of this Court.

DATED: November 8, 1991.

Respectfully submitted,

TECHDYN SYSTEMS CORPORATION

By: 

Garry R. Boehlert

By: 

Douglas C. Proxmire

WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Plaintiff's Motion for Reconsideration to be sent via telecopier and First-Class mail, postage pre-paid, this 8th day of November, 1991, to:

Peter B. Work, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

and

William L. Carey, Esquire
Miles & Stockbridge
11350 Random Hills Road
Suite 500
Fairfax, VA 22030


Garry R. Boehlert

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION

Plaintiff,

v.

WHITTAKER CORPORATION

Defendant.

AT LAW NO. 94144

**PLAINTIFF TECHDYN SYSTEMS CORPORATION'S
MEMORANDUM OF POINTS & AUTHORITIES IN
SUPPORT OF ITS MOTION FOR RECONSIDERATION**

COMES NOW, Plaintiff, TechDyn Systems Corporation (hereinafter "TechDyn"), pursuant to Rule 1:1 of the Rules of the Supreme Court of Virginia, and sets forth herein its points and authorities in support of its motion requesting that this Court vacate that portion of its October 31, 1991 Judgment Order which grants Defendant, Whittaker Corporation (hereinafter "Whittaker"), judgment on Count 1 of TechDyn's Amended Motion for Judgment and to reinstate the jury's \$2,101,000 verdict for TechDyn on Count 1.

I. RELEVANT FACTS

1. On or about August 21, 1990, TechDyn filed with the Court its Amended Motion for Judgment (attached hereto as Tab 1).

2. In its Amended Motion for Judgment, TechDyn requested damages under the following Counts:

- Count 1 - Breach of Contract - Whittaker's Failure to Perform PDFA Obligations;
- Count 2 - Breach of Contract - Whittaker's Failure to Perform RCE Obligations;
- Count 3 - Tortious Interference With Business - Whittaker's Tortious Interference With TechDyn's Business Relations With the Air Force Regarding Alaska and PACAF Options; and
- Count 4 - Breach of Contract - Whittaker's Breach of AAC and PACAF Obligations.

3. As TechDyn explained in its January 14, 1991 "Plaintiff's Supplemental Responses to Whittaker's Interrogatories Pursuant to Court Order of December 19, 1990", Count 1 of TechDyn's Amended Motion for Judgment sought damages of at least the following amounts as of January 14, 1991 for:

Delay:	\$2,324,610
Excess Overhead:	292,809
Relocation of Test Beds:	76,304
Relocation of Keyboard and Printer:	1,687
Lost Profits:	1,365,675

4. On March 15, 1991, Whittaker filed a Motion for Summary Judgment, citing the case of Hale v. Fawcett, 214 Va. 583, 202 S.E.2d 925 (1974), which sought summary judgment on

Count 1 because TechDyn allegedly did not apportion its damages between Whittaker and non-Whittaker causes (Tab 2).

5. TechDyn opposed Whittaker's motion and on May 7, 1991, Judge Brown denied Whittaker's motion stating (Tab 3):

After careful review of the papers submitted, the Court denies Whittaker's Motion for Summary Judgment.

* * *

There are material issues of fact genuinely in dispute. Whether evidence can be found and presented to support those facts will await the days of trial.

6. On July 1, 1991, trial of this case began.

7. Between July 1 and 11, 1991, TechDyn put on its case-in-chief.

8. During TechDyn's case-in-chief, TechDyn provided testimony from its President (Leo S. Morrison, Jr.), its Vice President and Chief Financial Officer, (William C. Hise), its Project Manager (Donald Ellis), its Project Engineer (Rufus Thornton), its Director of Marketing (Herbert Rountree), and its Contract Administrator (Max S. Rosen), regarding Whittaker's acts and omissions on the project which adversely impacted TechDyn. TechDyn also read deposition testimony from Mitre representative John Michitson regarding Whittaker's failings. Moreover, TechDyn provided expert testimony from Greg D. Crider (regarding scheduling matters and the causal relationship between Whittaker's acts and omissions and TechDyn's project delays), Edward Ripper (regarding lost profits), and Scott D. Gray

(regarding the cost impact of Whittaker's acts and omissions on TechDyn). During the trial, TechDyn also entered into evidence more than one hundred thirty (130) documentary exhibits which showed, among other things, the damages which Whittaker caused TechDyn by delaying project completion more than five (5) years.

9. The record contains ample evidence of the fact that Whittaker's acts and omissions in performing the PDFA portion of the project caused TechDyn damage as alleged in Count 1 of TechDyn's Amended Motion for Judgment. The following documentary evidence supports TechDyn's assertion that Whittaker caused TechDyn damage in the form of delay costs because of Whittaker's failure to timely complete its contract obligations:

- a) Plaintiff's Exhibit 161, an April 30, 1985 Request for Proposal sent by TechDyn to Whittaker, set forth the documents upon which Whittaker should base its bid. Prominently identified in Exhibit 161 was JCS-Pub-10, the document identifying the software upgrades Whittaker was required to perform. During trial, Whittaker (Claudia Justis) (Tr. p. 2237-40; attached hereto as Tab 4) admitted it did not have JCS-Pub-10 when it estimated and then submitted its \$5,271,888 proposal to TechDyn (Exhibit 181). Thus, Whittaker admitted that it bid the project ignorant of the scope of the task to be performed.
- b) Whittaker (Mike McCune) also admitted that Whittaker did not have the software which was the subject of the contract when it submitted its \$5,271,888 proposal to TechDyn (Tr. p. 1699-1700; attached hereto as Tab 5). Thus, the jury had evidence that Whittaker bid this project without the critical information necessary to accurately assess the current state of the software which the contract required Whittaker to upgrade.

- c) Plaintiff's Exhibit 11, a March 9, 1988 memo from Whittaker's witness, Al Johnson, to Whittaker's management (attached hereto as Tab 6), blamed Whittaker's poor understanding of MIL-STD-490 and Whittaker's inadequate B-Level and C-Level specifications for delays in project performance. Mr. Johnson's writing stated in pertinent part:

I do not feel that MIL-STD 490, although called out in the contract, was given much attention in the analysis of work packages required during the costing phase of 4C. Because of this several errors were made:

- ° The totality of design documentation was grossly under-estimated. Cost and schedule, therefore, had to be adversely affected from the outset.
- ° Quality assurance provisions in the program organization were late in being established. This was particularly evident in the software area.
- ° In order to gain time B-level specifications were submitted as strawman documents with the hope of getting approval of their format. This caused the government to doubt that WCCS/4C had personnel experienced in the development of specifications IAW the MIL-STD.
- ° WCCS/4C stated that a Computer Program Development Plan was in existence, however, it could not produce the document when a Software Quality Assurance Audit team requested it.

Mr. Johnson then observed that these errors "... led to more management oversight by ESD..." Thus, the heightened Air Force scrutiny which Whittaker alleged delayed performance was caused by Whittaker's failure to understand MIL-STD-490.

- d) Plaintiff's Exhibit 1006, a February 2, 1986 Air Force letter to TechDyn, establishes that Whittaker's work was deficient in the following areas: a) Whittaker failed to submit a computer program Development Plan; b) Whittaker failed to trace requirements between the different levels of specifications; c) Whittaker failed to advise the Government of the number of tools used in the software development and which were deliverable under the contract; d) Whittaker failed to submit checklists and schedules to ensure Software Quality Assurance Procedures were in effect; e) Whittaker failed to produce a standard method of tracking staff performance. The Air Force letter concluded with the observation that the Government wanted a disciplined approach to software development and modifications and Whittaker was not meeting its obligations.
- e) Plaintiff's Exhibit 1010, a June 17, 1986 letter from the Air Force to TechDyn, stated that Whittaker's "late delivery and inadequacy of the initial draft "B" level specifications has caused a lengthy review and revision process." These project delays, in turn, adversely impacted TechDyn.
- f) Plaintiff's Exhibit 852, an October 22, 1986 letter from the Air Force to TechDyn, reviewed Whittaker's software quality assurance procedures and criticized Whittaker's quality control. Whittaker's failure to monitor quality control delayed the project. The letter stated: "We understand the methods used by 4C in the quality assurance and configuration control functional areas. We are seriously concerned with the lack of quality control in the engineering branch."

- g) Plaintiff's Exhibit 1030, a September 15, 1987 letter from the Air Force to TechDyn, identified Whittaker's failure to pass the Computer Program Test and Evaluation ("CPT&E") on schedule which delayed the project. The Air Force stated:

Since the partial conduct of the CPT&E which began on 24 Aug 1987, the Government has reviewed the readiness and configuration of the software under test. As was demonstrated by the fact that the CPT&E could only be partially conducted, it is clear that the software requires recoding to fully meet system requirements. The known problems have been documented as system trouble reports (STRs), a large number of which remain open.

* * *

Given the above concerns, the Government cannot agree to continuation of CPT&E until all STRs involving the software are satisfactorily resolved.

* * *

The Air Force then said:

Request TechDyn forward a copy of this letter to the senior management of Whittaker Corporation. Request TechDyn response by 18 Sept 1987 including an assessment by Whittaker management and their "get well" plan.

Thus, once again, Whittaker's failure to perform delayed the project.

- h) Plaintiff's Exhibit 1043, the Air Force's April 20, 1988 letter to TechDyn, identified the Air Force's rejection of Whittaker's inadequate Software Qualification Test which delayed the project. The Air Force letter stated:

The Government has reviewed the subject ICCE/CENTAF SQT Report for the Processing and Display Functional Area (PDFA), including the ICCE SQT Report Supplement dated 1 March 1988. The government does not accept this document.

- i) Plaintiff's Exhibit 1046, the Air Force's July 5, 1988 letter to TechDyn, identified numerous System Trouble Reports ("STRs") which arose from Whittaker's failure to pass the Tactical Air Force ("TAF") Certification Test. Whittaker's failure to pass the test delayed the completion of the project. The Air Force stated:

The first attachment provides a list of all STRs from the TAF Certification Test identified as "In Scope", "Out Scope" and "Required for TAF Certification" and which were agreed upon as in scope at the reference TIM.

- j) Plaintiff's Exhibit 1373, Whittaker's July 21, 1988 letter to TechDyn, set forth Whittaker's instruction to TechDyn that Whittaker was stopping work on the project. Plaintiff's Exhibit 394, Whittaker's August 5, 1988 letter to TechDyn, set forth Whittaker's order that TechDyn remove its equipment from Whittaker's facility or begin paying rent at a rate of \$20,000 per month. These letters were supplemented by the testimony of Don Ellis and Leo Morrison which established that Whittaker's stopping work and ordering the removal of TechDyn test bed equipment delayed performance of the project and caused serious project inefficiencies.
- k) Plaintiff's Exhibit 65, excerpts from Test Plan Working Group meeting minutes, established that Whittaker failed to timely perform work on the outstanding System Trouble Reports that were within the scope of the contract. Whittaker's failure to timely perform that work further delayed the project. Exhibit 65 states in pertinent part:

The subcontractor stated that TAF CERT STR's have not been worked on to date. The subcontractor acknowledges that the STR's from the March 1988 correspondence are within the scope of the current contract.

- 1) Plaintiff's Exhibit 66, Whittaker's February 9, 1989 response to the Air Force's demand that Whittaker complete open System Trouble Reports ("STR's"), established that Whittaker admitted that it could not close out STR's without test bed equipment -- (i.e., equipment which Whittaker ordered removed in July 21, 1988 (Exhibit 1373). Thus, Whittaker admitted that its own act of ordering test bed removal caused project delay. Whittaker stated:

WES does not consider it prudent to proceed on STR corrections without a Conus Test Bed for verification purposes.

- m) Plaintiff's Exhibit 572. The Air Force's April 3, 1990 letter to TechDyn, established that again in the fall of 1989, Whittaker had failed to correct the outstanding STRs and that 23 new problems arose. Whittaker's failure to correct these STR's again delayed project progress.
- n) Plaintiff's Exhibit 1141. The Air Force's October 9, 1990 letter to TechDyn, explained Whittaker's failure to deliver adequate support software necessary for the completion of the project and required by the contract. Simply stated, the project could not be completed until Whittaker delivered the support software. The Air Force letter stated:

Thus far at the 4702 CSS, the previously delivered software has been found to be missing essential components necessary to accomplish this build on a day-by-day basis. A successful software PCA can not be conducted on a partial, incomplete set of delivered software.

- o) Plaintiff's Exhibit 1635. The Air Force's February 20, 1991 letter to TechDyn, set forth the Air Force's opposition to Whittaker's contention that it had completed its support software obligations and reaffirmed that the contract required Whittaker to provide a "complete set of all the software required to perform a complete build of the ICCE executable software from source". Thus, the Air Force could not consider the project complete until Whittaker completed all support software responsibilities.
- p) Plaintiff's Exhibit 1098. The Air Force's February 26, 1990 letter to TechDyn, sets forth the Air Force's concerns that because of Whittaker's failure to timely provide the PDFA O&M manual the project was being delayed. The Air Force stated:

We are concerned that given the lack of progress on the PDFA O&M manual since the 80% audit that the contractor will have difficulty in meeting the Feb 91 contract delivery date. The manual is in the critical path leading to M-Demo, Training, Verification, and therefore all installation activities (emphasis added).

- q) Plaintiff's Exhibit 1607. The Air Force's December 5, 1990 letter to TechDyn sets forth the Air Force's rejection of Whittaker's PDFA Operation and Maintenance Manual and Whittaker's System Operation and Maintenance Manual did not meet contractually prescribed standards. Again, the project could not be completed until Whittaker completed this work.
- r) Plaintiff's Exhibit 1616. The Air Force's January 4, 1991 letter to TechDyn again described the Air Force's frustration at Whittaker's failure to provide adequate manuals and its adverse impact on the project. The Air Force advised:

The verification of the PDFA O&M Manual and the System Level Manual

was stopped for various reasons and was not taken lightly by the Government. Every effort to continue was taken, but the problems encountered were too great to continue.

- s) Plaintiff's Exhibit 1634. The Air Force's February 27, 1991 letter to TechDyn, again set forth the Air Force's frustration with Whittaker's failure to timely provide the required manuals. The Air Force stated:

The Government agrees that every effort must be made to complete this program in a timely manner. We feel that we have gone the extra mile already, and now; it is time for WES to complete the manuals as required by the contract.

- t) Plaintiff's Exhibits 1251, 1252, 1253, 1254, 1256, 1257, 1258, 1259, 1260, 1261, 1263, 1264, 1265, and 1266, establish that Whittaker's four corporate relocations and three geographic moves delayed completion of the project.

10. At trial, the jury also heard ample testimony from TechDyn's fact witnesses, Leo S. Morrison, Donald Ellis, Rufus Thornton, and William C. Hise, regarding Whittaker's delays to the project because of the late and deficient submittal of B-level and C-level specifications, deficient software development and testing, deficient and delinquent correction of software trouble reports (STRs), untimely submittal of PDFA operational software, failure to ever submit acceptable RSSF support software, and failure to timely meet logistics obligations such as providing an acceptable PDFA Operations and Maintenance manual (see Transcripts from July 1, 2, 3, 8, 9, 10 and 11, 1991).

11. At trial, TechDyn provided expert testimony from Mr. Gregory D. Crider, based on approximately 1200 hours of studying the project (Tr. p. 1063), that Whittaker caused TechDyn 53 months of critical project delay that would not have occurred absent Whittaker's failings. At trial, Mr. Crider testified in relevant part concerning the Whittaker caused delays and their impact on TechDyn (see Tab 7 for relevant portions of Mr. Crider's testimony):

Q Mr. Crider, you testified that there were four critical areas of delay that you found.

A Yes.

Q Can you identify those delays and the areas in which you found them, please, sir?

A Yes. The four critical areas of delay on this project, in my opinion, were in the areas of software design, software development, software testing and correction and in the final delivery of the system.

Q Let's talk first about the critical delays that you found in software design. Would you tell the jury what delays you found in that area, sir?

A I found a total of 13 months of delay occurred in the software design of the PDFA, the processing and display functional area of the project.

Q Were you able to determine the cause of those 13 months of delay?

A Yes.

Q And what was that cause, sir?

A In my opinion, those 13 months of delay were caused by the late and deficient

submittal of B-level specifications and C-level specifications by Whittaker.

Q All right, sir. Were you able to find delays in the area of software development?

A Yes, that was the next critical area of delay.

Q And what were the delays that you found in that area?

A There was an additional month of delay or a total of 14 months of delay that occurred in the area of software development.

Q And were you able to determine the basis for those delays? The cause of those delays?

A Yes.

Q And what was that, sir?

A In my opinion, as I said, the critical delay, the first 13-month critical delay, in software design had set the whole project back 13 months. There was an additional month of delay which occurred in the actual coding development of the software itself and that was due to Whittaker's failure to timely complete the software development.

(Tr. p. 1097-98; Emphasis added).

* * *

Q Now, what was the third area of critical delay that you found?

A The third area of critical delay was in the PDF/A software testing and correction.

Q And how much delay did you find there, sir?

A That was a total of -- I believe it was 42 months.

Q And how did you find that delay, please, sir?

A That delay occurred in between the time period when Whittaker had completed software development to the time period in which they were able to get the Government to accept that software.

Q And then in the final delivery and installation?

A In the final delivery and installation, there is an additional delay so that the project is delayed a total of 53 months.

Q And were you able to determine the cause of those 53 months of delay?

A Yes.

Q And what was that, please, sir?

A In my opinion, those were caused by Whittaker's failure to complete delivery of critical items, the PDFA O&M manual and the support software which is used by the Government to maintain or make changes to the PDFA operational software.

Q Did that delay have any other impact?

A Yes. The delays in the verification of the PDFA O&M manual not only had a delay -- has not yet been resolved but it also delayed the final installation and testing of the CFA equipment in Iceland.

Q What effect did these four areas of critical delay have on TechDyn's performance?

A These four critical areas of delay extended TechDyn's performance on this work for a total of 53 months.

(Tr. p. 1099-1100; Emphasis added).

12. Techdyn's trial exhibits 950 through 967 itemized in detail the damages that TechDyn suffered as a result of the delay

caused by Whittaker for which TechDyn received no compensation from the Air Force or any other source (attached hereto as Tab 8).

13. At trial, Mr. Hise, TechDyn's Vice President and Chief Financial Officer, explained the calculation of TechDyn's demand of \$2,919,748 for Whittaker caused delay damages as follows (see Tab 9 for relevant portions of Mr. Hise's testimony):

Q Has Whittaker's performance on the subcontract had any impact on TechDyn?

A Yes.

Q What way?

A Well, it has increased the cost of our performance under this project.

Q Have you been able to assess those costs?

(Tr. p. 1278).

* * *

A Yes, I have.

Q How did you do that?

A We had gone through the financial records of the company, virtually every document that relates to this contract. We've looked at the schedules and the periods of delay that were being incurred. And have come up with our assessment of the damage impact, against the Corporation.

(Tr. p. 1279).

* * *

Q How did TechDyn compute those costs?

A As I was beginning to state, we reviewed all the costs documents that relate to the ICCE program. We --

Q Who was involved in that process?

A I was involved. My accounting staff was involved. And we utilized the assistance of Scott Gray, who is with a company called Barrington. He is a cost specialist.

Q What did you do to accumulate those costs?

A We took, as I said, all the documents that relate to the ICCE program, we took those and then did analysis of those costs that we felt were attributable to the delay that had been caused to TechDyn by the subcontractor on this job.

Q What materials were reviewed, Mr. Hise?

A Specifically, we reviewed all of the time sheets. We reviewed all of the labor distribution reports that result from the week, or the bi-weekly time sheets. We reviewed all of the travel vouchers. We reviewed all of the direct expenditure documents, invoices, the subcontract payments, the material costs. We virtually looked at hundreds and hundreds of documents, and the accounting files that relate to this contract.

(Tr. p. 1280; Emphasis added).

* * *

Q Any other documents reviewed?

A We reviewed virtually every document that relates to this contract. It was a very exhaustive time -- task of going back and looking and determining what had happened as relates to the non-performance of the directed subcontractor.

Q Were you able to reach any conclusions regarding TechDyn's damages as a result of that review?

A Yes, we were.

(Tr. p. 1283).

* * *

Q Were the conclusions you reached regarding damages reduced to writing?

A Yes, they have been.

Q Mr. Hise, I place in front of you a document -- a group of documents that have been previously marked as Plaintiff's Exhibits 950 through 987 and also Exhibit 912. And I ask you to look at those documents and tell me if you can identify them.

(Pause.)

A. Yes, I can.

Q Did you participate in the preparation of these documents?

A Yes, I did.

(Tr. p. 1284).

* * *

Q And what was the purpose of these documents that sit in front of you now, Plaintiff's Exhibit 950 through 987?

A The purpose was to take the pertinent documents from those voluminous records that I indicated and condense them down to the ones that were selected or used in coming up with our damage analysis.

Q And do these documents truly and accurately reflect the information contained in those source documents?

A They truly reflect the information in those documents. To the extent that they're listed here on the documents in

this notebook, they are accurate to the last degree.

(Tr. p. 1286).

* * *

Q Mr. Hise, looking at Plaintiff's Exhibit 950, it says summary of damages. Do you recognize this document?

A Yes, I do.

Q And what is it?

A It is a summary of the four categories that we have collected the damages against -- used in collecting the damages as a result from Whittaker non-performance.

Q The first category of damages there -- PDFA damages -- claim amount -- \$3,240,611.

A Yes.

Q What does that refer to? What are PDFA damages?

A These are the damages that result from the non-performance of the processing display functional area of the subcontract with Whittaker.

Q And are those damages further defined?

A Yes, they are.

Q Would you turn to -- please turn to page 951 or Exhibit 951.

A Yes.

Q The next page. At the very top, it says summary of Whittaker caused PDFA damages. Do you recognize this document?

A Yes, I do.

Q Now, on the left-hand side, it says description and below it there are four entries: delay, excess overhead,

relocation of test beds, replacement of keyboard and printer. Do you recognize those items?

A Yes, I do. Those are the four subcategories of the damages that relate to the processing display functional area.

Q Let's take them one by one if we might, please, and I'd like you to explain to us how you computed the amount being demanded.

Let's take delay first. What does delay mean?

A Delay means the extension of the program, the delay in meeting the required contract delivery dates and it's the damages in this case that result from that extended delay.

Q And have you been able to quantify that delay?

A Yes.

Q And would you turn to page 952, please?

A Yes.

Q On this document, it says delay damages per day and there's \$2,068 and delay days attributable to Whittaker and there's 1243. What does the 1243 represent?

A Okay. The 1243 are the days that we feel that Whittaker is totally responsible for as a result of their non-performance.

Q How did you arrive at the number 1243 days?

A Okay. You take the start date of the contract and go to the end. There are a certain number of days. What we did is take the performance period of the basis contract, including CENTAF, which would have been through February of 1987, and we further subtracted from the total number of days during the period from the inception of the contract to the end of

the contract -- or, not to the end of the contract but through the date that these were prepared, which was in May of 1991 -- and we further took out of there 9.75 months.

(Tr. p. 1289-91; Emphasis added).

* * *

Q And why was that taken out?

A That was taken out because in the modification that was issued by the Air Force, as a result of the negotiations of that modification, it was our belief that there was included in those dollars the costs associated with 9.75 months of delay.

(Tr. p. 1292).

* * *

Q The final line on this page, 953, states delay damages per day \$2068 per day.

A Yes.

Q What does that mean?

A That means for each day of delay that Whittaker caused us, we were ending up with \$2068 additional costs that was not covered in our contract.

* * *

(Tr. p. 1295; Emphasis added).

14. At trial, TechDyn provided expert testimony, from its cost and damages expert, Scott Gray, that explained the methodology TechDyn used to compute its damages. Mr. Gray further testified that TechDyn's methodology to compute its delay costs accumulated only Whittaker caused costs and is a

methodology generally accepted in the industry to prove delay costs. At trial, Mr. Gray testified in relevant part (see Tab 10 for relevant portions of Mr. Gray's testimony):

Q Okay. Based upon the review of those documents, what did you next do?

A Well, once we were familiar with them, we set out to understand cost increases or cost overruns on the job and then to try to understand what caused the cost to overrun and try to specifically identify the increased costs that came about from delays on the project and specific breaches on the project.

Q Were you able to do that?

A Yes, we were.

Q What did you do next?

A Well, the next step is really to identify the methodology that you're going to employ to price each discrete claim item and I worked with Mr. Hise as well as with my colleagues to identify the most appropriate methodology to use and then basically followed it through -- went to the cost records and --

Q Did you arrive at a methodology?

A Yes.

(Tr. p. 1415-16).

* * *

Q Mr. Gray, what methodology did you use to compute TechDyn's costs?

A We really relied on three basic principles. The first is reliance on the actual costs or the historical costs incurred by the company and recorded during the normal course of business in the regular business records and using those to identify the damage amount.

The second basic principle is to do discrete claim calculations or to do separate claim calculations for each area of damages.

And the third is to include in our claims only those costs that are attributable to the actions that are being alleged against Whittaker.

Q In your experience, Mr. Gray, is that a generally accepted method of computing damages?

A Yes. Those are the principles and guidelines that are accepted and are generally used in calculating a claim.

Q What about delay claims?

A Well, for a delay claim, what we've done is analyzed the time related costs on the job and identified those which were increased or really incurred due to the PDFA delays attributable to Whittaker.

Q How did you do that?

A Again, the first step is the identification of time related costs.

Q How did you do that?

A That -- it's a narrative process. It begins with an understanding of why costs on the project are being incurred. There are many costs on a project that are not time related costs, that relate only to performing a specific activity.

Q What type of costs are those?

A Well, we often refer to them as activity related costs and that would be a cost that relates to specifically performing a discrete item and work, such as purchasing a piece of hardware that is going to be installed. That is not affected by delay. You purchased that hardware and the cost stays the same regardless of whether the contract is pushed back or not.

Q So what, if anything, did you do in this process with those type of costs?

A Well, again, here we're trying to identify the delay costs attributable to Whittaker. So any costs that aren't affected by delays, we excluded from our analysis and didn't include them.

(Tr. p. 1429-31; Emphasis added).

* * *

Q Are there various methodologies to compute damages, delay related damages?

A Yes.

Q And are you familiar with those methodologies?

A Yes.

Q And what are some of them?

A Well, the method that is commonly used and is generally used in the industry, is to determine a daily rate of delay damages. And to apply that to the number of days of delay that are being attributed to the defendant to calculate the delay.

Q Is that what was done in this case?

A Yes, it is.

(Tr. p. 1437).

* * *

Q Now, turning to Plaintiff's Exhibit 953, if you have that in front of you.

A Yes, sir, I do.

Q And coming down the page about half way, do you see that same number \$2,315,153?

A Yes, I do.

Q You just explain to us how you arrived at that number, correct?

A Correct. Those are the time related costs that are attributable to Whittaker.

Q Now, the next entry is divided by the number of days in the delay period, 1,243 days.

A Yes.

Q How was that number arrived at?

A The entire contract period, for which these costs related, for which this \$5,153,000 of the time related costs relate, run from August 31 of 1985 up through May 19 of this year, May 19, 1991. And that is 2,088 days, calendar days, during that period.

Q All right.

A Now, again, part of that was originally anticipated, and part of it was compensated by the Air Force. So, we removed 18 months worth of days, 548 days from the 2,088 and also 9.75 months worth of days, which is 297, to arrive at this number of days in this delay period.

Q To get at this number of delay days, what is the ending date that you used, Mr. Gray?

A May 19 of 1991.

Q Of 1991. We have heard testimony that delays have gone beyond May 19, 1991. In this calculation, is there any compensation being demanded for that?

A No. Because when this was done, the most recent cost data available was May 19. And so we needed to rely on the costs that we had in hand at the time.

(Tr. p. 1444-45).

* * *

Q So you arrive at delay damages per day \$2068 per day.

A That's correct.

Q What does that mean?

A That means that every extra day that TechDyn had to stay out on the project they were damaged by that amount.

(Tr. p. 1447; Emphasis added).

15. The damages which TechDyn claimed against Whittaker were only a subset of TechDyn's total cost overruns on the project. At trial, Mr. Gray testified (see Tab 11):

Q Are you familiar with the term total cost claim?

A Yes, I am.

Q What is a total cost claim?

A Well, that's a methodology. A simple claim methodology in which a contractor would calculate his damages by taking total cost incurred on the project, subtracting out the bid cost or the budgeted costs, to determine an overrun and adding to that profit and interest in mark ups to come up with a claim amount.

Q Did TechDyn use a total cost approach to compute its damages?

A No, not on this project.

Q How did the TechDyn approach differ from a total cost claim?

A First of all, it differed by identifying discreet areas or discreet claim items. Identifying a delay claim, identifying increase costs related to overhead. Increased costs related to the test beds. Added costs for the RCE. By identifying discreet claims and pricing them out, rather than taking an aggregate approach and saying here is what we lost

doing everything, we identified specific items and just found the increased cost for that.

(Tr. p. 1434-35).

16. TechDyn eliminated from its damage presentation in Count 1 all non-Whittaker caused damages (see Tr. pp. 1437-44; Tab 12).

17. TechDyn eliminated from its damage presentation in Count 1 all costs (time related delay costs and otherwise) related to Whittaker's work on the Remote Control Element portion of the Project (Plaintiff's Trial Exhibits 953, 962; Tr. p. 1437, 1443, 1444; all of which are attached hereto as Tab 13).

18. At trial, TechDyn provided the jury documentary evidence (968, 968A, and 969; Tab 14), and testimony (Mr. Hise, pp. 1296-1299; Mr. Gray pp. 1448-50; Tab 15) to establish that Whittaker caused TechDyn \$262,409 of damages in the form of excess overhead claimed by TechDyn against Whittaker in Count 1.

19. At trial, TechDyn provided the jury documentary evidence (Plaintiff's Exhibits 973, 974, 975, 976, 980, 1560, 385 and 394; Tab 16), and testimony (Donald Ellis pp. 741-42; Mr. Hise pp. 1263-72 and 1299-1300; and Mr. Gray p. 1451; Tab 17) to establish that Whittaker caused TechDyn \$56,598 of damages for relocation of test beds claimed by TechDyn against Whittaker in Count 1.

20. At trial, TechDyn provided the jury documentary evidence (Plaintiff's Exhibits 977, 978, and 981; Tab 18), and testimony (Mr. Hise pp. 1301-02; and Mr. Gray p. 1451; Tab 19) to

establish that Whittaker caused TechDyn \$1,856 of damages because of Whittaker's failure to replace a keyboard and printer as alleged by TechDyn in Count 1.

21. At the close of TechDyn's case in chief, Whittaker filed a Motion to Strike the Evidence Relating to Count 1 of TechDyn's Amended Motion for Judgment (Tab 20). In that motion, Whittaker asserted:

Viewing the evidence in the light most favorable to TechDyn, no reasonable juror could find that Whittaker was the sole cause of the damages that TechDyn claims in Count One. Thus, the burden [wa]s on [TechDyn] to present evidence which [would] show 'within a reasonable degree of certainty' the share of damages for which [Whittaker] [wa]s responsible.'" Hale v. Fawcett, 214 Va. 583, 202 S.E.2d 923, 925 (1974). TechDyn failed to satisfy this burden. Accordingly, TechDyn's Count One should not be submitted to the jury, and TechDyn's evidence on that count should be stricken.

(Footnote omitted).

22. On July 11, 1991, the Court heard lengthy oral argument from Whittaker's counsel on Whittaker's motion to strike Count 1 (Tr. p. 1488, 1500-05; Tab 21).

23. After considering Whittaker's written motion and oral argument, the Court flatly rejected Whittaker's Motion to Strike Count 1 based upon Judge Brown's affirmative finding that "... the evidence is sufficient to allow the jury to consider whether the apportionment has been proved by one side and the other side." In so ruling, Judge Brown said (Tr. p. 1514; Tab 22):

I also overrule the motion to strike with regard to the delay damages. In this case, I find that the evidence is sufficient to allow the jury to consider whether the apportionment has been proved by one side and the other side. This is what I said to you up here in a bench conference, Mr. Work, the other day. I think you are confusing your effort to show that this delay was due to other causes from their evidence which taken in the light most favorable to them, even though you made some points on cross-examination, viewed in the light most favorable to the Plaintiff, they have presented sufficient evidence for the jury to consider whether they have made that reasonable apportionment or not or whether they have shown what the cause of the damage is, being Whittaker, to recover.

24. Between July 11 and 18, 1991, Whittaker put on its rebuttal case to TechDyn's case and also put on evidence of Whittaker's counterclaims against TechDyn.

25. On July 22, 1991, after the close of Whittaker's case, TechDyn moved to strike Whittaker's case for, among other things, failure to apportion liability among alleged TechDyn, Mitre, and Air Force causes. In short, TechDyn argued that as a matter of Contract (Exhibit 22; Subcontract p. 62; Tab 23), Whittaker had contracted away the right to seek damages for extra work caused by the Mitre Corporation's involvement in the project. During Whittaker's case, Whittaker asserted that Mitre's representatives caused Whittaker extra software development work for which Whittaker was seeking damages (Tr. 2196-2211; Tab 24). However, Whittaker made no effort to, and

did not, provide any basis to apportion damages allegedly caused by TechDyn, Mitre, and the Air Force.

26. On July 23, 1991, Whittaker renewed its Motion to Strike the evidence relating to Count 1 of TechDyn's Amended Motion for Judgment again asserting that TechDyn had not presented evidence sufficient to provide the jury a reasonable basis to apportion damages (Tab 25).

27. On July 29, 1991 (after a one week delay of the proceedings because of the death of Judge Brown's father), the Court denied Whittaker's motions: "... for the same reasons I gave before". The Court also denied TechDyn's motion seeking to strike Whittaker's evidence for failure to properly apportion damages stating (Tr. p. 2695; Tab 26):

TechDyn made a motion to strike which I find a certain irony in TechDyn's motion to strike relying on the Hale case for failure to apportion but I deny it for the same reason that I'm going to deny and have denied and will continue to deny Whittaker's motion on the same basis as to TechDyn's evidence (emphasis added).

And what I'm ruling there is simply that it's a jury question (emphasis added). The same thing with regard to the argument that the damages by Whittaker are speculative. They're jury questions.

28. No further rebuttal evidence was presented by either party.

29. At the close of all of the evidence, Whittaker renewed its motion to strike all four counts of TechDyn's case (Tr. p. 2722; Tab 27). During oral argument on those motions,

Whittaker's counsel stated: "I would solicit Your Honor's views on whether it would be productive at this time to argue our renewed motion with respect to Count One." Judge Brown responded by stating: "It would not" (Tr. p. 2726; Tab 28). Judge Brown then said: "... I'll just go on to say that I deny the motion for reasons previously given." (Tr. p. 2727; Tab 28).

30. On July 29, 1991, the Court further denied Whittaker's motions to strike the evidence with respect to Counts 3 and 4 of TechDyn's Amended Motion for Judgment related to the Alaska and Pacific Air Force options in the prime and subcontract. However, during his ruling, Judge Brown stated the following concerning his apparent understanding of a Judge's role vis a vis jury verdicts (Tr. 2742-43; Tab 29):

Okay. I am pretty sure Mr. Work is right. I'm pretty sure the jury won't give damages for this. I sure wouldn't if I was hearing it without a jury but again we are constantly admonished to send things to the jury unless we're absolutely sure and I can always take care of this later if the jury doesn't come up with the right answer, but I'm going to let it go to the jury. It's perhaps the only part of this case that I have a grasp of and that I think the jury will, too, so let's at least give them something they can decide that they'll understand (emphasis added). I deny the motion.

31. Judge Brown and counsel for the parties then engaged in a day long conference regarding jury instructions. During the parties' conference on jury instructions, the Court addressed the instructions which Whittaker and TechDyn proffered regarding apportionment of damages and the issues raised by the Hale v.

Fawcett case. After considering the matter at length, the Court drafted and granted its own instruction 12 which reads as follows (Tab 30):

Damages are not presumed nor may they be based upon speculation, but must be proven. The burden is upon the party claiming damages to prove by the greater weight of the evidence any damage claimed and that it is properly attributable to the other party's breach; and unless any such damage is thus proven by the greater weight of the evidence then the party claiming damage cannot recover for such damage.

If you believe from the greater weight of the evidence that any damage resulted from more than one cause, for one of which the other party is responsible, the burden is upon the party claiming damage to prove by the greater weight of the evidence the share of damage for which the other party is responsible. If a party fails so to prove damage then the party cannot recover for such damage.

32. On July 30, 1991, Count 1 of TechDyn's Amended Motion for Judgment (with the exception of TechDyn's claim for lost profits which Judge Brown previously struck as speculative) went to the jury for a verdict. In Count 1, TechDyn was asking for the following damages which were supported by Trial Exhibits 950-981 and the testimony discussed above:

Delay:	\$2,919,748
Excess Overhead:	\$ 262,409
Relocation of Test Beds:	\$ 56,598
Replacement of Keyboard and Printers:	\$ 1,856

(Tab 31).

33. On August 1, 1991 the jury returned its verdict for TechDyn on Count 1 of TechDyn's Amended Motion for Judgment and assessed damages against Whittaker on Count 1 in the amount of \$2,101,000.

34. Entry of Judgment on the jury's verdict was delayed because of Judge Brown's vacation and travel schedule between August 2, 1991 and September 3, 1991.

35. On August 21, 1991, Whittaker filed, among other motions, a Motion to Set Aside the Jury's Verdict as to Count 1 because TechDyn allegedly failed to provide a basis for allocating responsibility for its unreimbursed delay costs between Whittaker and non-Whittaker causes. On that same day, TechDyn also filed post-trial motions questioning the viability of the jury's verdict for Whittaker on Count 1 of Whittaker's Amended Counterclaim because of Whittaker's failure to properly apportion damages among TechDyn, Air Force and Mitre causes.

36. TechDyn opposed Whittaker's Motion in writing and sought oral argument on that motion so that judgment could promptly be entered on the jury's verdict.

37. TechDyn set the parties' motions for hearing for September 6, 1991. However, on September 6, 1991, the motions were rescheduled for hearing to October 31, 1991, because counsel for Whittaker asserted that the motions could not be heard within one-half hour.

38. On October 31, 1991, after hearing oral argument on the parties' post-trial motions, the Court denied all of

TechDyn's post-trial motions. Surprisingly, however, the Court set-aside the jury's \$2,101,000 verdict for TechDyn on Count 1 of TechDyn's Amended Motion for Judgment. The Court then entered judgment for the defendant Whittaker on Count 1 (Tab 32).

39. The Court's October 31, 1991 Order is flatly contrary to Judge Brown's July 11, 1991 ruling (while the evidence was fresh in his mind) that: "... I find that the evidence is sufficient to allow the jury to consider whether the apportionment has been proved by one side and the other side..." and his further ruling at that time that "... viewed in the light most favorable to the Plaintiff, they have presented sufficient evidence for the jury to consider whether they have made that reasonable apportionment or not or whether they have shown what the cause of damage is, being Whittaker, to recover."

II. LEGAL ARGUMENT

A. The Trial Court Erred In Setting Aside the Jury's Verdict and Entering Judgment for Defendant Whittaker on Count 1 of TechDyn's Amended Motion for Judgment

The Courts of Virginia closely guard the sanctity of jury verdicts. In Zedd v. Jenkins, 194 Va. 704, 74 S.E.2d 791, 793 (1953), the Supreme Court of Virginia stated:

It is the duty of a trial judge to correct formal mistakes in a verdict, but this power to correct is limited to mere matters of form, and does not include the right to change the substance of a jury's finding.

74 S.E.2d at 793.

It has repeatedly been held that the power conferred on the trial judge under Section 8.01-430 to set aside a jury verdict and enter judgment thereon can only be exercised where the verdict has no credible evidence to support it. If there is a conflict in the testimony on a material point, or if reasonable persons may differ in their conclusions of fact to be drawn from the evidence, or if the conclusion is dependent on the weight to be given the testimony, the trial judge cannot substitute his conclusion for that of the jury merely because he would have voted for a different verdict if he had been on the jury. In T.M. Graves Construction, Inc. v. National Cellulose Corp., 226 Va. 164, 306 S.E.2d 898 (1983) the court so held stating:

If we find any credible evidence in the record that supports the jury verdict, then that verdict must be reinstated and judgment entered thereon.

In Hadeed v. Medic-24 Ltd., 377 S.E.2d 589 (1989) the Virginia Supreme Court reversed Judge J. Howe Brown's decision to strike the plaintiff's evidence. In so holding, the Supreme Court said:

The standard we apply in reviewing the case in which the trial court has ruled on a motion to strike a plaintiff's evidence at the conclusion of all the evidence is set forth in Matney v. Cedar Land Farms, 216 Va. 932, 224 S.E.2d 162 (1976).

On review of a case in which the trial court has sustained a motion to strike after the introduction of all the evidence, we apply the principles governing consideration of evidence upon a motion to set aside a verdict as contrary to the evidence. "[W]e examine the evidence to determine whether or not a verdict in

behalf of the losing party can be sustained. That is, upon a careful consideration of all the evidence, if we are of opinion that reasonable men may differ on the conclusion to be reached, then it is our duty to hold that the trial court committed error in striking the evidence." In viewing the evidence we give the plaintiffs "the benefit of all substantial conflict in the evidence, and all fair inferences that may be drawn therefrom." *Id.* at 933-34, 224 S.E.2d at 163 (citations omitted) (quoting Walton v. Walton, 168 Va. 418, 422-23, 191 S.E. 768, 770 (1937)). The standard enunciated in Matney for appellate review also is the appropriate standard to be applied at the trial level.

It is clear from our reading of the record that the trial court, in passing on the defendants' motions to strike, misapplied the Matney standard of review by failing to view the evidence and all inferences fairly drawn therefrom in the light most favorable to Nawal. Consequently, we will state the evidence and all reasonable inferences fairly deducible therefrom in the light most favorable to Nawal.

377 S.E.2d at 590.

* * *

In sum, we hold that the trial Court erred (1) in applying the incorrect standard in ruling on the defendant's motion to strike Nawal's evidence, and (2) in striking Nawal's evidence.

377 S.E.2d at 595.

The foregoing decisions are fully consistent with the Supreme Court's earlier decision in Hoover v. J.P. Neff & Son, 133 Va. 56, 31 S.E.2d 265 (1944) where the Supreme Court reversed the trial court's ruling setting-aside a jury verdict. In Hoover, the Court discussed the following test to determine

whether the trial judge has properly or improperly set aside a verdict:

The prevailing rule relative to the motion to strike out a plaintiffs evidence has been clearly stated by Mr. Justice Epes in Green v. Smith, 153 Va. 675, 151 S.E. 282, 283, as follows:

"In considering a motion to strike out all the plaintiff's evidence, the evidence is to be considered very much as on a demurrer to the evidence. All inferences which a jury might fairly draw from plaintiff's evidence must be drawn in his favor; and where there are several inferences which may be drawn from the evidence, though they may differ in degree of probability, the court must adopt those most favorable to the party whose evidence it is sought to have struck out, unless they be strained, forced, or contrary to reason. Dove Co. v. New River Coal Co., 150 Va. 796, 143 S.E. 317; Limbaugh v. Commonwealth, 149 Va. [383], 393, 140 S.E. [133], 135; Goshen Furnace Corp. v. Tolley's Adm'r, 134 Va. 404, 114 S.E. 728."

In Mutual L. Insurance Company v. Brown, 137 Va. 278, 119 S.E. 142, 145, it is said that: "It has been repeatedly said by this court that where there is some evidence to support the verdict, it should not be set aside simply because the court, if on the jury, would have found a different verdict (emphasis added). To warrant setting the verdict aside, it must be either without evidence to support it, or plainly contrary to the evidence."

31 S.E.2d at 266-67.

* * *

In Burks' Pleading and Practice, 3rd Ed., page 543, the prevailing rule in this Commonwealth is thus stated:

"It is not sufficient that the judge, if on the jury, would have rendered a different verdict. It is not sufficient

that there is a great preponderance of the evidence against it. If there is conflict of the testimony on a material point, or if reasonably fair-minded men may differ as to the conclusions of fact to be drawn from the evidence, or if the conclusion is dependent on the weight to be given the testimony, in all such cases the verdict of the jury is final and conclusive and cannot be disturbed either by the trial court, or by this court, or if improperly set aside by the trial court, it will be reinstated by this court.

31 S.E.2d at 268.

Applying the foregoing test to the facts of the Hoover case, the court concluded that the trial judge wrongfully set aside the verdict. In so holding, the court found it important that the court had twice rejected the defendant's attempt to strike the plaintiff's case before sending it to the jury. In that regard, the Court said:

At the conclusion of plaintiff's evidence, defendant moved to strike the evidence on the ground that plaintiff had failed to show that Burford was acting for and on the business of defendant at the time of the accident and that the use of the truck by Burford was merely permissive.

The motion to strike the evidence was overruled. At the conclusion of the evidence, defendant renewed its motion to strike plaintiff's evidence and enter judgment for the defendant. This motion was also overruled, and the case was submitted to the jury upon instructions offered by plaintiff and defendant and the following instruction given to the jury by the court upon its own motion:

* * *

At the conclusion of the case defendant moved the court to set aside the verdict of the jury, on the ground that it was

contrary to the law and the evidence and to enter final judgment for defendant. This motion the court sustained.

* * *

The action of the court in twice refusing to strike the evidence of the plaintiff and in giving to the jury its own instruction, supra, strongly indicates the doubt in the mind of the court on the question of striking plaintiff's evidence (emphasis added). Unless the record demonstrates that the evidence offered by the plaintiff is inherently incredible, then it is the province of the jury, and not of the court, to pass upon the sufficiency thereof.

31 S.E.2d at 267.

* * *

The jury being the sole arbiters of the credibility of the witnesses, and there appearing nothing inherently incredible in their testimony, it was error for the trial court to substitute its view of the case for that of the jury.

As stated above, in the instant case, TechDyn provided the jury substantial evidence, in the form of testimony and exhibits (see Statement of Facts Nos. 9 and 10) concerning Whittaker's acts and omissions which delayed TechDyn's project completion. TechDyn also provided ample evidence which attributed TechDyn's project delays to Whittaker (see Statement of Fact No. 11). TechDyn further produced voluminous documentary evidence and testimony which quantified only those TechDyn damages that were caused by Whittaker (Statement of Fact Nos. 12, 13, 14, 16, 17, 18, 19, 20, and 21). TechDyn did not present to the jury a "total cost" claim (see Statement of Fact No. 15). Moreover,

TechDyn reduced its delay damages to a daily rate which made it extremely easy for the jury to apportion delay damages to various Whittaker causes--if necessary (Statement of Fact Nos. 12, 13, and 14). Plainly, with such evidence before the jury, it was wrong for Judge Brown to have set aside the jury's \$2,101,000 judgment for TechDyn on Count 1.

This Court's action of setting aside the verdict and entering judgment for Whittaker on Count 1 of TechDyn's Amended Motion for Judgment cannot be reconciled with the law of this Commonwealth. In Pebble Building Co. v. G. J. Hopkins, Inc., 223 Va. 188, 288 S.E.2d 437, 438 (1982), the Supreme Court rejected defendant's reliance on Hale v. Fawcett to attempt to upset a verdict for the plaintiff on a delay claim. In Pebble Building Co., the defendant's relied on Hale v. Fawcett to argue that the verdict improperly imposed damages on the defendant for delays not shown by the evidence to be solely attributable to the defendant. In rejecting the defendant's argument, the Court held:

There was abundant evidence to sustain the finding that Pebble caused the delays for which damages were awarded Hopkins. For example, the record shows that progress was retarded by incompetence of one of Pebble's job superintendents, by Pebble's frequent replacement of its supervisors, and by Pebble's failure to properly coordinate the work of the various subcontractors, including Hopkins.

This case is unlike Hale v. Fawcett, 214 Va. 583, 202 S.E.2d 923 (1974), upon which defendants heavily rely. There, this Court reversed a judgment in favor of the plaintiff in a negligence action when

there was evidence of damages from separate causes, as to a portion of which defendant was not responsible. The Court held the plaintiff failed to prove with reasonable certainty the share of the damage for which defendant could be held liable. But here, Hopkins proved with sufficient certainty that failures of commission and omission of Pebble resulted in the delays for which plaintiff was awarded damages. Thus, there is no merit to defendants' claim that Hopkins' evidence failed to allocate the damages between extra work caused by Pebble and extra work resulting from delays alleged not to be Pebble's responsibility.

288 S.E.2d at 438.

Similar to Pebble Building Co., TechDyn presented abundant evidence sufficient to sustain the jury's verdict. Specifically, Techdyn proved that progress on the project was delayed by Whittaker's incompetence, by frequent replacement of key people, and by Whittaker's failure to understand and/or honor its contractual responsibilities (See Statement of Facts, supra). The simple fact that Whittaker presented evidence challenging TechDyn's evidence does not allow the court to deprive the jury of the right to weigh the evidence and determine the cause and the amount of damage suffered by TechDyn.

Whittaker's argument and Judge Brown's actions are further refuted by the Court's holding in Sachs v. Hoffman, 224 Va. 545, 299 S.E.2d 694, 696 (1983). In Sachs, the defendant's misguided reliance on Hale v. Fawcett was again rejected by the Supreme Court of Virginia. In rejecting the defendant's contention that

a plaintiff cannot recover because its losses may be attributable to more than one source, the court stated:

As Sachs interprets this testimony, the rental loss was the result of different but interdependent causes. In such case, he says, a plaintiff is not entitled to any recovery unless he proves the amount of damages attributable to each cause. he relies on Hale v. Fawcett, 214 Va. 583, 202 S.E.2d 923 (1974), and Barnes V. Quarries, Inc., 204 Va. 414, 132 S.E.2d 395 (1963). Sachs misconceives the rationale in those cases. In both, our decisions were based upon the plaintiff's failure to produce evidence sufficient to establish specific causal connection between the defendant's conduct and the damage alleged. Here, Harding's testimony expressly identified the damage Sachs did to the building as a proximate cause of the loss of rentals. See Pebble Bldg. Co. v. Hopkins, Inc. 223 Va. 188, 288 S.E.2d 437 (1982).

299 S.E.2d at 696.

Despite voluminous evidence that Whittaker delayed TechDyn and inflicted damage upon TechDyn, Whittaker's motion claimed that because some evidence allegedly exists which indicated that non-Whittaker causes might have impacted TechDyn, TechDyn cannot recover against Whittaker. In Sachs, the Supreme Court of Virginia also expressly rejected this argument:

But, Sachs argues, even if the evidence was sufficient to show that he was responsible for part of the loss, it was insufficient to enable a jury to determine the portion attributable to the condition of the building. This argument raises the pivotal issue.

* * *

In all relevant particulars, Smith parallels this case. Like Pittston, Sachs

was responsible for only one of the apparent causes of the damage suffered. Here, as in Smith, absolute certainty was not attainable because it was impossible to establish a table of ratios of cause and effect by which liability could be ratably allocated with categorical verity. And, just as Smith was not required to bear an impossible burden of proof, the Hoffmans were not. While the trial judge initially questioned the import of Harding's testimony, he approved an instruction on damages to which no error is assigned. The judge told the jury that the standard of proof was reasonable certainty, and he explained that this standard applies when "the damages complained of ... may have resulted from either of two causes, for one of which the defendant may have been responsible and for the other of which he was not".

The quantum of the verdict indicates that the jurors understood and followed that instruction. Evidence of losses other than the loss of rentals supports more than half the \$40,000 the jury awarded. The total rental loss, based upon Harding's uncontradicted evaluation of \$16,000 per annum, was nearly \$48,000. The reasonable inference is that the jury weighed all the causative factors mentioned by Harding and concluded that only a portion of the total loss was fairly attributable to the cause for which Sachs was responsible.

We cannot say as a matter of law that the evidence was insufficient to enable the jury to allocate liability for the rental loss with a reasonable degree of certainty, and we uphold the trial court's ruling against Sachs' motion to strike Harding's testimony.

299 S.E.2d at 698-7 (Emphasis added).

Similarly, in National Energy Corp. v. O'Quinn, 223 Va. 83, 286 S.E.2d 181 (1982), the Supreme Court held that when

damages arise from multiple causes it is for the jury to determine the part attributable to the defendant and the part attributable to other causes. The Supreme Court ruled:

The defendant, through cross-examination and testimony of its own witnesses, sought to show that there had been no substantial increase in dust and noise in the area that was attributable to defendant after the plant became operational. The defendant contended other conditions in the neighborhood materially affected the dust and noise levels there. For example, defendant asserted increased road traffic, resulting from improvements made to the highway in the area, was a significant noise and dust factor. Also, defendant blamed the railroad operations, independent of the plant, for a lot of the noise. In addition, defendant urged that coal being hauled along the highway to the Clinchfield Company's plant site to the east was a source of much of the dust and noise. Defendant also contended that Clinchfield's employees who used the bridge to travel in their vehicles to and from their homes in the area were responsible for spreading much of the dirt and coal dust emanating from the bridge.

On appeal, defendant argues that plaintiffs, as a matter of law, failed to make out a prima facie case that operation of defendant's plant constituted a private nuisance. It also contends plaintiffs did not show with reasonable certainty the amount and source of their damage allegedly caused by dust and noise from defendant's plant.

The mere summary of evidence demonstrates the pure factual nature of the issues presented below. Taken in the light most favorable to the plaintiffs, the record convincingly establishes that defendant's business enterprise created a condition obnoxious to occupants of the neighboring dwellings and obstructed the reasonable, comfortable use of the property. Furthermore, the amount and source of the

damage as resulting from defendant's facility was sufficiently proved.

When damages are occasioned by a combination of causes originating from different sources, the jury must determine from the evidence the part attributable to the defendant and the part traceable to other causes. And while absolute certainty in the proof of damages in such a case is not attainable and is not required, the burden is on the plaintiff to produce evidence to show within a reasonable degree of certainty the defendant's share of the damage. Smith v. The Pittston Company, 203 Va. 711, 715, 127 S.E.2d 79, 82 (1962). Accord, Finley, Inc. v. Waddell, 207 Va. 602, 151 S.E.2d 347 (1966). This the plaintiffs have done under proper instructions. Apropos this case, the court in Southern Railway Co. v. McMenamin, 113 Va. 121, 129, 73 S.E. 980, 982 (1912), said:

"The jury viewed the premises and saw the conditions. The evidence abundantly shows the character of the injury complained of, the conditions under which plaintiffs suffered, and the inconvenience to them in the enjoyment of their property.

"Where the injury is discomfort and inconvenience, the amount of damages must be left to the jury, in view of all the facts."

286 S.E.2d at 184-185 (emphasis added).

As noted above, Whittaker sought the dismissal of TechDyn's case before trial (in the form of a motion for summary judgment) and during trial (in the form of motions to strike at the close of TechDyn's case and again at the close of the evidence) based on the contention that TechDyn allegedly did not provide the jury a reasonable basis to apportion damage between

Whittaker causes and non-Whittaker causes. Each time that Judge Brown was faced with that argument he flatly rejected it. In fact, in reaching his decision, Judge Brown made the affirmative finding that "...I find that the evidence is sufficient to allow the jury to consider whether the apportionment has been proved by one side and the other side." (Tr. 1514).

Based upon Judge Brown's affirmative finding that TechDyn had produced sufficient evidence for Count 1 to go to the jury, and Judge Brown's jury instruction 12 regarding the Hale v. Fawcett issue of apportionment of damages, Judge Brown sent Count 1 of TechDyn's action to the jury. The jury deliberated on that Count for approximately two (2) days and returned a \$2,101,000 verdict for TechDyn on Count 1 (which sought damages of \$3,240,611 for delay, excess overhead, relocation of test beds, and replacement of a keyboard and printer).

Three months passed between the time that the jury rendered its \$2,101,000 verdict for TechDyn and when Judge Brown decided to set it aside (without the benefit of having a transcript of the action). An even longer period had expired between Judge Brown's July 11, 1991 affirmative finding regarding the sufficiency of TechDyn's evidence and his shocking October 31, 1991 decision to set aside the jury's verdict.

Plainly, Judge Brown's decision to set aside the jury's verdict was wrong. It is indisputable that TechDyn has more than met its burden of showing that "...any credible evidence exists to support the jury's verdict." T.M. Graves, supra. Whether

intentional (see Transcript 2743-44, Tab 29, where Judge Brown says: "...I can always take care of this later if the jury doesn't come up with the right answer...") or unintentional, it is clear that Judge Brown has done nothing more than simply substitute his opinion on Count 1 for that of the jury. Plainly, such action is contrary to well established Virginia law which compels the confirmation of a jury verdict unless it is unsupported by any evidence. Graves, Hadeed, Hoover, supra. Accordingly, in order to correct this Court's serious error, and prevent a manifest injustice to TechDyn, the Court must modify that portion of its October 31, 1991 Order regarding Count 1 and enter judgment for TechDyn on Count 1 for \$2,101,000 consistent with the jury's August 1, 1991 verdict.

DATED: November 13, 1991.

Respectfully submitted,

TECHDYN SYSTEMS CORPORATION

By: 

Barry R. Boehlert

By: _____

Douglas C. Proxmire

WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

Counsel for Plaintiff

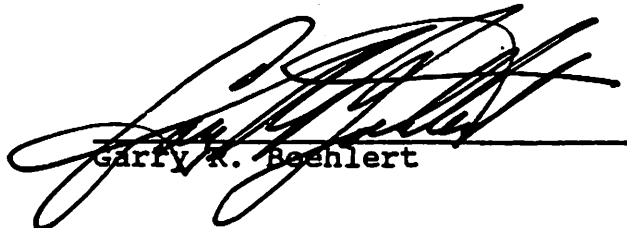
CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Plaintiff TechDyn Systems Corporation's Memorandum of Points & Authorities in Support of its Motion for Reconsideration of Count 1 of Plaintiff's Amended Motion for Judgment to be sent via hand-delivery this 13th day of November, 1991, to:

Peter B. Work, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

and

William L. Carey, Esquire
Miles & Stockbridge
11350 Random Hills Road
Suite 500
Fairfax, VA 22030



Garfy R. Beshlert

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION
6564 Loisdale Court
Springfield, Virginia 22150

Plaintiff,

v.

WHITTAKER CORPORATION
10880 Wilshire Boulevard
Los Angeles, California 90024

Defendant.

AT LAW NO. 94144

AMENDED MOTION FOR JUDGMENT

COMES NOW, the Plaintiff, TechDyn Systems Corporation (hereinafter "TechDyn") and for its Amended Motion for Judgment against Defendant Whittaker Corporation (hereinafter "Whittaker") states as follows:

I. Parties

1. TechDyn is a Delaware corporation with its principal place of business located at 6564 Loisdale Court, Springfield, Virginia 22150.

2. Whittaker, together with its unincorporated division Whittaker Electronic Systems (hereinafter collectively referred to as "Whittaker"), is a Delaware corporation with its principal place of business located at 10880 Wilshire Boulevard, Los Angeles, California 90024.

2023

Memo. P. 4/11
TAB 1

II. Jurisdiction and Venue

3. This Court has jurisdiction over this matter pursuant to §17-123 of the Code of Virginia.

4. Venue is proper in this Court pursuant to §8.01-262 of the Code of Virginia because the causes of action complained of in this Motion for Judgment arose in Fairfax County, Virginia, because Whittaker has regularly and systematically conducted business in Fairfax County, Virginia, and because TechDyn's principal place of business is Fairfax County, Virginia.

III. Background Facts

5. During early 1985, the United States Air Force was considering installing an air-to-ground tactical aircraft warning and control system in Iceland. The system was and is now known as the Iceland Command and Control Enhancement ("ICCE") Project.

6. During 1985, the Air Force had extensive discussions with a company called Command, Control and Communications Corporation (hereinafter "4C") during which the Air Force expressed its desire to award the ICCE Project to 4C in the form of a sole source procurement.

7. Upon learning that a sole source procurement to 4C was impossible, the Air Force decided to award the contract for the ICCE Project to a qualified small business through the Small Business Administration's 8(a) program and to direct the

successful contractor to sublet a substantial portion of the contract work to 4C.

8. The Air Force selected TechDyn as a qualified small business and on April 2, 1985 the Air Force awarded Contract No. F19628-85-C-0079 to the SBA. The SBA then designated TechDyn as the prime contractor for the ICCE Project under SBA Contract No. 3-85-2-6605 (hereinafter the "Prime Contract").

9. Paragraph 3 of the "Other Special Contract Requirements" of the Prime Contract specified that certain portions of the ICCE Project be subcontracted to 4C. Paragraph 3 of the "Other Special Contract Requirements" of the Prime Contract reads as follows:

3. DIRECTED SUBCONTRACT

The contractor is hereby required to obtain all hardware, software and related documentation for the Processing and Display Functional Area (PDFA) as defined in the statement of work and specifications from Command, Control and Communications Corporation (4Cs) of Torrance, California.

10. Consistent with the requirements of the Prime Contract, on or about April 5, 1985, TechDyn entered into Subcontract No. 125-001 (hereinafter the "Subcontract") with 4C.

11. Among other things, the Subcontract required that 4C perform the Processing and Display Functional Area (PDFA) portion of the ICCE Project.

12. Shortly after Subcontract award, 4C was acquired by Whittaker Command and Control Systems (hereinafter "WCCS"). WCCS

assumed all of 4C's responsibilities and liabilities under the Subcontract.

13. In or about May, 1988, Whittaker, acting by and through its division Whittaker Electronic Systems (hereinafter "Whittaker") assumed all of WCCS's responsibilities and liabilities under the Subcontract.

14. In addition to subcontracting the PDFA aspect of the ICCE Project to Whittaker, TechDyn also subcontracted with Whittaker to design the hardware configuration and to design, develop, test, and integrate the software of the Remote Control Element (RCE) portion of the ICCE Project.

COUNT 1
BREACH OF CONTRACT
Whittaker's Failure to Perform PDFA Obligations

15. Paragraphs 1 through 13 of this Motion for Judgment are incorporated herein by reference.

16. Under the Subcontract, Whittaker was required to provide the expertise, supervision, coordination, labor, and materials necessary to satisfactorily and timely complete the PDFA portion of the ICCE Project.

17. Whittaker breached the Subcontract by failing to provide the expertise, supervision, coordination, labor, and materials necessary to satisfactorily and timely complete the PDFA portion of the ICCE Project, thereby causing project delays and additional costs to TechDyn.

18. Under the Subcontract, Whittaker was required to employ and maintain competent management and technical personnel to satisfactorily perform the Subcontract work.

19. Whittaker breached the Subcontract by conducting frequent corporate organizational changes which caused loss of competent management and technical personnel and eroded Whittaker's ability to perform, thereby causing project delays and additional costs to TechDyn.

20. Under the Subcontract, Whittaker was required to timely develop and provide PDFA software.

21. Whittaker breached the Subcontract by failing to timely develop and provide PDFA software, thereby causing project delays and additional costs to TechDyn.

22. Under the Subcontract, Whittaker was required to pass all Air Force administered Critical Design Reviews (CDRs), Computer Program Test and Evaluations (CPT&Es), and Software Qualification Tests (SQTs).

23. Whittaker breached the Subcontract by repeatedly failing to pass Air Force administered Critical Design Reviews (CDRs), Computer Program Test and Evaluations (CPT&Es) and Software Qualification Tests (SQTs), thereby causing project delays and additional costs to TechDyn.

24. Under the Subcontract, Whittaker was required to timely and adequately remedy problems identified by the Air Force in Air Force Systems Trouble Reports (STRs).

25. Whittaker breached the Subcontract by repeatedly failing to timely and adequately remedy problems identified by the Air Force in Air Force Systems Trouble Reports (STRs), thereby preventing PDFA software from achieving Air Force certification, causing project delays and additional costs to TechDyn.

26. Under the Subcontract, Whittaker was required to produce and provide acceptable software documentation.

27. Whittaker breached the Subcontract by failing to timely produce and provide software documentation acceptable to the Air Force or TechDyn, thereby causing project delays and additional costs to TechDyn.

28. Under the Subcontract, Whittaker was required to produce PDFA Operator and Maintenance Manuals, the PDFA Positional Handbook, the Computer Program User's Manual, the Computer Programming Manual, and the Systems Level Manual.

29. Whittaker breached the Subcontract by failing to produce, or make adequate progress in producing, PDFA Operator and Maintenance Manuals, the PDFA Positional Handbook, the Computer Program User's Manual, the Computer Programming Manual, and the Systems Level Manual, thereby causing additional In-process Reviews, Technical Interchange Meetings, other meetings with the Air Force, project delays and additional costs to TechDyn.

30. Under the Subcontract, Whittaker had an obligation to diligently and continuously perform its work consistent with established project schedules to a successful conclusion.

31. Whittaker breached the Subcontract by unjustifiably stopping all work under the Subcontract from July 21, 1988 through September 29, 1988, thereby causing project delays and additional costs to TechDyn.

32. Under the Subcontract, Whittaker was responsible to timely provide monthly input into Contract Data Requirements List Deliveries as they relate to the PDFA.

33. Whittaker breached the Subcontract by repeatedly failing to provide monthly input into Contract Data Requirements List Deliveries as they relate to the PDFA, thereby causing project delays and causing additional costs to TechDyn.

34. Under the Subcontract, Whittaker was required to timely make delivery of Data Terminal Sets (DTSS) to TechDyn and the Air Force.

35. Whittaker breached the Subcontract by failing to make delivery of Data Terminal Sets (DTSS) as required by the Subcontract, thereby causing project delays and additional costs to TechDyn.

36. Under the Subcontract, Whittaker was required to perform Contractor Technical Support (CTS) services in support of PDFA equipment in Iceland.

37. Whittaker breached the Subcontract by failing to perform Contractor Technical Support (CTS) services in support of

PDF/A equipment in Iceland, thereby causing project delays and additional costs to TechDyn.

38. As a result of Whittaker's breaches of the PDF/A portion of the Subcontract as described in paragraphs 16 through 37 above, TechDyn has suffered and continues to suffer unreimbursed damages under its Contract with the Air Force/Small Business Administration in the amount of at least \$7,300,000.

39. As a result of Whittaker's breaches of the PDF/A portion of the Subcontract as described in paragraphs 16 through 37 above, Whittaker has extended TechDyn's completion on the ICCE Project by at least 34 months and has directly caused TechDyn to lose and otherwise be deprived of at least \$8,000,000 worth of new or other business and profits therefrom during this period.

WHEREFORE, TechDyn demands judgment against Whittaker in the amount of at least \$15,300,000, together with prejudgment interest, costs, expenses, attorneys' fees, and such other relief as this Court may deem appropriate.

COUNT 2
BREACH OF CONTRACT
Whittaker's Failure to Perform RCE Obligations

40. Paragraphs 1 through 14 of this Motion for Judgment are incorporated herein by reference.

41. Under the Subcontract, Whittaker was required to provide the expertise, supervision, coordination, labor, and materials necessary to satisfactorily and timely complete the Remote Control Element (RCE) portion of the ICCE Project.

42. Whittaker breached the Subcontract by failing to provide the expertise, supervision, coordination, labor, and materials necessary to satisfactorily and timely complete the RCE portion of the ICCE Project.

43. Whittaker breached the RCE portion of the Subcontract by failing to make timely progress on the RCE software, thereby causing project delays, endangering overall project completion, and causing TechDyn additional costs.

44. As a result of Whittaker's breach of the RCE portion of the Subcontract, TechDyn was forced to default terminate the RCE portion of Whittaker's work, and repro cure this same work at an increased cost of at least \$750,000.

WHEREFORE, TechDyn demands judgment against Whittaker in the amount of at least \$750,000, together with prejudgment interest, costs, expenses, attorneys' fees, and such other relief as this Court may deem appropriate.

COUNT 3
TORTIOUS INTERFERENCE WITH BUSINESS
Whittaker's Tortious Interference With
TechDyn's Business Relations With The Air Force
Regarding Alaska and PACAF Option

45. Paragraphs 1 through 14 of this Motion for Judgment are incorporated herein by reference.

46. Under TechDyn's Prime Contract, TechDyn had an option to perform substantial additional work for the Air Force in Alaska and the Pacific Region (hereinafter the "Alaska and PacAF Option").

47. During the course of the Subcontract, Whittaker intentionally, maliciously, and wrongfully deprived TechDyn of the right and opportunity to perform the Alaska and PacAF Option work for the Air Force.

48. Whittaker, in violation of its obligations to TechDyn as a subcontractor, supplied inaccurate and inflated price information to TechDyn for the Alaska and PacAF Option with the full intention and understanding that TechDyn was submitting that inflated price information to the Air Force in TechDyn's effort to gain the work called for by the Alaska and PacAF Option. Simultaneously, however, and without TechDyn's knowledge or consent, Whittaker was wrongfully quoting a lower price for the same work directly to the Air Force in an effort by Whittaker to obtain the Alaska and PacAF Option work for Whittaker's own account.

49. As a direct result of Whittaker's intentional, malicious, and wrongful actions described in paragraphs 45 through 48 above, the Air Force removed the Alaska PacAF Option from TechDyn's Prime Contract and awarded that work directly to Whittaker.

50. As a result of the removal of the Alaska and PacAF Option from TechDyn's Contract, Whittaker intentionally, maliciously, and wrongfully deprived TechDyn of that work and caused TechDyn to incur direct damages of at least \$800,000.

WHEREFORE, TechDyn demands judgment against Whittaker in the amount of at least \$800,000, punitive damages in the amount

of \$2,000,000, together with prejudgment interest, costs, expenses, attorneys' fees, and such other relief as this Court may deem appropriate.

COUNT 4
BREACH OF CONTRACT
Whittaker's Breach Of AAC And PACAF Obligations

51. Paragraphs 1 through 14 of this Amended Motion for Judgment are incorporated herein by reference.

52. Under TechDyn's Prime Contract, TechDyn had an option to perform substantial additional work for the Air Force in Alaska and the Pacific Regions (hereinafter "The AAC and PACAF Options").

53. Pursuant to Paragraph 3 "Other Special Contract Requirements" of the Prime Contract, TechDyn was "... required to obtain all hardware, software and related documentation for the Processing and Display Functional Area (PDFA)..." for the AAC and PACAF Option work from Whittaker.

54. On May 15, 1987, TechDyn requested Whittaker to submit a proposal to TechDyn pursuant to their Subcontract under which Whittaker would perform certain PDFA work as a Subcontractor to TechDyn for the AAC and PACAF Options.

55. On May 29, 1987, the Air Force transmitted a Request for Proposal (hereinafter "RFP") to TechDyn for the AAC and PACAF Options.

56. On June 1, 1987, TechDyn forwarded the RFP to Whittaker and requested a quote from Whittaker for the PDFA portion of the AAC and PACAF Options.

57. After negotiations and an exchange of correspondence between TechDyn and Whittaker regarding technical questions related to the RFP, on July 7, 1987, Whittaker submitted a quote of \$3,566,492.00 to TechDyn to perform the PDFA portion of the the AAC and PACAF Options.

58. On September 21 and 22, 1987, TechDyn, Whittaker and the Air Force met for a "Redlining Session" to make changes to reduce the cost of the AAC and PACAF Options.

59. On October 5, 1987, Whittaker submitted a revised proposal to TechDyn for the PDFA work called for by the AAC and PACAF Options.

60. On October 8, 1987, TechDyn rejected Whittaker's October 5, 1987 proposal and directed Whittaker to resubmit a proposal after incorporating the matters discussed in the September 21 and 22 "Redlining Sessions" into the proposal.

61. On November 13, 1987, Whittaker provided TechDyn another proposal for the AAC and PACAF Option work including a complete cost breakdown and technical description of the work to be performed. The total cost of this proposal was \$2,702,651.00.

62. In its November 13, 1987 proposal, Whittaker affirmatively certified to TechDyn in writing that: "This proposal is submitted in response to the RFP, Contract Modification, etc. in Item 1 and reflects our best estimates and/or actual costs as of this date."

63. At the time that Whittaker submitted its November 13, 1987 proposal to TechDyn, Whittaker knew and intended that

TechDyn use and rely on Whittaker's proposal in an effort to obtain award of the AAC and PACAF work from the Air Force.

64. On November 25, 1987, TechDyn submitted its AAC and PACAF proposal to the Air Force which included Whittaker's November 13, 1987 proposal for the PDFA portion of the work.

65. Subsequent to November 25, 1987, TechDyn expended considerable effort and expense in negotiations with the Air Force to obtain the AAC and PACAF Option work.

66. On or before January 25, 1988, which was subsequent to TechDyn's proposal, but before the time that TechDyn's AAC and PACAF Options were to expire on January 31, 1988, Whittaker secretly and without advising TechDyn provided the Air Force a proposal for the same AAC and PACAF work which Whittaker had quoted to TechDyn on November 13, 1987.

67. Whittaker's January 25, 1988 written proposal to the Air Force contained numerous material discrepancies from its November 13, 1987 proposal to TechDyn related to price, schedule and items of work for the AAC and PACAF Options.

68. On February 16, 1988, the Air Force informed TechDyn that the AAC and PACAF Options were not going to be awarded to TechDyn. Instead, all of the AAC and PACAF Option work was awarded to Whittaker based upon Whittaker's January 25, 1988 proposal to the Air Force.

69. As set forth above, by simultaneously providing TechDyn and the Air Force inconsistent price and scheduling

information for the AAC and PACAF Option work, Whittaker breached its contract with TechDyn.

WHEREFORE, TechDyn demands judgment against Whittaker in the amount of at least \$800,000, together with prejudgment interest, costs, expenses, attorneys' fees, and such other relief as this Court may deem appropriate.

DATED: August 21, 1990.

Respectfully submitted,

TECHDYN SYSTEMS CORPORATION

By: 

Gary R. Boettler

By: 

Douglas C. Proxmire

WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Amended Motion for Judgment was hand-delivered this 21st day of August, 1990 to:

William L. Carey, Esquire
Brian F. Kenney, Esquire
Miles & Stockbridge
11350 Random Hills Road
Suite 500
Fairfax, VA 22030

and

Jean-Pierre Swennen, Esquire
Robert T. Deyling, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505



Barry R. Boelert

MAR 15 1991

KELLEY & HOWARD

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION,

Plaintiff,

v.

WHITTAKER CORPORATION,

Defendant.

AT LAW NO. 94144

WHITTAKER CORPORATION'S MOTIONS FOR SUMMARY JUDGMENT

Pursuant to Rule 3:18 of the Supreme Court of Virginia, Whittaker Corporation hereby moves the Court to enter summary judgment in Whittaker's favor on the following claims asserted in TechDyn Systems Corporation's Amended Motion for Judgment:

1. Count One -- TechDyn's claim for alleged "unremibursed costs", plus profits, on the ICCE program.
2. Count One -- TechDyn's claim for the alleged loss of "new and other business."

2038

EXHIBIT

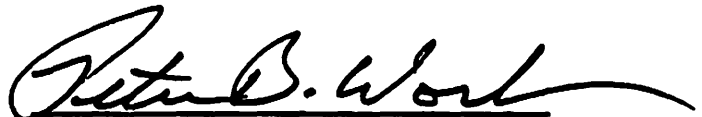
MEMO PG. 1 AUTH.
TAB 2

3. Count Two -- TechDyn's claim for alleged excess procurement costs relating to the ICCE remote control element.
4. Count Three -- TechDyn's claim for tortious interference with the alleged PACAF option in the ICCE prime contract.
5. Count Four -- TechDyn's claim for breach of the alleged PACAF option in the ICCE subcontract.

As detailed in the accompanying memorandum, there are no genuine issues of material fact as to these TechDyn claims, and Whittaker is entitled to judgment as a matter of law.

Respectfully submitted,
DEFENDANT, WHITTAKER CORPORATION

BY:



Peter B. Work
Jean-Pierre Swennen
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 624-2500

and

William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, VA 22030
(703) 352-4300

Dated: March 15, 1991

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION,

Plaintiff,

v.

WHITTAKER CORPORATION,

Defendant.

AT LAW NO. 94144

**WHITTAKER CORPORATION'S MEMORANDUM
IN SUPPORT OF ITS RENEWED MOTIONS FOR SUMMARY JUDGMENT**

By its Order of December 4, 1990, the Court denied certain dispositive motions by Whittaker Corporation but authorized the renewal of these motions "should such action be warranted by further discovery." 12/4/90 Order at 2. By its subsequent Order of December 19, 1990, the Court indicated that all such motions would be heard at the pretrial conference (now) scheduled for March 21.

Based on the above Orders, Whittaker is today filing summary judgment motions addressing the five claims asserted in TechDyn

Systems' Amended Motion for Judgment. These summary judgment motions are warranted based upon information in TechDyn's December 10, 1990 "Case Summary" and in the "Supplemental Interrogatory Responses" that TechDyn (belatedly) served on Whittaker on January 16, 1991. The unavoidable conclusion that emerges from these recent TechDyn submissions is that TechDyn's claims are legally baseless.

This conclusion certainly pertains to TechDyn's "PACAF option interference and breach" claims in Counts Three and Four with regard to which TechDyn, in its recent submissions, appears to have backed off from its whimsical reliance on options in the ICCE prime contract and subcontract that, in fact, had expired well before Whittaker allegedly interfered with or breached them.

The conclusion also applies to TechDyn's claim for excess procurement costs in Count Two, given TechDyn's recent submissions revealing that it cannot make the legally required showing that its "replacement" article was substantially similar to the article on which Whittaker had worked.

The conclusion applies as well to TechDyn's claims in Count One for alleged lost profits on "new and other business" unrelated to the ICCE and PACAF programs, and for TechDyn's total unreimbursed costs, plus profit, on ICCE.

We will discuss each of these claims in turn below, focusing on the new information disclosed in TechDyn's recent Case Summary and Supplemental Interrogatory Responses.

**COUNTS THREE AND FOUR -- TECHDYN'S PACAF OPTION
INTERFERENCE AND BREACH CLAIMS**

In Counts Three and Four of its Amended Motion for Judgment, TechDyn (now) alleges damages of \$609,002 based on Whittaker's alleged tortious interference with an option for the PACAF work in the ICCE prime contract (Count Three), or, in the alternative, on Whittaker's alleged breach of an option for the PACAF work in the ICCE subcontract (Count Four). These two counts were among the subjects of Whittaker's November 9 motions for summary judgment, and Whittaker specifically addressed them at the November 19 hearing on its motions. The Court did not, however, specifically mention Counts Three and Four in its December 4 Order.

Among the points that Whittaker made at the November 19 hearing with regard to Counts Three and Four were the following:

- (a) the PACAF option in the ICCE prime contract on which TechDyn relied in Count Three had expired on April 30, 1987, months before Whittaker's alleged interference with the option (as established by a formal protest which TechDyn filed with the United States General Accounting Office on February 19, 1988, alleging that the Air Force's decision to

permit the option to expire on April 30 was wrongful^{1/}); and

- (b) the PACAF option in the ICCE subcontract on which TechDyn relied in Count Four had also expired on April 30, 1987, months before Whittaker allegedly breached that option (as established by the TechDyn-issued Mod. 8 to ICCE subcontract^{2/}).

TechDyn did not acknowledge at the November 19 hearing that the PACAF options in the ICCE prime contract and subcontract had expired before Whittaker's alleged interference and breach. In its December 10 Case Summary, however, TechDyn appears to back away from its reliance on the expired options.

For its Count Three, TechDyn now alleges interference, not with an existing contract right, but rather with a "business expectancy". Compare TechDyn's 12/10/90 Case Summary at 13 (describing claim in Count Three as "Whittaker's Tortious Interference With TechDyn's Business Expectancy To Obtain Alaska/PACAF Work") with Amended Motion for Judgment (describing claim in Count Three as "Whittaker's Tortious Interference With TechDyn's

1/ For informational purposes only, TechDyn's GAO protest is attached hereto as Exhibit 1.

2/ For informational purposes only, Mod. 8 to the ICCE subcontract is attached hereto as Exhibit 2.

Business Relations With The Air Force Regarding Alaska and PACAF Option").

For its Count Four, TechDyn now alleges a breach, not of an option for the PACAF work in the ICCE subcontract, but of an implied duty arising from some unidentified source. Compare TechDyn's 12/10/90 Case Summary at 16 (describing claim in Count Four as being based on "Whittaker's Breach of Contract Related To Alaska/PACAF Work") with Amended Motion for Judgment (describing claim in Count Four as being based on "Whittaker's Breach Of AAC and PACAF Obligations").

Counts Three and Four, as thus presently characterized by TechDyn, are considered separately below.

Count Three

TechDyn's apparent abandonment of its Count Three claim for tortious interference with an existing contract right in favor of a claim for interference with a non-contractual business expectancy fundamentally changes the nature of the required legal inquiry under Virginia law. See Duggin v. Adams, 234 Va. 221, 360 S.E.2d 832 (1987) ("[T]he cause of action for interference with contractual rights provides no protection from the mere intentional interference with a contract terminable at will In short, the extent of permissible third-party

interference increases as the degree of enforceability of a business relationship decreases") (emphasis added).

According to the Virginia Supreme Court in Duggin, a plaintiff alleging interference with a prospective business expectancy must establish -- with increasingly convincing proof as the asserted expectancy becomes further removed from an enforceable contract right -- the following elements:

1. the existence of a business expectancy, with a "probability" of future economic benefit to plaintiff;
2. defendant's knowledge of the expectancy;
3. a "reasonable certainty" that, absent defendant's intentional misconduct, plaintiff would have realized the expectancy;
4. damage to plaintiff; and
5. defendant's employment of "improper methods", i.e., methods that are illegal or independently tortious, such as violations of statutes, regulations, or recognized common-law rules.

360 S.E.2d at 835-36.

Our search of the reports in Virginia and elsewhere has yielded no precedent for awarding a plaintiff damages in circumstances even approaching the remote, non-contractual "business expectancy" that TechDyn now apparently claims with respect to the PACAF work. Here, as TechDyn has formally admitted in its pleadings, the Air Force issued a legally-mandated, "Sole Source Justification" (Exhibit 3 hereto) declaring that the PACAF work should not be awarded to TechDyn because TechDyn could add no tangible value to what the Air Force wanted to procure, and because, as a matter of public policy, the Air Force should not pay a non-contributing middleman's markup (which TechDyn's complaint indicates would have been in the range of \$800,000).^{3/} Given this acknowledged Air Force determination, TechDyn cannot possibly prove with the required high degree of "certainly" that it would have realized its "expectancy" but for Whittaker's alleged actions. Thus, summary judgment should be granted on Count Three as it is now cast.

Count Four

TechDyn's apparent abandonment of its Count Four claim for breach of an enforceable ICCE subcontract option in favor of a claim based on a nebulous implied duty arising from some

^{3/} TechDyn has admitted in its interrogatory responses that the Sole Source Justification is an authentic document and the language upon which Whittaker relies is contained therein. See TechDyn's Objections and Responses to Defendant's Second Set of Interrogatories at 5-6.

unidentified source eliminates all legal basis for a breach of contract award relating to the PACAF program. See e.g. Hagans, Brown & Gibbs v. First National Bank of Anchorage, 783 P.2d 1164, 1166 n.3 (Alaska 1989) (explaining that implied duty of good faith and fair dealing is "a product of the relationship created by the contract, and there is no tort duty of good faith and fair dealing independent of that relationship"). The only aspect of the ICCE subcontract that had anything to do with the PACAF program was the PACAF option. When that option expired on April 30, 1987, the parties had no continuing contractual relationship of any kind with respect to the PACAF work. TechDyn had no contractual duty vis-a-vis Whittaker to request a PACAF proposal from Whittaker, and Whittaker had no contractual duty to submit a PACAF proposal.

Because TechDyn does not now allege any Whittaker breach of an identifiable contractual duty relating to the PACAF program, summary judgment should be granted on TechDyn's breach of contract claim in Count Four.

COUNT TWO -- TECHDYN'S CLAIM FOR EXCESS REPROCUREMENT COSTS RELATING TO THE REMOTE CONTROL ELEMENT

In Count Two of its Amended Motion for Judgment, TechDyn (now) alleges that it incurred excess reprocurement costs of \$454,637 in connection with its partial default termination of Whittaker on the software portion of the ICCE remote control element ("RCE"). Whittaker addressed Count Two in its November 9

motions for summary judgment, pointing out that one of the many legal hurdles TechDyn had to clear in order to sustain a default termination based on an alleged failure to make progress was its proof of the existence of a contractually effective schedule at the time of termination. Given the TechDyn-acknowledged absence of such a schedule, Whittaker contended that summary judgment should be granted.

The Court denied this Whittaker motion on December 4, stating that it could not "say as a matter of law that only a time schedule can be used to determine whether progress is being made." 12/4/90 Order at 2. While we disagree with that conclusion, based on our reading of the body of case law interpreting the standard federal Default Termination clause that the parties incorporated in the ICCE subcontract, Whittaker does not renew its motion with regard to Count Two on that basis.

Rather, Whittaker's current motion is based on the fact that the "replacement" article TechDyn procured following its default termination of Whittaker was not "substantially similar" to the RCE software on which Whittaker had been working before the termination. This legally dispositive fact is evident in TechDyn's 1/16/90 Supplemental Interrogatory Responses which confirm that the replacement article was not software at all but rather a mechanical switching device that had been dictated by the

Air Force well before the termination. See TechDyn's 1/16/90 Supplemental Interrogatory Responses at Exhibit 21.

It is a well-established legal principle that a party seeking excess reprocurement costs under the standard federal Default Termination clause must prove that the replacement article was substantially similar in physical and mechanical characteristics and functional purpose to the article being replaced. As the Court of Claims has said:

It has long been held that where the Government by reason of a claimed default in the performance of a contract elects under its terms to relet the contract and charge the increased cost, if any, to the defaulting contractor, such charge may not be sustained if in the reletting there is a material or substantial departure from the original contract terms.

Samual Schwartz, Trading As the Sun Radio Co. v. United States, 106 Ct. Cl. 225, 238 (1946) (quoting Rosenberg v. United States, 76 Ct. Cl. 662, 679 (1933)); accord United States v. California Bridge Co., 245 U.S. 337, 344-45 (1917) (holding that where contract for construction of bridge was terminated, "it [could] not be said that the work performed under the second contract was so substantially that which the Bridge Company contracted to perform so as to permit the recovery of the difference in cost between the two under the familiar rules applicable to the subject").

Recent decisions are consistently to the same effect, e.g., Theodore R. Korotie, 89-3 BCA ¶ 22,214 at 111,728 (AGBCA 1989) ("It has long been established that the assessment of excess costs is a Government claim and that, therefore, the Government has the burden of proving that the reprocurement was effected under substantially the same terms and conditions as the defaulted contract, for a reasonable price, and that the work has been completed and paid for"); Cosmos Engineers, Inc., 88-2 BCA ¶ 120,795 at 105,055 (ASBCA 1988) ("One requirement for the Government to recover excess reprocurement costs pursuant to the Default clause is that the reprocured items be similar to the defaulted items. They need not be identical, but must be similar in physical and mechanical characteristics as well as functional purpose").

TechDyn itself, in its Amended Motion for Judgment, tacitly acknowledged the requirement of substantial similarity by alleging that, due to Whittaker's alleged failure "to make progress on the RCE software" TechDyn was "forced to . . . reprocure this same work at an increased cost". Amended Motion for Judgment at ¶¶ 43-44. Yet, in its Supplemental Interrogatory Responses, TechDyn demonstrates the fundamental dissimilarity between the replacement article and the article being replaced by confirming that the replacement article was a mechanical switching device rather than software.

Given the lack of similarity between the RCE software on which Whittaker had worked prior to termination and the mechanical switching device which replaced that software, TechDyn is barred by established law from recovering excess procurement costs, and summary judgment should be granted as to Count Two.

**COUNT ONE -- TECHDYN'S CLAIM FOR THE ALLEGED LOSS
OF "NEW AND OTHER BUSINESS"**

In Count One of its Amended Motion for Judgment, TechDyn (now) claims damages of \$1,366,777 based on an alleged loss of "new and other business" completely unrelated to the ICCE or PACAF projects. TechDyn's theory is that its ICCE personnel, had they not been tied up on ICCE for an unexpectedly lengthy period, could have pursued other business opportunities. TechDyn first claimed added compensation from the Air Force on the basis of this novel theory but ultimately turned its attention to Whittaker when the Air Force summarily refused to consider such a claim.

The specific factual basis upon which TechDyn asserts a claim for the loss of "new and other business" remained a mystery to Whittaker until TechDyn served its 1/16/91 Supplemental Interrogatory Responses. Initially, in responding to Whittaker's interrogatories, TechDyn merely referred Whittaker to the Government publication Commerce Business Daily for the period of 1985 through 1990. Later, near the end of the originally authorized discovery period, TechDyn released a long list of

Government programs that an internal TechDyn functionary had just recently culled from back issues of the Commerce Business Daily. Then, just after the November 2 discovery cut-off, TechDyn identified (by program number only) five programs on which it had unsuccessfully bid.

It was on the basis of these meager TechDyn disclosures that Whittaker sought summary judgment on November 9 with respect to TechDyn's claim for the loss of "new and other business." Whittaker relied on the established legal principle in Virginia that damages for the loss of business and profits allegedly resulting from a breach of contract are recoverable

only to the extent that the evidence affords a sufficient basis for estimating their amount in money with reasonable certainty. Moreover, profits which are remote, speculative, contingent or uncertain are not recoverable.

Boggs v. Duncan, 202 Va. 87, 121 S.E.2d 359, 363 (1961) (citations omitted) (emphasis added); see also Murray v. Hadid, 238 Va. 722, 385 S.E.2d 898, 904 (1989) ("It is well settled that . . . prospective profits are not recoverable in any case if it is uncertain that there would have been any profits" (emphasis added)); ADC Fairways Corp. v. Johnmark Const. Inc., 231 Va. 312, 343 S.E.2d 90, 93 (1986) (holding that award of lost profits was error because they were purely speculative).

The Court did not comment on Whittaker's November 9 motion relating to TechDyn's "new and other business" claim in its December 4 Order.

Although the factual basis for TechDyn's "new and other business" claim remains uncertain, it now appears from TechDyn's 1/16/91 Supplemental Interrogatory Responses that one of TechDyn's proposed experts came up with the current claim amount without reference to any particular program. See TechDyn's 1/16/91 Supplemental Interrogatory Responses at p. 26 ("It is Mr. Ripper's opinion that had Whittaker not delayed the PDFA portion of the ICCE project and/or defaulted on its RCE work, TechDyn would have obtained substantial additional work and would have realized a profit thereon"). Apparently, Mr. Ripper simply looked at TechDyn's pre-ICCE business and inferred that TechDyn would have won additional, but unidentified, work during the period of TechDyn's ICCE performance had it not been for problems on the ICCE program.

Clearly, Mr. Ripper's inference does not satisfy the "reasonable certainty" standard that Virginia courts impose on claims for lost business and profits. The claim as now presented is completely speculative and thus not legally cognizable in Virginia.

In searching for cases that have considered claims for lost future business comparable to TechDyn's claim, we have found just

one that even comes close: Rogerson Aircraft Corp. v. Fairchild Industries, 632 F. Supp. 1494 (C.D. Cal. 1986). In that case, involving breach of contract claims, the court considered whether the plaintiff aircraft parts supplier could recover lost profits from identified prospective aircraft parts contracts with identified third parties. Even in these relatively concrete circumstances, the court concluded that

Rogerson's claim must also be rejected as a claim for unforeseeable and speculative damages.

632 F. Supp. at 1504 (emphasis added). This reasoning dictates a grant of summary judgment on TechDyn's much more whimsical claim for loss of "new and other business." At very least, the Court should preclude TechDyn's reliance on long lists of Commerce Business Daily-published programs supposedly exemplifying the type of business that TechDyn might have obtained in different circumstances.

COUNT ONE -- TECHDYN'S CLAIM FOR "UNREIMBURSED COSTS", PLUS PROFITS, ON THE ICCE PROGRAM

Also in Count One of its Amended Motion for Judgment, TechDyn seeks compensation for "unreimbursed costs" on the ICCE program, (now) allegedly amounting to an estimated \$2,665,410, plus profit. Whittaker moved to strike this claim on November 9 on the ground that it was a "total cost claim" not cognizable under Virginia law. See e.g., Hale v. Fawcett, 214 Va. 583, 202 S.E.2d 923, 925

(1974) ("When there is evidence of damage from several causes, as to a portion of which a defendant cannot be held liable, the burden is on a plaintiff to present evidence which will show 'with a reasonable degree of certainty' the share of damages for which a defendant is responsible"); Medcom, Inc. v. C. Arthur Weaver Co., Inc., 232 Va. 80, 348 S.E.2d 243, 248 (1986) ("a claimant must prove 'with reasonable certainty the amount of damages and the cause from which they resulted'") (citations omitted); Carr v. Citizens Bank and Trust Co., 228 Va. 644, 325 S.E.2d 86, 90 (1985) ("Where the loss results from several causes, the plaintiff must show with a reasonable degree of certainty the amount chargeable against a particular defendant").

The Court did not address this Whittaker motion in its December 4 Order.

It is noteworthy that TechDyn's response to Whittaker's November 9 motion to strike asserted that its claim for "unreimbursed costs" -- despite the implication of TechDyn's own label -- was not a "total cost" claim:

Plainly, TechDyn does not seek recovery under a total cost theory. Moreover, TechDyn's total loss on the ICCE project has been greater than what TechDyn is claiming from Whittaker (see TechDyn's response to Interrogatory Number 12 of TechDyn's October 9, 1990 Supplemental Answers to Interrogatories, attached hereto as Exhibit 2).

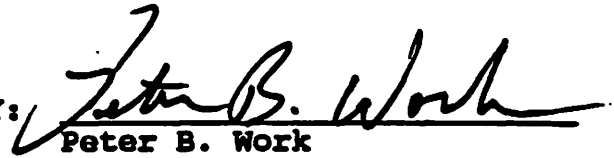
TechDyn's 11/15/90 Response at 6-7.

Notwithstanding TechDyn's November 15 disclaimer of any intent to assert a total cost claim, TechDyn's 12/10/90 Case Summary and 1/16/91 Supplemental Interrogatory Responses make clear that TechDyn is, in fact, seeking from Whittaker every last penny of its actual and projected ICCE costs that have not already been reimbursed by the Air Force. Moreover, TechDyn's recent submissions abandon any effort to tie specific TechDyn costs to any alleged Whittaker breach. TechDyn is now plainly seeking to treat the ICCE program as a cost-plus program, and TechDyn ironically looks to its subcontractor, Whittaker, to fund all costs and profits for which the Air Force has not already acknowledged responsibility. See TechDyn's 12/10/90 Case Summary at 8, and TechDyn's 1/16/91 Supplemental Interrogatory Responses at 5.

Given TechDyn's recent submissions, and its past acknowledgements of non-Whittaker causes of at least some of its projected ICCE losses, the claim for "unreimbursed damages" that TechDyn asserts in Count One is plainly a "total cost" claim that has no legal basis in Virginia. On this ground, summary judgment should be granted.

Respectfully submitted,
DEFENDANT, WHITTAKER CORPORATION

BY:



Peter B. Work
Jean-Pierre Swennen
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 624-2500

and

William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, VA 22030
(703) 352-4300

Dated: March 15, 1991

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Whittaker Corporation's Motions for Summary Judgment and Supporting Memorandum were hand delivered this 15th day of March, 1991 upon:

Garry R. Boehlert, Esquire
Watt, Tieder, Killian & Hoffar
7929 Westpark Drive
Suite 400
McLean, VA 22101


Peter B. Work



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030

COUNTY OF FAIRFAX
Fax: (703) 385-4432

CITY OF FAIRFAX
(703) 246-2221

MAY 09 1991

KILLIAN & HOFFAR

May 7, 1991

RICHARD J. JAMBORSKY
WILLIAM G. PLUMMER
THOMAS J. MIDDLETON
F. BRUCE BACH
QUINLAN H. MANCOCK
JOHANNA L. FITZPATRICK
J. HOWE BROWN
JACK B. STEVENS
THOMAS A. FORTKORT
MICHAEL P. McWEENY
ROSEMARIE ANNUNZIATA
THOMAS S. KENNY
MARCUS D. WILLIAMS
JUDGES

JAMES KEITH
LEWIS D. MORRIS
BURCH MELLISAP
BARNARD F. JENNINGS
LEWIS H. GRIFFITH
RETIRED JUDGES

Garry R. Boehlert, Esq.
Watt, Tieder, Killian
& Hoffar
7929 Westpark Drive
Suite 400
McLean, VA 22102

Peter B. Work, Esq.
Crowell & Moring
100 Pennsylvania Ave., N.W.
Washington, D. C. 20004-2505

Re: TechDyn Systems Corp. v. Whittaker
Corp. - At Law No. 94144

Dear Counsel:

After careful review of the papers submitted the Court denies Whittaker's motion for summary judgment. I do so without, frankly, any real confidence that the issues have been fully explored, but because our Supreme Court takes a very dim view of summary judgment except in the most extraordinary case. It had been my hope that we could find a point before trial at which we could be confident that discovery was full and complete. I am not confident that we ever reached that point, and I see a trial as the only way to test the sufficiency of the evidence. There are material issues of fact genuinely in dispute. Whether evidence can be found and presented to support those facts will await the days of trial.

I also despair when I contemplate seven citizens from all walks of life sitting and listening to what will be a

2059

memo 5/14/91
TAB 3

TechDyn Systems Corp. v.

Whittaker Corp.

May 7, 1991

Page Two

long trial with frequent interruptions for objections over what Mr. Boehlert, at least, thinks are complicated issues. I respectfully draw your attention to Virginia Code Section 8.01-359(D.), under which you might be able to select a three person jury perhaps more familiar with contract issues than you are likely to get from the general population of Fairfax County.

I also remind both of you, as I have on several prior occasions, that I intend strictly to adhere to the rule that evidence will not be received which should have been, but was not, revealed in response to discovery properly propounded.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Howe Brown", with a long horizontal flourish extending to the right.

J. Howe Brown

JHB/al

1 MR. BOEHLERT: I'm sorry. I'd like to have them.
2 I think they'll be here in one second.

3 MR. RIDDLES: It'll be faster than one second -- I
4 mean slower than one second. It might be a minute. Do you
5 mind, Your Honor?

6 JUDGE BROWN: What did you say?

7 MR. RIDDLES: If we could just get those, we'll go
8 quickly.

9 (Pause.)

10 JUDGE BROWN: Bring the jury in and we'll save
11 some time.

12 (Pause while jury is seated.)

13 JUDGE BROWN: Okay. We're ready to go.

14 CROSS-EXAMINATION

15 BY MR. BOEHLERT:

16 Q Good afternoon, Ms. Justis. When did you first
17 become involved in this project?

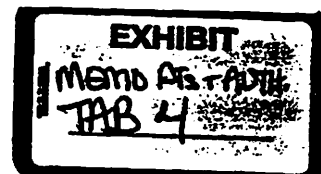
18 A In the beginning of the project.

19 Q Were you part of the contract formation part of
20 this project?

21 A Only in a small part. I mean, I was there during
22 the proposal but I wasn't involved, obviously, in any of the
23 contract negotiations.

24 Q What did you do with respect to the proposal?

25 A Only provided estimates. Software estimates.



1 Q Who did you provide those to?

2 A I don't remember.

3 Q Were you part of a team to do that?

4 A Yes.

5 Q Did you have a document or any specifications you
6 were referring to to do that?

7 A Since we were only going to make minor upgrades to
8 the TADIL-A interface, we had an idea of what those upgrades
9 were.

10 And, of course, the rest of the things we were
11 going to do, the documentation, was something that we knew
12 what we needed to do. We had the military standards to
13 govern us.

14 Q Well, let's talk about the upgrades. How did you
15 get an understanding of what the upgrades would be?

16 A From my contacts at other military bases.

17 Q So was it just word of mouth that you were
18 estimating?

19 A We had to rely on that because we couldn't get a
20 copy of the JCS PUB 10 that we needed.

21 Q So you didn't have a copy of the JCS PUB 10 to
22 make an estimate. Is there anything else you didn't have?

23 A That's all we understood the contract to be, was
24 the upgrade to the JCS PUB 10 and the documentation. So at
25 the onset of the program, that was all that we did not have

1 that we thought we needed.

2 Q You're talking now about the time that a bid is
3 being put together for this project. Is that correct?

4 A That's correct.

5 Q Did you request a copy of JCS PUB 10?

6 A We requested one. I don't remember if it was at
7 the proposal time or not but we requested one.

8 Q Who did you request it from?

9 A I requested one from our contracts people and
10 then they in turn, I suspect, requested it from the
11 Government.

12 Q But you don't know that they did.

13 A I know that it came up in several meetings about
14 JCS PUB 10 and we said we still don't have one, we'd like a
15 copy of JCS PUB 10. So at least in the exchange in some of
16 the meetings they knew that we didn't have a JCS PUB 10.
17 These are the B5 meetings.

18 Q Okay. But at the time of estimating, JCS PUB 10
19 prescribed the upgrades that were going to be made to this
20 system. Is that correct?

21 A That's correct.

22 Q And those upgrades involved, to a large degree,
23 the issues of reporting responsibility, digital handover,
24 correlation, is that correct?

25 A No. Those issues are a perceived requirement out

1 of JCS PUB 10. The updates that they wanted us to do was to
2 the current -- where they made changes to the message
3 standards so that your interface changed.

4 Now, what you did internally in your program,
5 which is what the issues of R squared and digital handover
6 and correlation involved, is what each system decides on
7 their own.

8 They dictate what you have to do to interface to
9 another agency. The PUB 10 doesn't dictate what you do
10 internally. And those issues are things that a system does
11 internally in their system.

12 Q Okay. So I want to get back, though, to see what
13 you relied on. So you knew there were going to be upgrades
14 but your understanding was just basically word of mouth as
15 to what the upgrades would consist of.

16 A We had a copy of JCS PUB 10. It wasn't to the
17 issue of the one they required. I have enough contacts at
18 other military bases to get those documents. I could see
19 them under other contracts. But we didn't have one
20 physically in house that we could work from.

21 It was enough to give us an idea of what we were
22 looking at software-wise for changes.

23 Q Is that how you came upon the decision that there
24 would be a 5 percent upgrade?

25 A Yes, it is.

1 Q So he didn't come onboard until after you were
2 already involved in the ICCE program.

3 A That's my best recollection. That's all I can
4 say.

5 Q Okay. Prior to this time that you -- let me go
6 back for a moment to the time that you were involved in the
7 negotiation phase and I think you testified the technical
8 proposal aspect. Was it your testimony that the Air Force
9 had had the software for the RADIL in its possession prior
10 to that time?

11 A That's correct.

12 Q And they had delivered it to you at that time. Am
13 I correct, sir?

14 A Delivered it at which time, please?

15 Q When they were asking you to modify the software,
16 you had a copy of that software that they were asking you to
17 modify, didn't you?

18 A No, I did not.

19 Q And you didn't have it any time before the
20 contract began?

21 A No.

22 Q And yet you knew they had it.

23 A Yes.

24 Q Did you -- and so -- I just want to make sure I'm
25 right. You were going to be modifying software that the Air

2065

1 Force had -- correct?

2 A Correct.

3 Q That you did not have.

4 A That's correct.

5 Q Now, is that you, personally, or you, as the 4C
6 Corporation?

7 A Both.

8 Q Neither 4C nor you personally had a copy of that
9 software that you were going to be modifying.

10 A Yes.

11 Q And that's the software on which you base now your
12 5 percent estimate. Am I correct?

13 A That's correct.

14 Q You mentioned testing in your direct examination.
15 Were you present at those tests, sir?

16 A Some of them, yes.

17 MR. RIDDLES: I'm going to show you what's been
18 marked as Plaintiff's Exhibit 571.

19 (Pause.)

20 MR. RIDDLES: It's already in evidence?

21 (Pause.)

22 BY MR. RIDDLES:

23 Q Take a look at Plaintiff's Exhibit 571. Do you
24 recognize that as a letter from the Whittaker Corporation?

25 A Yes.

Memorandum For: Mr. Don Moeller

Subject: Assessment of the ICCE Program

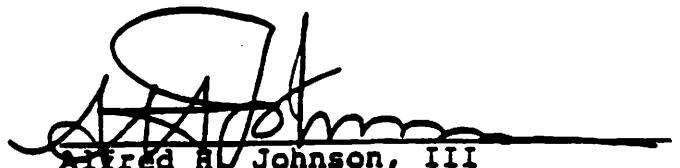
1. Per your request on 9 March 1988, I conducted a review of the ICCE Program with the objective of addressing the following:

- o Assessment of the WCCS Performance on the ICCE Contract (Enclosure 2)
- o Assessment of performance of the Prime Contractor on the ICCE contract (Enclosure 3)
- o Assessment of residual tasks (Enclosure 4)

2. The review has taken into account the documentation and the activities of a project that is, at time of writing, approximately 18 months behind schedule. There is little confidence that this level of slippage can be held.

3. It should be noted that this review is problem oriented. No attempt has been made to emphasize the positive aspects of the program since these are readily apparent. Only the issues that contribute to delays, cost growth and non-compliance are identified in order that the viability of the program can be assessed.

4. In assessing the program I have felt it appropriate to also assess the contractual aspects of the program. This is necessary to understand the programmatic risks that the program has had to overcome. These programmatic factors are funding; schedule; contract relationships; political. This contractual assessment is attached as Enclosure 1.


Alfred H. Johnson, III
Consultant

4 Inclosures/as stated

EXHIBIT	FAIRFAX CIRCUIT COURT
MEMO. PIS. AUTH	CIV. FILE No. 11
TAB 6	DATE
	JUDGE BROWN
	CASE NO. 94144

2067

002033

CONTRACTUAL ANALYSIS

1. During discussions with the government Program Manager and Deputy Program Manager in 1984, prior to issuance of an RFP, it was evident that the government was seeking a qualified 8-A contractor to provide a means for buying RADIL's. They looked at the acquisition as one that was low-risk; however it was schedule driven, in that the user community was eager to satisfy their requirement for an E-3A ground interface at the Region Operation's Control Centers (ROCC). These discussions, for the most part, concerned the procurement of off-the-shelf (Non-developmental) items with some enhancements to RADIL System software.

2. The risk in the program was considered to be that involved in the design of the remote control element for the Icelandic Ground Entry Stations. However, a design solution had been considered and worked out in principle by WCCS and MITRE engineers. The risk for this design was considered low-to-medium.

3. Regarding the software enhancement for the RADIL, a low-to-medium risk was presumed because the ESD System Program Office (SPO) thought that a baseline existed for the software that was in current use at the ROCC's. This proved to be in error.

From the standpoint of software the contract was awarded without an adequately defined technical baseline, and because the program was schedule driven (Critical Design Review 180 days ADAD), cost growth and resultant delays were inevitable.

4. The government awarded the contract with full knowledge that protective aspects of the programmatic sections of the document were open to question. Examples are:

- o Failure to provide with the contractual references specific deficiencies requiring changes in the ICCE software that the government had knowledge of. At the time of contract award the current version of RADIL software, as maintained by the RSSF, Tyndall AFB, had failed TAF certification testing. Early visibility of these deficiencies by contractor management could have saved considerable time and effort.
- o Failure to provide the most current version of JCS PUB-10 in contractual references.
- o Failure to determine when OT&E will be conducted: This milestone is important. It is some time after system turnover, however, the logistic support for the system is contractor responsibility through OT&E.
- o Requirement placed upon the contractor to perform formal Price/Schedule Status Reporting (using C/SSR format) on a Firm-Fixed-Price contract. This is contradictory to the spirit and intent of the MIL-STD.
- o Failure to include a CWBS in the contractual document. The government and the contractor should agree on the products and objectives

Assessment of WCCS Performance

1. WCC's performance to date has been affected by a poorly structured subcontract document. It is difficult to follow because of the way -- and the time frame over which-changes occurred. The following comments apply:

- o TechDyn has used WCCS poor performance as an ESD "directed subcontract" as the main basis for their claim for equitable adjustment. The terms and conditions of the Prime Contract only "directs" TechDyn to WCCS for the following:

- RADIL (PDFA) Hardware
- Software for the above
- Documentation for the above

Any other tasks - CFA RCE, services etc., are TechDyn/WCCS arrangements and are not clearly stated as contractual requirements in the WCCS Subcontract.

- o The correct SOW was not placed under contract with WCCS until 14 Jan 86. The start date was 30 Aug 85.
- o The attachment providing details for Provisioning may still not be contractually covered.
- o The Modification for the CONUS upgrade omitted several CDRL's -- this had an impact on timely delivery of the first unit.

2. WCCS, in its previous incarnation, 4C, looked at the ICCE project as one in which maximum benefit would be gained using a knowledgeable technical personnel base from other programs, e.g., Ship-Shore/Ship-Buffer. Existing documentation would be revised without considering that the program was one in the validation or full-scale-development phase of R&D. The reason for this view of the program is understandable; they were led in this thinking by the original managers in the ESD SPO -- Maj. Taylor, Ed Kalapinski, et al. I do not feel that MID-STD 490, although called out in the contract, was given much attention in the analysis of work packages required during the costing phase by 4C. Because of this several errors were made:

- o The totality of design documentation was grossly under-estimated. Cost and schedule, therefore, had to be adversely affected from the outset.
- o Quality assurance provisions in the program organization were late in being established. This was particularly evident in the software area.
- o In order to gain time B-level specifications were submitted as strawman documents with the hope of getting approval of their format. This caused the government to doubt that WCCS/4C had personnel experienced in the

development of specifications IAW the MIL-STD.

- o WCCS/4C stated that a Computer Program Development Plan was in existence, however, it could not produce the document when a Software Quality Assurance Audit team requested it.

3. These initial errors, which have been overcome, led to more management oversight by ESD, resulting in more action items that in themselves created inefficiencies. These were caused by tying down the same people working on current tasks at the expense of work scheduled.

4. Based upon management guidance provided, software engineering always had a firm handle on what had to be done. As indicated in the contractual assessment, software engineering was a victim of the whims and vagaries of the numerous meetings concerning the allocated baseline of the PDFA. It should be noted that guidance from ESD on the most serious design problems (Digital Handover; Correlation; and Reporting Responsibility) was not given until 9 months after the specification review cycle started. The problem was not identified by ESD until 6 months after the start of the review cycle.

5. As indicated above, the program errors that caused more visibility to be focussed on WCCS than may have been justified resulted in a unique system of controls.

Almost by-passing the Prime Contractor, ESD forced (passively) WCCS into a management control system that imposed high order levels of control and visibility on sub-elements of the project. This inefficiency caused the program to focus on software or QA -- whatever was in the last letter -- at the expense of managing the program on a total systems basis.

6. I recommend that WCCS increase management visibility in the following areas:

- o Data Management - There are a number of CDRL requirements overdue. This should be a matter of concern because ESD is increasing pressure on the Prime Contractor.
- o Scheduling - WCCS cannot lead this effort. I believe that TechDyn is awaiting WCCS input without providing guidance and clear objectives. Schedules have to be more realistic and adaptive to known risks. In the past, perturbations in an event have caused program slips - work-arounds were generally not in place.
- o RCE Engineering - This involves hardware engineering; software development; integration activities by Redondo Systems. More control is needed by WCCS over what is being done. Is the contractor on schedule, *Is* coordination needed with the Prime?

2073

002102

- o Maintainability - The requirements for this demonstration has to be scoped. How long will planning take? What affect on schedules? Is coordination with the Prime being effected?
- o Tech Orders/Manuals - The failure to reach 80% level for the recent IPR will cause problems for training and system delivery. This situation must be given a high order of interest and control. Again, the Prime must take the lead in assessing any damage to the program and, jointly with WCCS, develop a get-well plan.

Assessment of Residual Tasks

The following are major tasks remaining on the program. Tasks related to the CONUS Upgrade Program are not included, since this part of the overall effort is under firm project control.

1. Test Plan/Procedures for the Remote Control Element.

These must be approved (or at least redlined) before system level in-plant testing can be conducted.

2. System Level Test Plan/Procedures. This TechDyn plan must include the Remote Control Element input, above.

3. In-Plant Installation. All equipment must be installed and checked out prior to formal testing.

Problem areas noted:

- o The modem for the data link is the incorrect item.

Another model has to be procured by TechDyn. This changeover requires an ECP action since the current CODEX modem has been baselined.

- o The Remote Control Element has not demonstrated that it can satisfy all requirements in the A Specification. It must clearly show that it can handle all of the parameters that are to be remotely operated and do so with a high degree of confidence, given the extreme distances and climate peculiar to Iceland.

4. In-Plant Test. All PDFA and CFA equipment must be integrated to verify system level requirements delineated in the Master Test Plan and the Verification Cross Reference Matrix (VCRM).

Problem Areas noted:

- o Scheduling

- o Maintainability Demonstration -

This could be a high risk area as it relates to the schedule.

- o Completion of any software Qualification Test

Trouble Reports that have not been cleared.

5. Provisioning Conference.

6. 80% Tech Order Review. All CFA manuals must be reviewed.

PDF/A manuals that were found unsatisfactory must be re-done.

This is another milestone that drives the schedule because these documents are needed for training.

Problem Areas noted:

- o CFA COTS Manuals (TechDyn responsibility) may not be under contract yet with VEDA. These manuals must be brought up to MIL-M standard or the proper level of data/information must be extracted and included in the CFA O&M Manual.

7. Training.

8. FCA/PCA for FOC System for Iceland.

9. Tech Order/Manual Verification. This is a USAF task. It can be done In-Plant or in Iceland.

10. Pack/Ship to Iceland. This includes the total system plus the spares/repair parts that must be delivered prior to final installation.

11. Installation Activity, Iceland. The problem here is where does it go. TechDyn has a requirement to submit a TCP by

29 March 88 to cover plans and costs to install equipment, scheduled for the Master Direction Center, into the new ICCE-ROCC facility. This would require WCCS input for planning and cost changes since all cables being fabricated and other ancillary details will most likely have to conform to new dimensions.

12. Field DT&E.
13. Final Delivery FOC System.
14. Contractor Maintenance & Support. The installed and delivered system must be given up to depot level support through the USAF conducted OT&E. This date has not been established.
15. Options for Maintenance & Support. May be exercised by ESD for one year.
16. All contract requirements for the 3 additional Ground Entry Stat.

1 Q Did you talk to anyone from the Whittaker
2 Corporation?

3 A No, I did not. But I did review the Whittaker
4 depositions to make sure that I understood their side of the
5 story. I also reviewed the deposition of the Mitre and Air
6 Force personnel.

7 Q All this work must have taken some time.

8 A It did.

9 Q How many hours did you spend in this effort, if
10 you know?

11 A On the schedule analysis, I had one associate
12 working for me and the two of us spent a total of
13 approximately 1200 hours studying the project.

14 Q Is your company being paid for these hours of work
15 that you spent?

16 A Yes, we are.

17 Q And what are your fees that are being paid?

18 A Our total fees for the schedule analysis have
19 totaled approximately \$100,000.

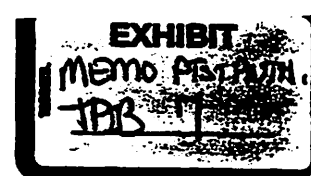
20 Q Who will be paying those fees, sir?

21 A TechDyn.

22 Q After your review of this information that you
23 mentioned in these 1200 hours, what did you do next?

24 A Well, basically three things. First, I identified
25 the planned schedule; then I identified the actual schedule;

2078



1 A Good afternoon.

2 Q Mr. Crider, you testified that there were four
3 critical areas of delay that you found.

4 A Yes.

5 Q Can you identify those delays and the areas in
6 which you found them, please, sir?

7 A Yes. The four critical areas of delay on this
8 project, in my opinion, were in the areas of software
9 design, software development, software testing and
10 correction and in the final delivery of the system.

11 Q Let's talk first about the critical delays that
12 you found in software design. Would you tell the jury what
13 delays you found in that area, sir?

14 A I found a total of 13 months of delay occurred in
15 the software design of the PDFA, the processing and display
16 functional area of the project.

17 Q Were you able to determine the cause of those 13
18 months of delay?

19 A Yes.

20 Q And what was that cause, sir?

21 A In my opinion, those 13 months of delay were
22 caused by the late and deficient submittal of B-level
23 specifications and C-level specifications by Whittaker.

24 Q All right, sir. Were you able to find delays in
25 the area of software development?

1 A Yes, that was the next critical area of delay.

2 Q And what were the delays that you found in that
3 area?

4 A There was an additional month of delay or a total
5 of 14 months of delay that occurred in the area of software
6 development.

7 Q And were you able to determine the basis for those
8 delays? The cause of those delays?

9 A Yes.

10 Q And what was that, sir?

11 A In my opinion, as I said, the critical delay, the
12 first 13-month critical delay, in software design had set
13 the whole project back 13 months. There was an additional
14 month of delay which occurred in the actual coding
15 development of the software itself and that was due to
16 Whittaker's failure to timely complete the software
17 development.

18 Q What was -- you say the first 13 months set this
19 one back 14 months.

20 A Right.

21 Q Can you explain that to the jury, please?

22 A Yes. That's where we had identified earlier as a
23 critical delay. In our schoolhouse example, if the walls
24 are 13 months late, obviously the roof is going to be 13
25 months late getting started and in this case, there was an

1 additional month of delay in putting the roof on or, in this
2 case, developing the software.

3 So the total delay through the end of software
4 development that had occurred as a result of the Whittaker
5 problems, the PDFA problems, was a total of 14 months.

6 Q Now, what was the third area of critical delay
7 that you found?

8 A The third area of critical delay was in the PDFA
9 software testing and correction.

10 Q And how much delay did you find there, sir?

11 A That was a total of -- I believe it was 42 months.

12 Q And how did you find that delay, please, sir?

13 A That delay occurred in between the time period
14 when Whittaker had completed software development to the
15 time period in which they were able to get the Government to
16 accept that software.

17 Q And then in the final delivery and installation?

18 A In the final delivery and installation, there is
19 an additional delay so that the project is delayed a total
20 of 53 months.

21 Q And were you able to determine the cause of those
22 53 months of delay?

23 A Yes.

24 Q And what was that, please, sir?

25 A In my opinion, those were caused by Whittaker's

1 failure to complete delivery of critical items, the PDFA O&M
2 manual and the support software which is used by the
3 Government to maintain or make changes to the PDFA
4 operational software.

5 Q Did that delay have any other impact?

6 A Yes. The delays in the verification of the PDFA
7 O&M manual not only had a delay -- has not yet been resolved
8 but it also delayed the final installation and testing of
9 the CFA equipment in Iceland.

10 Q What effect did these four areas of critical delay
11 have on TechDyn's performance?

12 A These four critical areas of delay extended
13 TechDyn's performance on this work for a total of 53 months.

14 Q Was there any problem that you found with respect
15 to the RCE?

16 A Yes, there was also a critical delay in the area
17 of the RCE software development and testing.

18 Q And was that a contributing factor to the 53
19 months of delay to TechDyn's work?

20 A That would have also contributed to TechDyn's
21 delay, yes.

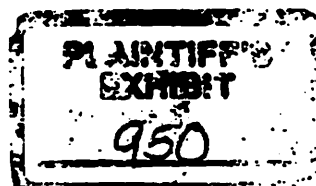
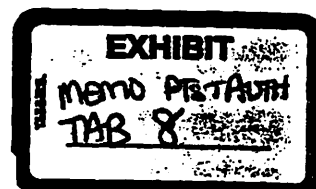
22 Q Were all of these delays to TechDyn's work that we
23 mentioned, the 53 months, attributable to the Whittaker
24 Corporation?

25 A In my opinion, yes.

SUMMARY OF DAMAGES

DESCRIPTION	CLAIM AMOUNT
PDFA DAMAGES	\$3,240,611
RCE DAMAGES	569,031
ALASKA AND PACAF DAMAGES	609,002
LOST PROFITS	3,214,338

2083



SUMMARY OF WHITTAKER-CAUSED PDFA DAMAGES

DESCRIPTION	CLAIM AMOUNT (BEFORE INTEREST)	INTEREST	CLAIM AMOUNT (INCLUDING INTEREST)
DELAY	\$2,570,524 (Exh. 952)	\$349,224 (Exh. 979)	\$2,919,748
EXCESS OVERHEAD	262,409 (Exh. 968)	0	262,409
RELOCATION OF TEST BEDS	48,742 (Exh. 973)	7,856 (Exh. 980)	56,598
REPLACEMENT OF KEYBOARD AND PRINTER	1,687 (Exh. 977)	169 (Exh. 981)	1,856
TOTAL	\$2,883,362	\$357,249	\$3,240,611

2084



CALCULATION OF DELAY DAMAGES
ATTRIBUTABLE TO WHITTAKER

DESCRIPTION	CLAIM AMOUNT
-----	-----
DELAY DAMAGES PER DAY	\$2,068 (Exhibit 953)
DELAY DAYS ATTRIBUTABLE TO WHITTAKER	x 1,243

TOTAL	\$2,570,524
	=====

2085



CALCULATION OF DELAY DAMAGES PER DAY

DESCRIPTION	AMOUNT
RECORDED TIME-RELATED COSTS, 9/85 TO 5/91	\$5,153,759 (Exh. 9)
LESS: TIME-RELATED COSTS IN ORIGINAL CONTRACT PERIOD	1,352,617
TIME-RELATED COSTS IN DELAY PERIOD COMPENSATED BY AIR FORCE	733,079
TIME-RELATED COSTS IN OTHER CONTRACT MODIFICATIONS	579,923 (Exh. 9)
TIME-RELATED COSTS IN REMOTE CONTROL ELEMENT REPROCUREMENT	172,987 (Exh. 9)
TIME-RELATED COSTS ATTRIBUTABLE TO WHITTAKER DELAYS	2,315,153
DIVIDED BY: NUMBER OF DAYS IN DELAY PERIOD	1,243
DELAY COST PER DAY	1,863
PROFIT AT 11%	205
DELAY DAMAGES PER DAY	\$2,068 per d.

**SUMMARY OF RECORDED TIME-RELATED
COSTS, 9/85 TO 8/90**

DESCRIPTION -----	AMOUNT -----	
LABOR:		
PROGRAM MANAGEMENT	\$296,829	(EXHIBIT 955)
SYSTEMS ENGINEERING & TESTING	392,759	(EXHIBIT 956)
LOGISTICS	401,035	(EXHIBIT 957)
FIELD MAINTENANCE	180,700	(EXHIBIT 958)
CONTRACT MANAGEMENT	131,778	(EXHIBIT 959)
COST ANALYSIS	80,890	(EXHIBIT 960)
SECRETARIAL	129,378	(EXHIBIT 961)

TOTAL LABOR	1,613,369	
ON-SITE OVERHEAD	2,086,086	
TRAVEL	631,562	(EXHIBIT 962)
CONSULTANTS	301,220	(EXHIBIT 963)
CONTRACT LABOR	84,746	(EXHIBIT 964)
OTHER DIRECT COSTS	44,435	(EXHIBIT 965)

TOTAL DIRECT COSTS	4,761,418	
GENERAL & ADMINISTRATIVE	392,341	

TOTAL	\$5,153,759	

PROGRAM .MENT DIRECT LABOR

DATE	ELLIS, D.		JOHNSON, A.	
	NRS.	\$	NRS.	\$
15-Sep-85				
29-Sep-85			35.00	1,101.80
13-Oct-85			45.50	1,432.34
27-Oct-85			74.50	2,345.26
10-Nov-85			53.00	1,668.44
24-Nov-85			61.50	1,936.02
08-Dec-85			51.00	1,605.48
22-Dec-85			52.00	1,636.96
05-Jan-86			50.50	1,589.74
19-Jan-86			57.00	1,794.36
02-Feb-86			52.00	1,636.96
16-Feb-86			68.00	2,140.64
02-Mar-86			74.00	2,329.52
16-Mar-86			66.00	2,077.68
30-Mar-86			46.00	1,448.08
13-Apr-86			67.00	2,109.16
27-Apr-86			44.50	1,400.86
11-May-86			71.00	2,235.08
25-May-86			67.50	2,124.90
08-Jun-86			54.00	1,699.92
22-Jun-86			62.00	1,951.76
06-Jul-86			59.50	1,873.06
20-Jul-86			93.50	2,943.38
03-Aug-86			70.50	2,219.34
17-Aug-86			85.00	2,675.80
31-Aug-86			62.50	1,967.50
14-Sep-86			55.50	1,747.14
28-Sep-86			82.00	2,581.36
12-Oct-86			58.00	2,725.47
26-Oct-86			59.50	1,970.48
09-Nov-86			68.50	2,263.93
23-Nov-86			90.50	2,991.03
07-Dec-86			64.00	2,115.21
21-Dec-86			70.50	2,330.03
04-Jan-87			43.00	1,421.15
18-Jan-87			80.00	2,644.01
01-Feb-87			39.50	1,305.49
15-Feb-87			68.50	2,263.94
01-Mar-87			45.00	1,487.25
15-Mar-87			69.50	2,296.99
29-Mar-87			64.50	2,131.73
12-Apr-87			64.00	2,115.22
26-Apr-87			82.50	2,726.63
10-May-87			95.00	3,139.76
24-May-87			69.50	2,296.98
07-Jun-87			81.00	2,677.06
21-Jun-87			66.50	2,197.83
05-Jul-87			172.00	5,968.40
19-Jul-87			91.00	3,157.70
02-Aug-87			91.50	3,175.05
16-Aug-87			73.50	2,550.35
30-Aug-87			56.50	1,940.55

2088

PLANTIFF'S

DEBIT

955

PROGRAM .MENT DIRECT LABOR

DATE	ELLIS, D.		JOHNSON, A.	
	MRS.	\$	MRS.	\$
13-Sep-87			72.00	2,498.40
27-Sep-87			95.00	3,296.50
11-Oct-87			51.00	1,769.70
25-Oct-87			66.00	2,290.20
08-Nov-87			75.00	2,602.50
22-Nov-87			64.00	2,220.80
06-Dec-87			75.00	2,602.50
20-Dec-87			91.00	3,157.70
03-Jan-88			40.00	1,388.00
17-Jan-88			82.00	2,845.40
31-Jan-88			69.00	2,394.30
14-Feb-88			58.50	2,029.95
28-Feb-88			65.50	2,272.85
13-Mar-88			28.50	988.95
27-Mar-88	88.00	1,866.48		
10-Apr-88	96.00	2,036.16		
24-Apr-88	118.50	2,513.39		
08-May-88	109.00	2,311.89		
22-May-88	80.00	1,696.80		
05-Jun-88	63.00	1,336.23		
19-Jun-88	116.50	2,470.97		
03-Jul-88	87.00	1,845.27		
17-Jul-88	82.00	1,739.22		
31-Jul-88	88.50	1,877.09		
14-Aug-88	84.00	1,781.64		
28-Aug-88	45.50	965.06		
11-Sep-88	84.00	1,718.02		
25-Sep-88	108.50	2,301.29		
09-Oct-88	87.50	3,703.97		
23-Oct-88	87.00	2,091.48		
06-Nov-88	77.00	1,851.08		
20-Nov-88	80.00	1,923.20		
04-Dec-88	58.00	1,394.32		
18-Dec-88	87.50	2,103.50		
01-Jan-89	72.00	1,730.88		
15-Jan-89	77.00	1,851.08		
29-Jan-89	66.00	1,586.64		
12-Feb-89	54.50	1,319.18		
26-Feb-89	76.00	1,827.04		
12-Mar-89	98.00	2,355.92		
26-Mar-89	85.00	2,043.40		
09-Apr-89	79.50	1,911.18		
23-Apr-89	80.00	1,923.20		
07-May-89	65.00	1,562.60		
21-May-89	68.00	1,634.72		
04-Jun-89	71.00	1,706.84		
18-Jun-89	79.00	1,899.16		
02-Jul-89	74.00	1,778.96		
16-Jul-89	66.50	1,598.66		
30-Jul-89	83.00	1,995.32		
13-Aug-89	39.00	937.56		
27-Aug-89	81.50	1,959.26		

PROGRAMENT DIRECT LABOR

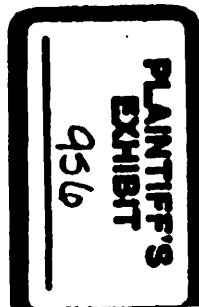
	ELLIS, D.		JOHNSON, A.	
DATE	MRS.	\$	MRS.	\$
10-Sep-89	66.00	1,586.64		
24-Sep-89	72.00	1,730.88		
08-Oct-89	76.00	1,827.04		
22-Oct-89	99.00	2,379.96		
05-Nov-89	72.00	1,730.88		
19-Nov-89	84.50	2,031.38		
03-Dec-89	58.00	1,394.32		
17-Dec-89	82.00	1,971.29		
31-Dec-89	80.00	1,923.20		
14-Jan-90	69.00	1,658.76		
28-Jan-90	72.00	1,730.88		
11-Feb-90	96.00	2,307.84		
25-Feb-90	72.00	1,730.88		
11-Mar-90	80.00	1,923.20		
25-Mar-90	92.00	2,211.68		
08-Apr-90	66.00	1,586.64		
22-Apr-90	80.00	1,923.20		
06-May-90	44.50	1,069.78		
20-May-90	74.00	1,778.96		
03-Jun-90	63.00	1,514.52		
17-Jun-90	83.00	1,995.32		
01-Jul-90	69.00	1,658.76		
15-Jul-90	60.00	1,442.40		
29-Jul-90	58.00	1,394.32		
12-Aug-90	98.50	2,367.94		
26-Aug-90	81.00	1,947.24		
09-Sep-90	72.50	1,742.90		
23-Sep-90	88.00	2,115.52		
07-Oct-90	94.50	2,271.78		
21-Oct-90	82.50	1,983.30		
04-Nov-90	79.50	1,911.18		
18-Nov-90	73.50	1,766.94		
02-Dec-90	64.00	1,538.56		
16-Dec-90	69.00	1,658.76		
30-Dec-90	68.00	1,634.72		
13-Jan-91	70.00	1,682.80		
27-Jan-91	71.50	1,718.86		
10-Feb-91	82.00	1,971.28		
24-Feb-91	72.00	1,730.88		
10-Mar-91	79.00	1,899.16		
24-Mar-91	102.00	2,452.08		
07-Apr-91	80.50	1,935.22		
21-Apr-91	74.00	1,778.96		
05-May-91	36.50	877.46		
19-May-91	69.00	1,658.76		
TOTALS	6,418.00	152,286.69	4,357.00	144,542.53

TOTAL PROGRAM MANAGEMENT

SYSTEMS ENGINEERING & TESTING DIRECT LABOR

DATE	THORNTON, R.		SOLEBELLO		ROSE, R.		MELNIG, G.		BENR, A.		ELLIS, D.	
	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
15-Sep-85							56.00	1,036.00	72.00	1,332.72		
29-Sep-85							80.00	1,400.00	80.00	1,400.80		
13-Oct-85							78.00	1,443.00	72.00	1,332.72		
27-Oct-85							77.00	1,424.50				
10-Nov-85							81.00	1,490.50	182.00	3,368.82		
24-Nov-85							96.00	1,776.00	84.00	1,554.84		
08-Dec-85							75.00	1,387.50	56.00	1,036.56		
22-Dec-85			59.00	1,357.00			64.00	1,184.00	95.00	1,758.45		
05-Jan-86			44.00	1,012.00			64.00	1,184.00	66.00	1,221.66		
19-Jan-86			52.00	1,196.00			72.00	1,332.00	77.00	1,425.27		
02-Feb-86			28.00	444.00			72.00	1,332.00	72.00	1,332.72		
16-Feb-86			56.00	276.00			38.00	703.00	80.00	1,400.80		
02-Mar-86			64.00	1,472.00			71.00	1,313.50	72.00	1,332.72		
16-Mar-86			68.00	1,564.00			72.00	1,332.00	64.00	1,184.64		
30-Mar-86			68.00	1,564.00			80.00	1,400.00	80.00	1,400.80		
13-Apr-86			80.00	1,040.00			72.00	1,332.00	80.00	1,400.80		
27-Apr-86			80.00	1,840.00			70.00	1,295.00	80.00	1,400.80		
11-May-86			72.00	1,656.00			76.00	1,406.00	84.00	1,554.84		
25-May-86			54.00	1,242.00			76.00	1,406.00	92.00	1,702.92		
08-Jun-86			47.00	1,081.00			62.00	1,147.00	72.00	1,332.72		
22-Jun-86			24.00	552.00			47.00	869.50	72.00	1,332.72		
06-Jul-86			44.00	1,012.00					79.00	1,462.29		
20-Jul-86			32.00	736.00					80.00	1,400.80		
03-Aug-86			40.00	920.00					99.00	1,832.49		
17-Aug-86			38.00	874.00						1,480.80		
31-Aug-86			26.00	508.00								
14-Sep-86			20.00	440.00								
28-Sep-86			89.00	2,047.00								
12-Oct-86			57.00	1,095.00								
26-Oct-86			23.00	563.96								
09-Nov-86			18.00	441.36								
23-Nov-86			14.00	215.64								
07-Dec-86			13.00	318.76								
21-Dec-86			2.00	49.04								
04-Jan-87	32.00	646.40										
18-Jan-87	80.00	1,616.00										
01-Feb-87	64.00	1,292.00										
15-Feb-87	78.00	1,575.60										
01-Mar-87	72.00	1,454.40										
15-Mar-87	80.00	1,616.00										
29-Mar-87	84.00	1,696.80										
12-Apr-87	77.00	1,555.40										
26-Apr-87	85.00	1,717.00										
10-May-87	82.00	1,656.40										
24-May-87	82.00	1,656.40										
07-Jun-87	76.00	1,535.20										
21-Jun-87	95.00	1,919.00										
05-Jul-87	148.00	3,229.36										
19-Jul-87	74.00	1,614.68										
02-Aug-87	79.00	1,723.78										
16-Aug-87	78.00	1,701.96										
30-Aug-87	81.00	1,767.62										

2091



102.00 2,060.40
40.00 808.00
80.00 1,616.00
76.00 1,535.20

SYSTEMS ENGINEERING & TESTING DIRECT LABOR

	THORNTON, R.		SOLEBELLO		ROSE, R.		HELMIG, G.		BENR, A.		ELLIS, D.	
DATE	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
13-Sep-87	58.00	1,091.00									74.00	1,569.54
27-Sep-87	95.00	2,072.90									90.00	1,908.90
11-Oct-87	76.00	1,658.32									68.00	1,442.28
25-Oct-87	91.00	1,985.62									92.00	1,951.32
08-Nov-87	87.00	1,898.34									84.00	1,781.64
22-Nov-87	78.00	1,701.96									107.00	2,269.47
06-Dec-87	49.00	1,049.18									96.00	2,036.16
20-Dec-87	107.00	2,334.74									80.00	1,696.80
03-Jan-88	60.00	1,309.20									56.00	1,187.76
17-Jan-88	77.00	1,680.14									76.00	1,611.96
31-Jan-88	72.00	1,571.04									72.00	1,527.12
14-Feb-88	77.00	1,680.14									72.00	1,527.12
28-Feb-88	87.00	1,898.34									93.00	1,972.53
13-Mar-88	75.00	1,636.50									98.00	2,078.59
27-Mar-88	60.00	1,309.20										
10-Apr-88	84.00	1,832.88										
24-Apr-88	108.00	2,356.56			80.00	1,596.00						
08-May-88	96.00	2,094.72			104.00	2,074.80						
22-May-88	79.00	1,723.78			80.00	1,596.00						
05-Jun-88	63.00	1,374.66			106.00	2,114.70						
19-Jun-88	78.00	1,701.96			72.00	1,436.40						
03-Jul-88	79.00	1,791.19			80.00	1,596.00						
17-Jul-88	42.00	961.38			72.00	1,436.40						
31-Jul-88	98.00	2,060.18			80.50	1,605.98						
14-Aug-88	65.00	1,487.05			42.00	837.90						
28-Aug-88	37.00	846.93			101.50	2,024.93						
11-Sep-88					72.00	1,436.40						
25-Sep-88					84.00	1,675.80						
09-Oct-88					80.00	1,596.00						
23-Oct-88	58.00	1,327.62			209.00	4,169.55						
06-Nov-88	81.00	1,854.09			80.00	1,596.00						
20-Nov-88	64.00	1,444.96			60.00	1,197.00						
04-Dec-88	62.00	1,419.18			65.50	1,306.73						
18-Dec-88	81.00	1,854.09			80.00	1,596.00						
01-Jan-89	75.00	1,716.93			74.50	1,486.28						
15-Jan-89	72.00	1,648.08			68.00	1,356.70						
29-Jan-89	67.00	1,533.63			56.00	1,117.20						
12-Feb-89	84.00	1,922.77			40.00	798.00						
26-Feb-89	72.00	1,448.08			50.00	997.50						
12-Mar-89	88.00	1,831.20			80.00	1,596.00						
26-Mar-89	75.00	1,716.75			89.50	1,785.53						
09-Apr-89	38.00	849.82			72.00	1,436.40						
23-Apr-89	88.00	1,831.20			81.00	1,646.75						
07-May-89	84.00	1,922.76			56.00	1,139.60						
21-May-89	77.00	1,762.53			87.00	1,770.45						
04-Jun-89	71.00	1,425.19			76.00	1,546.60						
18-Jun-89	78.00	1,785.42			80.00	1,628.00						
02-Jul-89	77.00	1,762.53			92.00	1,872.20						
16-Jul-89	40.00	915.60			72.00	1,465.20						
30-Jul-89	77.00	1,762.53			64.00	1,302.40						
13-Aug-89	87.00	1,898.34			80.00	1,596.00						

SYSTEMS ENGINEERING & TESTING DIRECT LABOR

DATE	THORNTON, R.		SOLEBELLO		ROSE, R.		MELWIG, G.		BENR, A.		ELLIS, D.	
	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
18-Sep-89	37.00	846.93			62.00	1,261.70						
24-Sep-89	40.00	915.60			80.00	1,628.00						
08-Oct-89	76.00	1,739.64			101.00	2,055.33						
22-Oct-89	68.00	1,356.52			80.00	1,628.00						
05-Nov-89	77.00	1,769.89			77.00	1,566.95						
19-Nov-89	60.00	1,428.60			40.00	814.00						
03-Dec-89	64.00	1,523.84			51.00	1,037.85						
17-Dec-89	77.00	1,833.37			80.50	1,638.18						
31-Dec-89	80.00	1,904.80			80.00	1,628.00						
14-Jan-90	74.00	1,761.94			69.00	1,404.15						
28-Jan-90	44.00	1,095.26			70.00	1,424.50						
11-Feb-90	90.00	2,142.90			42.00	854.78						
25-Feb-90	73.00	1,738.13			48.00	976.88						
11-Mar-90	81.00	1,928.61			83.00	1,689.05						
25-Mar-90	89.00	2,119.89			80.00	1,628.00						
08-Apr-90	74.00	1,761.94			80.00	1,628.00						
22-Apr-90	40.00	952.40			80.00	1,628.00						
06-May-90	79.00	1,880.99			53.50	1,088.73						
20-May-90	79.00	1,880.99			80.00	1,628.00						
03-Jun-90	68.00	1,619.88			72.00	1,465.20						
17-Jun-90	80.00	1,904.80			70.00	1,424.50						
01-Jul-90	80.00	1,904.80			68.00	1,383.80						
15-Jul-90	40.00	952.40			69.00	1,404.15						
29-Jul-90	70.00	1,857.18			74.00	1,505.90						
12-Aug-90	73.00	1,738.13			80.00	1,628.00						
26-Aug-90	16.00	380.96			80.00	1,628.00						
09-Sep-90					72.00	1,465.20						
23-Sep-90					96.00	1,953.60						
07-Oct-90	26.00	631.28										
21-Oct-90	54.00	1,311.12										
04-Nov-90	54.00	1,311.12										
18-Nov-90	43.00	1,044.84										
02-Dec-90	15.00	364.20										
16-Dec-90	49.00	1,189.72										
30-Dec-90	32.00	776.96										
13-Jan-91	44.00	1,048.32										
27-Jan-91	38.00	922.64										
10-Feb-91	44.00	1,048.32										
24-Feb-91	48.00	1,165.44										
10-Mar-91	52.00	1,262.56										
24-Mar-91	96.00	2,330.88										
07-Apr-91	38.00	922.64										
21-Apr-91	27.00	655.56										
05-May-91	54.00	1,311.12										
19-May-91	48.00	1,165.44										
TOTALS	7,562.00	170,740.97	1,212.00	27,526.76	4,875.50	98,383.56	1,479.00	27,361.50	1,890.00	36,464.70	1,539.00	32,281.63

LOGISTICS D LABOR

DATE	KRMEL, R.		BELL, E.		JONES, E.		GALLAGHER	
	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
15-Sep-85								
29-Sep-85							20.00	379.80
13-Oct-85							80.00	1,519.20
27-Oct-85							80.00	1,519.20
10-Nov-85							80.00	1,519.20
24-Nov-85							100.00	1,899.00
08-Dec-85							74.00	1,405.26
22-Dec-85							92.00	1,747.08
05-Jan-86							51.00	968.49
19-Jan-86							68.00	1,291.32
02-Feb-86							4.00	75.96
16-Feb-86								
02-Mar-86	2.00	37.24						
14-Mar-86	34.00	633.08			72.00	1,481.76		
30-Mar-86	49.00	943.92						
13-Apr-86	44.00	1,216.00			78.00	1,717.56		
27-Apr-86	58.00	1,102.00			16.00	352.32		
11-May-86	85.00	1,615.00						
25-May-86	100.00	1,900.00						
08-Jun-86	74.00	1,406.00						
22-Jun-86	104.00	1,976.00						
06-Jul-86	91.00	1,729.00						
20-Jul-86	82.00	1,558.00						
03-Aug-86	80.00	1,520.00						
17-Aug-86	82.00	1,558.00						
31-Aug-86	85.00	1,615.00						
14-Sep-86	62.00	1,178.00						
28-Sep-86	130.00	2,470.00	104.00	2,000.96				
12-Oct-86	44.00	836.00	107.00	2,058.68	40.00	808.00		
26-Oct-86			103.50	1,991.34	80.00	1,616.00		
09-Nov-86			92.00	1,770.08	80.00	1,616.00		
23-Nov-86			104.00	2,000.96	80.00	1,616.00		
07-Dec-86			95.00	1,827.80	64.00	1,292.80		
21-Dec-86			99.50	1,914.38	80.00	1,616.00		
04-Jan-87			76.00	1,462.24	40.00	807.80		
18-Jan-87			87.50	1,683.50	64.00	1,292.80		
01-Feb-87			64.00	1,231.36	64.00	1,292.80		
15-Feb-87			77.00	1,481.48	80.00	1,616.00		
01-Mar-87			69.50	1,337.18	72.00	1,454.40		
15-Mar-87			80.00	1,539.20	77.00	1,555.40		
29-Mar-87			80.00	1,539.20	80.00	1,616.00		
12-Apr-87			80.00	1,539.20	80.00	1,616.00		
26-Apr-87			72.00	1,385.28	88.00	1,777.60		
10-May-87			80.00	1,539.20	76.00	1,535.20		
24-May-87			80.00	1,539.20	80.00	1,616.00		
07-Jun-87			72.00	1,385.28	72.00	1,454.40		
21-Jun-87			80.00	1,539.20	80.00	1,616.00		
05-Jul-87			184.00	3,540.16	112.00	2,443.84		
19-Jul-87			84.00	1,616.16	80.00	1,745.60		
02-Aug-87			80.00	1,539.20	80.00	1,745.60		
16-Aug-87			80.00	1,539.10	77.00	1,680.14		
30-Aug-87			80.00	1,539.20	80.00	1,745.60		

2094

PLANTIFF'S
EXHIBIT

LOGISTICS DI ABON

DATE	KRIEMEL, R.		BELL, E.		JONES, E.		GALLAGHER	
	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
13-Sep-87			72.00	1,385.28	72.00	1,571.04		
27-Sep-87			93.00	1,870.92	68.00	1,483.76		
11-Oct-87			86.00	1,737.60	80.00	1,745.60		
25-Oct-87			46.50	939.30	68.00	1,483.76		
08-Nov-87			64.00	1,292.80	80.00	1,745.60		
22-Nov-87			91.00	1,838.20	71.00	1,549.22		
06-Dec-87			74.00	1,494.80	35.00	763.70		
20-Dec-87			121.00	2,444.20	92.00	2,007.44		
03-Jan-88			68.50	1,383.70	61.00	1,331.02		
17-Jan-88			80.00	1,616.00	75.00	1,636.50		
31-Jan-88			72.00	1,454.40	65.00	1,418.30		
14-Feb-88			74.50	1,504.90				
28-Feb-88			78.00	1,575.60	72.00	1,571.04		
13-Mar-88			107.50	2,171.10	78.00	1,701.96		
27-Mar-88			80.00	1,616.00	80.00	1,745.60		
10-Apr-88			72.00	1,454.40	76.00	1,658.32		
24-Apr-88			78.00	1,575.60	67.00	1,461.94		
08-May-88			89.00	1,797.80	80.00	1,745.60		
22-May-88			80.00	1,616.00	64.00	1,396.48		
05-Jun-88			85.00	1,717.00	69.00	1,505.58		
19-Jun-88			80.00	1,616.00	85.00	1,854.70		
03-Jul-88			80.00	1,616.00	46.00	1,035.82		
17-Jul-88			64.00	1,292.80	48.00	1,098.72		
31-Jul-88			95.00	1,919.00	85.00	1,945.65		
14-Aug-88			76.00	1,535.20	40.00	915.60		
28-Aug-88			94.50	1,908.90	56.00	1,281.84		
11-Sep-88			40.00	808.00	43.00	984.27		
25-Sep-88			82.50	1,666.50	14.00	320.46		
09-Oct-88			10.00	1,621.66				
23-Oct-88			74.50	1,553.33	75.00	1,716.75		
06-Nov-88			78.00	1,626.30	58.00	1,327.62		
20-Nov-88			73.00	1,522.05	50.00	1,144.50		
04-Dec-88			56.00	1,167.60	35.00	801.15		
18-Dec-88			80.00	1,668.00	53.00	1,213.17		
01-Jan-89			69.00	1,438.65	45.00	1,030.05		
15-Jan-89			69.00	1,438.65	51.00	1,167.39		
29-Jan-89			72.00	1,501.20	51.00	1,167.39		
12-Feb-89			80.00	1,668.00	62.00	1,419.18		
26-Feb-89			73.50	1,532.48	55.00	1,258.95		
12-Mar-89			105.50	2,199.68	30.00	686.70		
26-Mar-89			80.00	1,668.00	65.00	1,487.85		
09-Apr-89			72.00	1,501.20	76.00	1,739.64		
23-Apr-89			77.50	1,615.88	60.00	1,373.40		
07-May-89			75.00	1,563.75	37.00	846.93		
21-May-89			87.50	1,824.38	56.00	1,281.84		
04-Jun-89			64.00	1,334.40	53.00	1,213.17		
18-Jun-89			40.00	834.00	58.00	1,327.62		
02-Jul-89			80.00	1,668.00	61.00	1,396.29		
16-Jul-89			72.00	1,501.20	53.00	1,213.19		
30-Jul-89			80.00	1,668.00	52.00	1,190.28		
13-Aug-89			80.00	1,668.00	55.00	1,298.51		
27-Aug-89			80.00	1,668.00	44.00	1,047.64		

LOGISTICS D LABOR

DATE	KRUMEL, R.		BELL, E.		JONES, E.		GALLAGHER	
	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
10-Sep-89			64.00	1,334.40	55.00	1,309.55		
24-Sep-89			79.00	1,686.16	59.00	1,404.79		
08-Oct-89			76.00	1,647.68	52.00	1,238.12		
22-Oct-89			20.00	433.60	68.00	1,619.08		
05-Nov-89			64.00	1,387.52	53.00	1,261.93		
19-Nov-89			72.00	1,560.96	52.00	1,238.12		
03-Dec-89			64.00	1,387.52	55.00	1,309.55		
17-Dec-89			80.00	1,734.40	55.00	1,309.55		
31-Dec-89			80.00	1,734.40	62.00	1,476.22		
14-Jan-90			56.00	1,214.08	28.00	666.68		
28-Jan-90			72.00	1,560.96	56.00	1,333.36		
11-Feb-90			80.00	1,734.40	72.00	1,714.32		
25-Feb-90			64.00	1,387.52	48.00	1,142.88		
11-Mar-90			80.00	1,734.40	54.00	1,285.74		
25-Mar-90			80.00	1,734.40	60.00	1,428.60		
08-Apr-90			80.00	1,734.40	59.00	1,404.79		
22-Apr-90			72.00	1,560.96	35.00	833.35		
06-May-90			76.00	1,647.68	60.00	1,428.60		
20-May-90			56.00	1,214.08	56.00	1,333.36		
03-Jun-90			68.00	1,474.24	54.00	1,285.74		
17-Jun-90			73.00	1,582.64	85.00	2,023.85		
01-Jul-90			80.00	1,734.40	80.00	1,904.80		
15-Jul-90			25.00	542.00	50.00	1,190.50		
29-Jul-90			34.00	737.12	79.00	1,880.99		
12-Aug-90			25.50	552.84	54.00	1,285.74		
26-Aug-90			50.00	1,084.00	70.00	1,666.70		
09-Sep-90			162.00	3,512.16	51.00	1,214.31		
23-Sep-90			99.00	2,146.32	78.00	1,857.18		
07-Oct-90			103.75	2,249.30	54.00	1,285.74		
21-Oct-90			40.00	888.80	75.00	1,785.75		
04-Nov-90			77.00	1,710.94	61.00	1,452.41		
18-Nov-90			75.25	1,672.06	74.00	1,761.94		
02-Dec-90			61.00	1,355.42	37.00	880.97		
16-Dec-90			80.00	1,777.60	42.00	1,000.02		
30-Dec-90			68.00	1,510.96	53.00	1,261.93		
13-Jan-91			72.00	1,599.84	52.00	1,238.12		
27-Jan-91			70.50	1,566.51	48.00	1,142.88		
10-Feb-91			73.50	1,633.17	28.00	666.68		
24-Feb-91			88.00	1,955.36	50.00	1,190.50		
10-Mar-91			101.00	2,244.22	75.00	1,785.75		
24-Mar-91			111.50	2,477.53	58.00	1,380.98		
07-Apr-91			64.00	1,422.08	54.00	1,285.74		
21-Apr-91			82.00	1,822.04	58.00	1,380.98		
05-May-91			80.00	1,777.60	78.00	1,857.18		
19-May-91			69.00	1,533.18	48.00	1,142.88		
TOTALS	1,226.00	23,293.24	9,411.50	195,831.80	7,562.00	169,585.20	649.00	12,324.51

TOTAL LOGISTICS DIRECT LABOR DOLLARS

401,035

FIELD # ACE DIRECT LABOR

DATE	JOHNSON, E.		ALLEN		CARTER	
	MRS.	\$	MRS.	\$	MRS.	\$
15-Sep-85						
29-Sep-85						
13-Oct-85						
27-Oct-85						
10-Nov-85						
24-Nov-85						
08-Dec-85			36.00	540.00		
22-Dec-85			78.00	1,170.00		
05-Jan-86						
19-Jan-86			130.00	1,950.00		
02-Feb-86			136.00	2,040.00		
16-Feb-86						
02-Mar-86			80.00	1,200.00		
16-Mar-86			183.00	2,745.00		
30-Mar-86			87.00	1,305.00		
13-Apr-86			88.00	1,320.00		
27-Apr-86			80.00	1,200.00		
11-May-86			80.00	1,200.00		
25-May-86						
08-Jun-86			160.00	2,400.00		
22-Jun-86			80.00	1,200.00		
06-Jul-86			72.00	1,080.00		
20-Jul-86			80.00	1,200.00		
03-Aug-86			80.00	1,200.00		
17-Aug-86			80.00	1,200.00		
31-Aug-86				1,200.00		
14-Sep-86			72.00	1,080.00		
28-Sep-86			96.00	1,200.00		
12-Oct-86			160.00	2,400.00		
26-Oct-86			80.00	1,200.00		
09-Nov-86						
23-Nov-86			160.00	2,400.00		
07-Dec-86			64.00	960.00		
21-Dec-86			80.00	1,200.00		
04-Jan-87			64.00	960.00		
18-Jan-87			80.00	1,200.00		
01-Feb-87			72.00	1,112.40		
15-Feb-87			80.00	1,236.00		
01-Mar-87			72.00	1,112.40		
15-Mar-87			80.00	1,236.00		
29-Mar-87			80.00	1,236.00		
12-Apr-87			80.00	1,236.00		
26-Apr-87			80.00	1,236.00		
10-May-87			80.00	1,236.00		
24-May-87			80.00	1,236.00		
07-Jun-87			72.00	1,112.40		
21-Jun-87			80.00	1,236.00		
05-Jul-87			144.00	2,224.80		
19-Jul-87			80.00	1,236.00		
02-Aug-87			80.00	1,236.00		
16-Aug-87			114.00	1,761.30		
30-Aug-87			97.00	1,498.65		

2097

PLANTIFF'S
DOCKET
0 < 0

FIELD NO. ACE DIRECT LABOR

DATE	JOHNSON, E.		ALLEN		CARTER	
	MRS.	\$	MRS.	\$	MRS.	\$
13-Sep-87			72.00	1,112.40		
27-Sep-87			190.00	2,935.50		
11-Oct-87			80.00	1,236.00		
25-Oct-87			87.00	1,344.15		
08-Nov-87			80.00	1,236.00		
22-Nov-87			80.00	1,236.00		
06-Dec-87			64.00	988.80		
20-Dec-87			80.00	1,236.00		
03-Jan-88			104.00	1,606.80		
17-Jan-88			80.00	1,236.00		
31-Jan-88			76.00	1,174.20		
14-Feb-88			93.00	1,436.85		
28-Feb-88			72.00	1,112.40		
13-Mar-88			80.00	1,236.00		
27-Mar-88			83.00	1,282.35		
10-Apr-88				(339.90)		
24-Apr-88						
08-May-88						
22-May-88	40.00	654.00				
05-Jun-88	71.00	1,160.85				
19-Jun-88	80.00	1,308.00				
03-Jul-88	64.00	1,046.40				
17-Jul-88	72.00	1,177.20				
31-Jul-88	86.00	1,406.10				
14-Aug-88	80.00	1,308.00				
28-Aug-88	89.00	1,455.15				
11-Sep-88	88.00	1,438.80				
25-Sep-88	92.00	1,504.20				
09-Oct-88	80.00	1,308.00				
23-Oct-88	207.00	3,384.45				
06-Nov-88	80.00	1,308.00				
20-Nov-88	142.00	2,321.70				
04-Dec-88	146.00	2,387.10				
18-Dec-88	88.00	1,438.80				
01-Jan-89	72.00	1,177.20				
15-Jan-89	109.00	1,782.15				
29-Jan-89	122.00	1,994.70				
12-Feb-89	96.00	1,569.60				
26-Feb-89	97.00	1,585.95				
12-Mar-89	116.00	1,896.60				
26-Mar-89	123.00	2,011.05				
09-Apr-89	84.00	1,373.40				
23-Apr-89	119.00	1,945.65				
07-May-89	85.00	1,389.75				
21-May-89	99.00	1,635.80				
04-Jun-89	90.00	1,515.60				
18-Jun-89						
02-Jul-89	24.00	404.16				
16-Jul-89	84.00	1,414.56				
30-Jul-89	80.00	1,347.20				
13-Aug-89	96.00	1,616.64				
27-Aug-89	80.00	1,347.20				

FIELD M JCE DIRECT LABOR

DATE	JOHNSON, E.		ALLEN		CARTER	
	MRS.	\$	MRS.	\$	MRS.	\$
10-Sep-89	72.00	1,212.48				
24-Sep-89	80.00	1,347.20				
08-Oct-89	80.00	1,347.20				
22-Oct-89	80.00	1,347.20				
05-Nov-89	80.00	1,347.20				
19-Nov-89	72.00	1,212.48				
03-Dec-89	72.00	1,212.48				
17-Dec-89	80.00	1,347.20				
31-Dec-89	80.00	1,347.20				
14-Jan-90	72.00	1,212.48				
28-Jan-90	72.00	1,212.48				
11-Feb-90	80.00	1,347.20				
25-Feb-90	72.00	1,212.48				
11-Mar-90	80.00	1,347.20				
25-Mar-90	80.00	1,347.20				
08-Apr-90	80.00	1,347.20				
22-Apr-90	80.00	1,347.20				
06-May-90	92.00	1,549.28				
20-May-90	80.00	1,347.20				
03-Jun-90	72.00	1,212.48				
17-Jun-90	80.00	1,347.20				
01-Jul-90	80.00	1,347.20				
15-Jul-90	72.00	1,212.48				
29-Jul-90	80.00	1,347.20				
12-Aug-90	80.00	1,347.20				
26-Aug-90	80.00	1,347.20				
09-Sep-90	72.00	1,212.48				
23-Sep-90	80.00	1,347.20				
07-Oct-90	33.00	555.72				
21-Oct-90					80.00	1,411.20
04-Nov-90					90.00	1,587.60
18-Nov-90					72.00	1,270.08
02-Dec-90					64.00	1,128.96
16-Dec-90					87.00	1,534.68
30-Dec-90					40.00	705.60
13-Jan-91					72.00	1,270.08
27-Jan-91					72.00	1,270.08
10-Feb-91					81.00	1,428.84
24-Feb-91					82.00	1,446.48
10-Mar-91					58.00	1,023.12
24-Mar-91					42.00	740.88
07-Apr-91						
21-Apr-91						
05-May-91						
19-May-91						
TOTALS	5,294.00	87,880.88	5,078.00	78,001.50	840.00	14,817.60

TOTAL FIELD MAINTENANCE

DATE	VENOWINE, D.		ROSEN, M.		FOURNEY		NISE, W.	
	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
15-Sep-85							4.00	124.64
29-Sep-85	5.00	55.30						
13-Oct-85	16.25	179.73					11.00	342.76
27-Oct-85	31.00	342.86					16.00	498.56
10-Nov-85	53.50	591.71					31.00	965.96
24-Nov-85	41.00	453.46					28.00	872.48
08-Dec-85	36.50	403.69					26.00	810.16
22-Dec-85	24.00	265.44					15.00	467.40
05-Jan-86	13.50	149.31					17.00	529.72
19-Jan-86	48.00	530.88						
02-Feb-86	32.00	353.92					31.00	965.96
16-Feb-86	29.50	326.28					25.00	779.00
02-Mar-86	30.25	334.57					21.00	654.36
16-Mar-86	50.25	555.77					31.00	965.96
30-Mar-86	38.50	425.81					49.00	1,526.84
13-Apr-86	36.00	398.16					19.00	592.04
27-Apr-86	63.00	696.78					18.00	560.88
11-May-86	22.00	243.32					9.00	280.44
25-May-86	56.50	624.89					29.50	919.22
08-Jun-86	45.50	873.41					33.00	1,028.28
22-Jun-86	69.00	877.68					49.00	1,526.84
06-Jul-86	74.50	947.64					10.00	311.60
20-Jul-86	4.00	50.88					40.00	1,246.40
03-Aug-86	33.00	419.76					29.50	919.22
17-Aug-86	52.50	667.80					39.00	1,215.24
31-Aug-86	27.50	349.80					24.00	747.84
14-Sep-86	20.00	254.40					19.00	592.04
28-Sep-86	43.50	553.32					30.00	934.80
12-Oct-86	17.00	216.24					41.00	1,660.54
26-Oct-86	48.50	616.92					31.00	1,014.32
09-Nov-86	52.50	667.80					44.00	1,439.68
23-Nov-86	47.00	597.84					39.00	1,276.08
07-Dec-86	38.50	489.72					64.50	2,110.44
21-Dec-86	67.00	852.24					60.00	1,963.20
04-Jan-87	27.00	343.44					10.00	327.20
18-Jan-87	54.00	686.88					19.00	621.68
01-Feb-87	34.50	438.84					18.00	588.96
15-Feb-87	41.50	527.88					13.00	425.36
01-Mar-87	28.50	362.52					16.00	523.52
15-Mar-87					54.50	760.28	20.50	670.76
29-Mar-87					48.50	676.58	25.00	818.00
12-Apr-87					47.50	662.63	49.00	1,603.28
26-Apr-87					57.00	795.15	15.00	490.80
10-May-87					51.00	711.45	59.50	1,946.84
24-May-87					60.00	837.00	47.00	1,537.84
07-Jun-87					47.50	682.63	22.50	736.20
21-Jun-87					79.00	1,102.05	45.00	1,495.36
05-Jul-87					94.00	1,311.30	72.00	2,473.89
19-Jul-87					79.00	1,102.06	50.50	1,735.18
02-Aug-87					67.50	941.63	44.00	1,511.84
16-Aug-87					32.00	446.40	27.00	927.72
30-Aug-87					59.00	823.05	28.00	962.08

PLAINTIFF'S
EXHIBIT
959

CONTRACT MANAGEN

.CT LABOR

DATE	YENOMINE, D.		ROSEN, M.		FOURNEY		HISE, W.	
	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
13-Sep-87					39.50	551.03	23.00	790.28
27-Sep-87					55.50	774.23	5.00	171.60
11-Oct-87					29.50	411.53	24.00	824.64
25-Oct-87					45.00	627.75	14.50	498.22
08-Nov-87							13.00	446.68
22-Nov-87			10.00	153.90			22.00	755.92
06-Dec-87			19.00	292.41			6.00	206.16
20-Dec-87			37.00	569.43			9.00	309.24
03-Jan-88			39.00	600.21			8.00	274.68
17-Jan-88			36.50	561.74			14.00	481.04
31-Jan-88			23.00	353.97			15.00	515.48
14-Feb-88			9.00	138.51			5.00	171.60
28-Feb-88			20.50	315.50			8.00	274.68
13-Mar-88			46.00	707.94				
27-Mar-88			74.00	1,138.86			3.00	103.08
10-Apr-88			72.00	1,108.08			7.00	240.52
24-Apr-88			72.00	1,108.09			43.00	1,477.48
08-May-88			45.00	692.55			5.00	171.60
22-May-88			57.00	877.23			10.00	343.60
05-Jun-88			35.00	538.65			9.00	309.24
19-Jun-88			46.00	1,015.75			4.00	137.44
03-Jul-88			48.50	746.42			8.00	274.68
17-Jul-88			60.50	931.11			16.00	577.28
31-Jul-88			51.00	784.89			34.50	1,244.76
14-Aug-88			36.50	561.74			5.50	198.44
28-Aug-88			45.50	700.25			6.50	234.52
11-Sep-88			37.00	569.43			9.00	324.72
25-Sep-88			46.00	763.14			4.00	144.32
09-Oct-88			33.00	547.47			6.00	216.48
23-Oct-88			33.00	547.47			33.00	1,190.64
06-Nov-88			46.00	763.14			6.50	234.52
20-Nov-88			41.00	680.19			7.00	252.56
04-Dec-88			26.00	431.34			3.50	126.28
18-Dec-88			57.00	945.64			8.00	288.64
01-Jan-89			46.00	763.14			9.00	324.72
15-Jan-89			47.00	779.77			17.00	613.36
29-Jan-89			54.00	895.87			7.00	252.56
12-Feb-89			60.50	1,003.70			12.00	432.96
26-Feb-89			34.50	572.37			21.50	775.72
12-Mar-89			49.50	821.21			27.00	974.16
26-Mar-89			47.00	779.74			23.00	829.84
09-Apr-89			39.50	655.31			11.00	396.88
23-Apr-89			33.00	547.47			8.50	306.68
07-May-89			28.00	483.00			8.00	288.64
21-May-89			43.00	741.75			8.50	306.68
04-Jun-89			44.50	767.63			8.50	306.68
18-Jun-89			15.50	267.38			3.50	126.28
02-Jul-89			16.50	284.63			3.00	108.24
16-Jul-89			25.00	431.25			8.00	288.64
30-Jul-89			53.00	914.25			8.50	306.68
13-Aug-89			46.00	793.51			7.50	270.60
27-Aug-89			8.00	138.00			1 HH	4HH 3L

DATE	VENOVINE, D.		ROSEN, M.		FOURNEY		WISE, W.	
	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
10-Sep-89								
24-Sep-89								
08-Oct-89								
22-Oct-89								
05-Nov-89								
19-Nov-89								
03-Dec-89								
17-Dec-89								
31-Dec-89								
14-Jan-90								
28-Jan-90								
11-Feb-90								
25-Feb-90								
11-Mar-90								
25-Mar-90								
08-Apr-90								
22-Apr-90								
06-May-90								
20-May-90								
03-Jun-90								
17-Jun-90								
01-Jul-90								
15-Jul-90								
29-Jul-90								
12-Aug-90								
26-Aug-90								
09-Sep-90								
23-Sep-90								
07-Oct-90								
21-Oct-90								
04-Nov-90								
18-Nov-90								
02-Dec-90								
16-Dec-90								
30-Dec-90								
13-Jan-91								
27-Jan-91								
10-Feb-91								
24-Feb-91								
10-Mar-91								
24-Mar-91								
07-Apr-91								
21-Apr-91								
05-May-91								
19-May-91								
TOTALS	1,452.25	17,726.89	1,912.50	30,785.03	946.00	13,196.75	2,104.00	70,069.11

TOTAL CONTRACT MANAGEMENT DIRECT LABOR DOLLARS

131,778

COST ANAL

RECT LABOR

DATE	WILLIAMSON		MCGEE, M.		CATLIN	
	MRS.	\$	MRS.	\$	MRS.	\$
15-Sep-85						
29-Sep-85	64.00	774.40				
13-Oct-85	80.00	968.00				
27-Oct-85	80.00	968.00				
10-Nov-85	86.00	1,040.60				
24-Nov-85	80.00	968.00				
08-Dec-85	78.50	949.85				
22-Dec-85	81.00	980.10				
05-Jan-86	43.00	520.30				
19-Jan-86	87.00	1,052.70				
02-Feb-86	74.00	895.40				
16-Feb-86	80.00	968.00				
02-Mar-86	72.00	871.20				
16-Mar-86	85.00	1,028.50				
30-Mar-86	91.50	1,107.15				
13-Apr-86	80.00	968.00				
27-Apr-86	43.00	762.30				
11-May-86	80.00	968.00				
25-May-86	115.00	1,391.50				
08-Jun-86	121.00	1,451.94				
22-Jun-86	69.00	834.90				
06-Jul-86	56.00	677.60				
20-Jul-86	102.50	1,240.25				
03-Aug-86	79.00	955.90				
17-Aug-86	82.50	998.25				
31-Aug-86	80.00	968.00				
14-Sep-86	75.00	907.50				
28-Sep-86			16.00	354.40		
12-Oct-86			56.00	1,240.40		
26-Oct-86			109.00	2,414.36		
09-Nov-86			62.00	1,373.30		
23-Nov-86			83.50	1,849.52		
07-Dec-86			90.50	2,004.58		
21-Dec-86			79.00	1,749.85		
04-Jan-87			59.50	1,317.93	64.00	615.68
18-Jan-87			11.00	243.65	98.00	942.76
01-Feb-87			40.00	886.00	82.50	793.65
15-Feb-87					83.50	803.27
01-Mar-87			0.50	11.08	83.00	798.46
15-Mar-87					83.00	798.46
29-Mar-87			6.00	136.32	78.50	755.17
12-Apr-87					80.50	774.41
26-Apr-87					72.00	692.64
10-May-87					81.00	779.22
24-May-87					93.00	894.66
07-Jun-87					56.00	538.72
21-Jun-87					87.00	836.94
05-Jul-87					154.00	1,481.48
19-Jul-87					85.00	817.70
02-Aug-87					99.00	952.38
16-Aug-87					65.00	625.30
30-Aug-87					97.00	924.66

COST ANAL

DIRECT LABOR

DATE	WILLIAMSON		MCGEE, M.		CATLIN	
	MRS.	\$	MRS.	\$	MRS.	\$
13-Sep-87					55.00	529.10
27-Sep-87					97.00	933.14
11-Oct-87					77.50	745.55
25-Oct-87					75.00	721.50
08-Nov-87						
22-Nov-87					71.00	683.02
06-Dec-87					45.50	437.71
20-Dec-87					40.00	384.80
03-Jan-88					49.00	471.38
17-Jan-88					56.00	538.72
31-Jan-88					26.00	250.12
14-Feb-88						
28-Feb-88						
13-Mar-88						
27-Mar-88			55.75	1,320.16		
10-Apr-88			21.00	497.28		
24-Apr-88			20.00	473.60		
08-May-88			11.00	260.48		
22-May-88			12.50	296.00		
05-Jun-88			15.00	355.20		
19-Jun-88			12.50	296.00		
03-Jul-88			6.00	142.08		
17-Jul-88			18.00	426.24		
31-Jul-88			16.50	390.72		
14-Aug-88			14.50	343.36		
28-Aug-88			15.00	355.20		
11-Sep-88						
25-Sep-88			19.00	449.42		
09-Oct-88			21.00	497.28		
23-Oct-88			14.00	331.52		
06-Nov-88			21.50	509.12		
20-Nov-88			18.00	426.24		
04-Dec-88			15.50	367.04		
18-Dec-88			18.00	426.24		
01-Jan-89			8.00	189.44		
15-Jan-89			12.00	284.16		
29-Jan-89			12.00	284.16		
12-Feb-89			36.00	852.48		
26-Feb-89						
12-Mar-89			7.00	172.34		
26-Mar-89			33.00	812.46		
09-Apr-89			27.00	664.74		
23-Apr-89			17.50	430.85		
07-May-89			8.00	196.96		
21-May-89			44.00	1,083.28		
04-Jun-89						
18-Jun-89						
02-Jul-89			23.00	566.26		
16-Jul-89			25.50	627.81		
30-Jul-89			22.00	541.64		
13-Aug-89			14.00	344.68		
27-Aug-89			24.00	590.88		

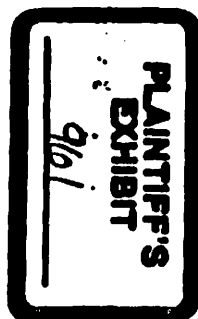
COST ANAL DIRECT LABOR

DATE	WILLIAMSON		MCGEE, M.		CATLIN	
	HRS.	\$	HRS.	\$	HRS.	\$
10-Sep-89			19.00	467.70		
24-Sep-89			21.00	517.02		
08-Oct-89						
22-Oct-89						
05-Nov-89			16.50	406.23		
19-Nov-89			17.50	430.85		
03-Dec-89			12.00	295.44		
17-Dec-89			10.00	246.20		
31-Dec-89			14.00	344.68		
14-Jan-90			12.00	295.44		
28-Jan-90			10.00	246.20		
11-Feb-90			7.00	172.34		
25-Feb-90			6.00	152.88		
11-Mar-90			12.00	305.76		
25-Mar-90			6.00	152.88		
08-Apr-90			7.00	178.36		
22-Apr-90			17.00	433.16		
06-May-90			11.00	280.28		
20-May-90			10.00	254.80		
03-Jun-90			7.00	178.36		
17-Jun-90						
01-Jul-90						
15-Jul-90			16.00	407.68		
29-Jul-90						
12-Aug-90						
26-Aug-90						
09-Sep-90						
23-Sep-90						
07-Oct-90						
21-Oct-90						
04-Nov-90						
18-Nov-90						
02-Dec-90						
16-Dec-90						
30-Dec-90						
13-Jan-91						
27-Jan-91						
10-Feb-91						
24-Feb-91						
10-Mar-91						
24-Mar-91						
07-Apr-91						
21-Apr-91						
05-May-91						
19-May-91						
TOTALS	2,085.00	25,216.34	1,501.75	35,153.05	2,134.00	20,520.60

TOTAL COST ANALYSIS DIRECT LABOR DOLLARS \$0 \$00

SECRETARIAL DIRECT LABOR

	WOODLEY		MILLER, L.		JOHNSTON, V.		HARRIS, K.		FLOYD, A.		ANGLIN, A.	
DATE	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
15-Sep-85							52.00	364.00	51.00	357.00		
29-Sep-85							80.00	560.00	82.00	584.50		
13-Oct-85			10.00	105.80			80.00	560.00	80.00	560.00		
27-Oct-85			18.00	190.44			74.00	518.00	80.00	560.00		
10-Nov-85			21.00	222.18			76.00	532.00	69.00	483.00		
24-Nov-85			34.00	359.72			81.00	650.48	83.00	729.75		
08-Dec-85			43.00	454.94			93.50	795.64	87.50	764.23		
22-Dec-85			43.00	454.94			77.00	584.33	52.00	419.65		
05-Jan-86			35.50	375.59			65.00	520.02	73.00	627.55		
19-Jan-86			55.50	587.19			75.00	553.09	80.50	621.78		
02-Feb-86			29.00	306.82			71.00	521.85	72.00	554.40		
16-Feb-86			34.50	366.17			73.00	534.55	79.00	608.30		
02-Mar-86			76.00	804.08			104.50	899.31	104.00	924.00		
16-Mar-86			60.50	640.09			82.00	602.70	59.00	454.30		
30-Mar-86			43.00	454.94			81.75	607.29	76.00	585.20		
13-Apr-86			47.50	502.55			77.00	565.95	77.00	592.90		
27-Apr-86			52.50	555.45			80.00	588.00	78.00	600.60		
11-May-86			61.00	645.38			76.50	578.81	54.00	433.13		
25-May-86			83.00	878.14			90.50	771.93	90.00	785.93		
08-Jun-86			30.00	317.40			67.00	528.82	62.50	511.06		
22-Jun-86			44.00	465.52			78.50	521.11	86.50	725.18		
06-Jul-86			50.00	529.00			64.50	499.87	40.50	329.26	7.00	52.92
20-Jul-86			22.00	232.76			64.00	494.08	73.50	603.98	21.50	162.54
03-Aug-86							80.00	617.60	59.00	476.72	5.00	37.80
17-Aug-86							72.00	555.84	69.00	557.52	18.00	136.08
31-Aug-86							80.00	617.60	80.00	646.40	50.50	381.78
14-Sep-86							78.00	625.32	70.00	606.00	72.00	544.32
28-Sep-86							104.50	916.75	106.00	969.60	39.00	294.84
12-Oct-86							77.50	600.23	57.00	460.54	72.00	568.00
26-Oct-86							80.00	617.60	72.00	581.74	49.00	388.57
09-Nov-86							76.00	586.72	76.00	614.08	10.00	79.30
23-Nov-86							77.50	598.30	24.00	193.92	48.00	380.64
07-Dec-86							74.50	619.53			7.00	55.51
21-Dec-86							95.50	859.45			6.00	47.58
04-Jan-87							64.00	519.00			16.00	126.88
18-Jan-87							91.50	808.98			56.00	444.08
01-Feb-87	30.00	259.80					71.50	642.72			30.00	237.90
15-Feb-87	38.00	344.24					80.50	689.37			32.00	253.76
01-Mar-87	37.50	324.75					71.00	579.87			53.00	420.29
15-Mar-87	46.00	575.89					76.50	638.67			22.00	174.46
29-Mar-87	59.50	515.27					84.00	729.90			23.00	182.39
12-Apr-87	67.50	608.37					106.00	965.09			19.00	150.67
26-Apr-87	46.50	404.86					73.50	618.39			11.00	87.23
10-May-87	45.25	395.11					67.50	549.45				
24-May-87	72.50	675.48					141.00	1,156.69				
07-Jun-87	44.50	385.37					113.00	1,050.25				



SECRETARIAL DIRECT LABOR

DATE	WOODLEY		MILLER, L.		JOHNSTON, V.		MARRIS, K.		FLOYD, A.		ANGLIN, A.	
	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
21-Jun-87	42.00	539.09					80.00	648.80				
05-Jul-87	78.00	675.48					128.00	1,038.08				
19-Jul-87	75.00	734.11					73.00	596.09				
02-Aug-87	53.00	484.06					86.00	721.80				
16-Aug-87	37.50	352.24					81.00	660.97			2.00	15.86
30-Aug-87	31.50	286.34					90.00	770.45				
13-Sep-87	38.50	354.52					61.00	490.65				
27-Sep-87	15.50	143.17					60.50	494.71				
11-Oct-87	53.00	481.77					35.50	287.91				
25-Oct-87	46.50	431.78										
08-Nov-87	40.50	377.24									5.00	41.65
22-Nov-87	43.00	398.87										
06-Dec-87	37.50	348.88										
20-Dec-87	45.00	409.05										
03-Jan-88	26.50	240.89										
17-Jan-88	36.00	327.24										
31-Jan-88	29.00	274.86										
14-Feb-88	23.50	224.19			64.00	576.00						
28-Feb-88	31.00	295.74			86.00	774.00						
13-Mar-88	42.50	405.45			53.50	481.50						
27-Mar-88	60.00	477.00			80.00	720.00						
18-Apr-88	41.50	395.91			80.00	720.00						
24-Apr-88	58.50	481.77			80.00	720.00						
08-May-88	31.00	295.74			80.00	720.00						
22-May-88	49.50	472.23			79.00	711.00						
05-Jun-88	24.00	228.96			55.00	495.00						
19-Jun-88	54.50	519.93			64.00	576.00						
03-Jul-88	50.00	477.00			80.00	720.00						
17-Jul-88	43.00	401.02			73.00	657.00						
31-Jul-88					78.50	706.50						
14-Aug-88					80.00	745.60						
28-Aug-88					77.00	717.64						
11-Sep-88					72.00	671.04						
25-Sep-88					72.00	671.04						
09-Oct-88					40.00	372.80						
23-Oct-88					78.00	726.96						
06-Nov-88					77.00	717.64						
20-Nov-88					80.00	745.60						
04-Dec-88					64.00	596.48						
18-Dec-88					80.00	745.60						
01-Jan-89					60.50	563.86						
15-Jan-89					72.00	671.04						
29-Jan-89					67.00	624.44						
12-Feb-89					78.50	749.12						
26-Feb-89					70.50	676.80						
12-Mar-89					72.00	691.20						

SECRETARIAL DIRECT LABOR

DATE	WOODLEY		MILLER, L.		JOHNSTON, V.		HARRIS, K.		FLOYD, A.		ANGLIN, A.	
	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
26-Mar-89					78.00	748.80						
09-Apr-89					79.00	758.40						
23-Apr-89					71.50	686.40						
07-May-89					74.00	710.40						
21-May-89					78.00	748.80						
04-Jun-89					61.50	590.40						
18-Jun-89					85.00	816.00						
02-Jul-89					68.50	657.60						
16-Jul-89					68.00	652.80						
30-Jul-89					75.00	720.00						
13-Aug-89					80.00	768.00						
27-Aug-89					71.00	681.60						
10-Sep-89					72.00	691.20						
24-Sep-89					77.50	744.00						
08-Oct-89					70.00	672.00						
22-Oct-89					53.00	508.80						
05-Nov-89					8.00	76.80						
19-Nov-89												
03-Dec-89												
17-Dec-89												
31-Dec-89												
14-Jan-90												
28-Jan-90												
11-Feb-90					40.00	399.20						
25-Feb-90					72.00	718.56						
11-Mar-90					78.00	778.44						
25-Mar-90					72.00	718.56						
08-Apr-90					79.00	788.42						
22-Apr-90					75.00	748.50						
06-May-90					69.00	688.62						
20-May-90					32.00	319.36						
03-Jun-90												
17-Jun-90												
01-Jul-90												
15-Jul-90												
29-Jul-90												
12-Aug-90												
26-Aug-90					12.00	129.00						
09-Sep-90					52.00	559.00						
23-Sep-90					54.00	580.50						
07-Oct-90					58.00	623.50						
21-Oct-90					62.00	666.50						
04-Nov-90					58.00	623.50						
18-Nov-90					56.00	602.00						
02-Dec-90					36.00	387.00						
16-Dec-90					56.00	602.00						

SECRETARIAL DIRECT LABOR

DATE	WOODLEY		MILLER, L.		JOHNSTON, V.		HARRIS, K.		FLOYD, A.		ANGLIN, A.	
	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$	MRS.	\$
30-Dec-90					26.50	284.88						
13-Jan-91					45.00	483.75						
27-Jan-91					48.00	516.00						
10-Feb-91					23.50	252.63						
24-Feb-91												
10-Mar-91												
24-Mar-91					24.00	258.00						
07-Apr-91					60.00	645.00						
21-Apr-91					60.00	645.00						
05-May-91					58.00	623.50						
19-May-91					51.00	548.25						
TOTAL	1,766.25	16,209.67	895.00	9,469.10	4,620.50	44,685.53	4,394.25	35,226.61	2,303.00	18,522.26	674.00	5,265.05

TOTAL SECRETARIAL DIRECT LABOR DOLLARS 129,378.22

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
10-Nov-85	VIP TRAVEL AGENCY	675.00	13
10-Nov-85	VIP TRAVEL AGENCY	622.00	13
10-Nov-85	HELVIG, GLENN	129.76	13
10-Nov-85	VIP TRAVEL AGENCY	475.00	13
10-Nov-85	BEHR, ALAN	1,858.78	13
10-Nov-85	YENOWINE, DAVID	95.15	13
24-Nov-85	VIP TRAVEL AGENCY	980.00	18
08-Dec-85	JOHNSON, ALFRED	6,259.05	13
22-Dec-85	GALLAGHER, JOHN	686.56	18
22-Dec-85	VIP TRAVEL AGENCY	535.00	13
22-Dec-85	ALLEN, GEORGE	63.92	13
05-Jan-86	SOLEBELLO, MICHAEL	827.74	12
05-Jan-86	MONMOUTH WORLD TRAVEL	237.00	12
05-Jan-86	ARROW LIMOUSINE	157.00	12
06-Jan-86	ALLEN, GEORGE	962.68	13
06-Jan-86	VIP TRAVEL AGENCY	269.00	13
06-Jan-86	BEHR, ALAN	8.65	13
19-Jan-86	VIP TRAVEL AGENCY	490.00	16
19-Jan-86	VIP TRAVEL AGENCY	490.00	9
19-Jan-86	YENOWINE, DAVID	232.83	9
19-Jan-86	YENOWINE, DAVID	232.82	16
19-Jan-86	VIP TRAVEL AGENCY	459.00	16
02-Feb-86	HELVIG, GLENN	243.18	9
02-Feb-86	SOLEBELLO, MICHAEL	1,105.28	12
02-Feb-86	HELVIG, GLENN	243.18	16
02-Feb-86	SOLEBELLO, MICHAEL	310.36	12
16-Feb-86	MONMOUTH WORLD TRAVEL	490.00	12
16-Feb-86	MONMOUTH WORLD TRAVEL	490.00	17
16-Feb-86	ARROW LIMOUSINE	166.00	12
02-Mar-86	SOLEBELLO, MICHAEL	346.55	10
02-Mar-86	SOLEBELLO, MICHAEL	582.36	9
02-Mar-86	ALLEN, GEORGE	2,715.41	13
02-Mar-86	SOLEBELLO, MICHAEL	346.58	15
02-Mar-86	JOHNSON, ALFRED	5,228.01	13
02-Mar-86	ARROW LIMOUSINE	78.00	12
02-Mar-86	JOHNSON, ALFRED	110.30	12
02-Mar-86	SOLEBELLO, MICHAEL	1,005.00	12
02-Mar-86	ARROW LIMOUSINE	78.00	12
16-Mar-86	SOLEBELLO, MICHAEL	167.46	10
16-Mar-86	SOLEBELLO, MICHAEL	167.46	9
16-Mar-86	SOLEBELLO, MICHAEL	167.15	13
30-Mar-86	MONMOUTH WORLD TRAVEL	118.50	9
30-Mar-86	MONMOUTH WORLD TRAVEL	39.50	16
30-Mar-86	ARROW LIMOUSINE	39.00	9
30-Mar-86	ALLEN, GEORGE	1,359.49	13
13-Apr-86	VIP TRAVEL AGENCY	196.00	16
13-Apr-86	MONMOUTH WORLD TRAVEL	536.00	15
13-Apr-86	JOHNSON, ALFRED	301.23	17
13-Apr-86	WISE, WILLIAM	1,610.99	13
13-Apr-86	JOHNSON, ALFRED	301.23	12
13-Apr-86	VIP TRAVEL AGENCY	196.00	11
13-Apr-86	SOLEBELLO, MICHAEL	92.53	9
13-Apr-86	VIP TRAVEL AGENCY	196.00	13
13-Apr-86	KRUMEL, RICHARD	136.56	17
13-Apr-86	MONMOUTH WORLD TRAVEL	534.00	9
13-Apr-86	VIP TRAVEL AGENCY	196.00	12
13-Apr-86	JOHNSON, ALFRED	563.48	18
13-Apr-86	JOHNSON, ALFRED	1,420.70	10
13-Apr-86	JOHNSON, ALFRED	2,513.50	13
13-Apr-86	JOHNSON, ALFRED	2,822.52	8
13-Apr-86	VIP TRAVEL AGENCY	196.00	17
13-Apr-86	JOHNSON, ALFRED	563.49	10
13-Apr-86	ALLEN, GEORGE	597.75	13
13-Apr-86	MONMOUTH WORLD TRAVEL	457.00	16
13-Apr-86	SOLEBELLO, MICHAEL	416.10	12
13-Apr-86	VIP TRAVEL AGENCY	75.00	14
13-Apr-86	VIP TRAVEL AGENCY	75.00	8
13-Apr-86	JOHNSON, ALFRED	1,420.71	15
13-Apr-86	JOHNSON, ALFRED	563.49	17
13-Apr-86	SOLEBELLO, MICHAEL	417.95	17
13-Apr-86	KRUMEL, RICHARD	136.56	12
13-Apr-86	KRUMEL, RICHARD	136.56	11
13-Apr-86	ALLEN, GEORGE	597.75	13

2110

PLAINTIFF'S
EXHIBIT

942

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
13-Apr-86	KRUMEL, RICHARD	136.52	13
13-Apr-86	JOHNSON, ALFRED	563.49	12
13-Apr-86	KRUMEL, RICHARD	136.55	16
27-Apr-86	ARROW LIMOUSINE	41.93	17
27-Apr-86	ALLEN, GEORGE	664.55	13
27-Apr-86	ARROW LIMOUSINE	105.92	12
27-Apr-86	JOHNSON, ALFRED	30.51	14
27-Apr-86	JOHNSON, ALFRED	30.52	8
11-May-86	MONMOUTH WORLD TRAVEL	490.00	12
11-May-86	JOHNSON, ALFRED	423.10	12
11-May-86	KRUMEL, RICHARD	113.44	17
11-May-86	THOMAS, KENNETH	209.28	17
11-May-86	SOLEBELLO, MICHAEL	467.21	17
11-May-86	MONMOUTH WORLD TRAVEL	441.00	12
11-May-86	YENOWINE, DAVID	900.56	8
11-May-86	MONMOUTH WORLD TRAVEL	441.00	17
11-May-86	SOLEBELLO, MICHAEL	575.86	17
11-May-86	JOHNSON, ALFRED	256.54	17
11-May-86	SOLEBELLO, MICHAEL	467.19	12
11-May-86	ALLEN, GEORGE	946.95	13
11-May-86	SOLEBELLO, MICHAEL	237.15	12
11-May-86	MONMOUTH WORLD TRAVEL	(64.67)	15
11-May-86	VIP TRAVEL AGENCY	231.00	11
11-May-86	JOHNSON, ALFRED	320.00	10
11-May-86	SOLEBELLO, MICHAEL	575.87	12
11-May-86	SOLEBELLO, MICHAEL	492.50	11
11-May-86	VIP TRAVEL AGENCY	258.50	12
11-May-86	VIP TRAVEL AGENCY	232.50	8
11-May-86	HELVIG, GLENN	561.06	11
11-May-86	SOLEBELLO, MICHAEL	237.15	10
11-May-86	KRUMEL, RICHARD	113.43	12
11-May-86	MONMOUTH WORLD TRAVEL	490.00	17
11-May-86	MONMOUTH WORLD TRAVEL	(64.64)	16
11-May-86	THOMAS, KENNETH	209.28	12
11-May-86	VIP TRAVEL AGENCY	258.50	17
11-May-86	MONMOUTH WORLD TRAVEL	158.00	9
25-May-86	SOLEBELLO, MICHAEL	557.53	12
25-May-86	JOHNSON, ALFRED	1,003.42	9
25-May-86	MONMOUTH WORLD TRAVEL	158.00	17
25-May-86	ARROW LIMOUSINE	103.00	11
25-May-86	JOHNSON, ALFRED	1,003.42	17
25-May-86	ARROW LIMOUSINE	39.00	12
25-May-86	ARROW LIMOUSINE	55.10	17
25-May-86	JOHNSON, ALFRED	1,003.42	12
25-May-86	MONMOUTH WORLD TRAVEL	79.00	12
25-May-86	ALLEN, GEORGE	2,173.70	13
25-May-86	JOHNSON, ALFRED	1,003.41	10
25-May-86	AIRPORT WHEELS	27.60	12
25-May-86	ARROW LIMOUSINE	133.10	12
25-May-86	JOHNSON, ALFRED	409.53	10
25-May-86	MONMOUTH WORLD TRAVEL	79.00	10
25-May-86	AIRPORT WHEELS	27.60	17
25-May-86	JOHNSON, ALFRED	409.53	9
25-May-86	AIRPORT WHEELS	27.60	10
25-May-86	SOLEBELLO, MICHAEL	557.52	17
25-May-86	JOHNSON, ALFRED	409.53	12
25-May-86	ARROW LIMOUSINE	55.10	10
25-May-86	ARROW LIMOUSINE	39.00	17
25-May-86	JOHNSON, ALFRED	409.53	17
25-May-86	SOLEBELLO, MICHAEL	511.95	17
08-Jun-86	ALLEN, GEORGE	605.20	13
08-Jun-86	ALLEN, GEORGE	799.30	13
08-Jun-86	MONMOUTH WORLD TRAVEL	158.00	17
22-Jun-86	JOHNSON, ALFRED	841.18	17-
22-Jun-86	JOHNSON, ALFRED	472.83	10
22-Jun-86	AIRPORT WHEELS	18.40	17
22-Jun-86	SOLEBELLO, MICHAEL	32.58	17
22-Jun-86	SOLEBELLO, MICHAEL	32.58	12
22-Jun-86	JOHNSON, ALFRED	841.19	12
22-Jun-86	AIRPORT WHEELS	18.40	12
22-Jun-86	JOHNSON, ALFRED	472.83	9

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
29-Jun-86	MONMOUTH WORLD TRAVEL	(39.50)	11
29-Jun-86	MONMOUTH WORLD TRAVEL	(39.50)	16
29-Jun-86		(470.35)	12
29-Jun-86	THOMAS, KENNETH	80.45	12
29-Jun-86	JOHNSON, ALFRED	1,420.71	15
29-Jun-86	JOHNSON, ALFRED	495.48	15
29-Jun-86	BEHR, ALAN	236.33	8
29-Jun-86	ARROW LIMOUSINE	22.42	12
29-Jun-86	ALLEN, GEORGE	609.50	13
29-Jun-86	JOHNSON, ALFRED	301.23	12
29-Jun-86	JOHNSON, ALFRED	495.48	13
29-Jun-86	ARROW LIMOUSINE	217.43	17
29-Jun-86	JOHNSON, ALFRED	(2,513.55)	13
29-Jun-86	SOLEBELLO, MICHAEL	191.94	17
29-Jun-86	JOHNSON, ALFRED	2,513.55	13
29-Jun-86	THOMAS, KENNETH	80.45	17
29-Jun-86	BEHR, ALAN	554.53	14
29-Jun-86	JOHNSON, ALFRED	301.23	17
29-Jun-86	JOHNSON, ALFRED	495.48	11
29-Jun-86	ALLEN, GEORGE	1,660.60	13
29-Jun-86	JOHNSON, ALFRED	(2,822.52)	8
29-Jun-86	JOHNSON, ALFRED	495.48	10
29-Jun-86	JOHNSON, ALFRED	495.48	12
29-Jun-86	JOHNSON, ALFRED	(1,420.70)	10
29-Jun-86	JOHNSON, ALFRED	(301.23)	17
29-Jun-86	JOHNSON, ALFRED	1,420.70	10
29-Jun-86	MONMOUTH WORLD TRAVEL	79.00	17
29-Jun-86	SOLEBELLO, MICHAEL	191.94	12
29-Jun-86	MONMOUTH WORLD TRAVEL	79.00	12
29-Jun-86	JOHNSON, ALFRED	(301.23)	12
29-Jun-86	JOHNSON, ALFRED	(1,420.71)	15
29-Jun-86	JOHNSON, ALFRED	2,822.52	8
20-Jul-86	KRUMEL, RICHARD	75.49	11
20-Jul-86	KRUMEL, RICHARD	151.04	17
20-Jul-86	KRUMEL, RICHARD	151.04	12
20-Jul-86	ALLEN, GEORGE	280.00	13
20-Jul-86	KRUMEL, RICHARD	151.04	13
20-Jul-86	KRUMEL, RICHARD	75.49	16
20-Jul-86	BEHR, ALAN	455.96	8
03-Aug-86	SOLEBELLO, MICHAEL	484.66	12
03-Aug-86	ALLEN, GEORGE	1,247.15	13
03-Aug-86	VIP TRAVEL AGENCY	294.00	17
03-Aug-86	ALLEN, GEORGE	604.20	13
03-Aug-86	VIP TRAVEL AGENCY	293.00	12
03-Aug-86	SOLEBELLO, MICHAEL	484.66	17
03-Aug-86	BEHR, ALAN	454.37	14
03-Aug-86	BEHR, ALAN	573.23	8
17-Aug-86	ALLEN, GEORGE	612.70	13
17-Aug-86	ARROW LIMOUSINE	22.00	9
17-Aug-86	JOHNSON, ALFRED	808.10	12
17-Aug-86	JOHNSON, ALFRED	808.09	11
17-Aug-86	JOHNSON, ALFRED	808.09	10
17-Aug-86	BEHR, ALAN	347.82	13
17-Aug-86	JOHNSON, ALFRED	808.09	13
17-Aug-86	ALLEN, GEORGE	789.20	13
17-Aug-86	BEHR, ALAN	549.07	8
17-Aug-86	JOHNSON, ALFRED	808.09	15
31-Aug-86	MONMOUTH WORLD TRAVEL	490.00	17
31-Aug-86	SOLEBELLO, MICHAEL	149.80	12
31-Aug-86	MONMOUTH WORLD TRAVEL	79.00	17
31-Aug-86	MONMOUTH WORLD TRAVEL	490.00	12
31-Aug-86	SOLEBELLO, MICHAEL	149.80	17
31-Aug-86	ARROW LIMOUSINE	23.50	12
31-Aug-86	ALLEN, GEORGE	1,027.70	13
31-Aug-86	MONMOUTH WORLD TRAVEL	79.00	12
31-Aug-86	ARROW LIMOUSINE	23.50	17
14-Sep-86	SOLEBELLO, MICHAEL	(21.50)	12
14-Sep-86	SOLEBELLO, MICHAEL	(21.50)	17
28-Sep-86	KRUMEL, RICHARD	48.86	17
28-Sep-86	ARROW LIMOUSINE	46.00	17
28-Sep-86	KRUMEL, RICHARD	245.08	11
28-Sep-86	KRUMEL, RICHARD	48.86	12
28-Sep-86	AIRPORT WHEELS	36.80	17

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
28-Sep-86	JOHNSON, ALFRED	258.73	9
28-Sep-86	KRUMEL, RICHARD	245.06	16
28-Sep-86	JOHNSON, ALFRED	459.37	12
28-Sep-86	SOLEBELLO, MICHAEL	80.43	17
28-Sep-86	SOLEBELLO, MICHAEL	80.44	12
28-Sep-86	JOHNSON, ALFRED	536.54	16
28-Sep-86	NONMOUTH WORLD TRAVEL	118.00	17
28-Sep-86	AIRPORT WHEELS	36.80	10
28-Sep-86	AIRPORT WHEELS	36.80	12
28-Sep-86	ARROW LIMOUSINE	46.00	17
28-Sep-86	JOHNSON, ALFRED	423.21	10
28-Sep-86	ARROW LIMOUSINE	36.00	17
28-Sep-86	JOHNSON, ALFRED	72.59	17
28-Sep-86	ARROW LIMOUSINE	46.00	17
28-Sep-86	SOLEBELLO, MICHAEL	242.19	17
28-Sep-86	ARROW LIMOUSINE	46.00	12
28-Sep-86	ALLEN, GEORGE	2,939.25	13
28-Sep-86	AIRPORT WHEELS	36.80	9
28-Sep-86	JOHNSON, ALFRED	186.23	17
28-Sep-86	ARROW LIMOUSINE	36.00	12
12-Oct-86	AIRPORT WHEELS	21.00	17
12-Oct-86	JOHNSON, ALFRED	53.77	10
12-Oct-86	JOHNSON, ALFRED	53.77	9
12-Oct-86	JOHNSON, ALFRED	53.79	17
12-Oct-86	AIRPORT WHEELS	21.00	10
12-Oct-86	AIRPORT WHEELS	13.03	12
12-Oct-86	AIRPORT WHEELS	34.03	9
26-Oct-86	SOLEBELLO, MICHAEL	417.41	17
26-Oct-86	NONMOUTH WORLD TRAVEL	79.00	17
26-Oct-86	ALLEN, GEORGE	2,144.96	13
26-Oct-86	ARROW LIMOUSINE	19.50	17
26-Oct-86	SOLEBELLO, MICHAEL	417.41	12
26-Oct-86	NONMOUTH WORLD TRAVEL	79.00	17
26-Oct-86	NONMOUTH WORLD TRAVEL	79.00	12
26-Oct-86	ARROW LIMOUSINE	19.50	12
09-Nov-86	NONMOUTH WORLD TRAVEL	35.00	17
09-Nov-86	SOLEBELLO, MICHAEL	326.92	12
09-Nov-86	NONMOUTH WORLD TRAVEL	79.00	12
09-Nov-86	NONMOUTH WORLD TRAVEL	79.00	17
09-Nov-86	JOHNSON, ALFRED	55.00	12
09-Nov-86	JONES, EVERETT	246.67	17
09-Nov-86	VIP TRAVEL AGENCY	240.00	17
09-Nov-86	NONMOUTH WORLD TRAVEL	89.50	17
09-Nov-86	ARROW LIMOUSINE	44.85	12
09-Nov-86	VIP TRAVEL AGENCY	365.00	12
09-Nov-86	BELL, EDWARD	158.42	12
09-Nov-86	NONMOUTH WORLD TRAVEL	79.00	17
09-Nov-86	BELL, EDWARD	158.40	17
09-Nov-86	VIP TRAVEL AGENCY	365.00	17
09-Nov-86	NONMOUTH WORLD TRAVEL	89.50	12
09-Nov-86	ARROW LIMOUSINE	146.42	17
09-Nov-86	JONES, EVERETT	186.08	12
09-Nov-86	VIP TRAVEL AGENCY	240.00	12
09-Nov-86	NONMOUTH WORLD TRAVEL	35.00	12
09-Nov-86	NONMOUTH WORLD TRAVEL	79.00	12
09-Nov-86	ARROW LIMOUSINE	39.00	17
09-Nov-86	SOLEBELLO, MICHAEL	326.92	17
09-Nov-86	ALLEN, GEORGE	5,824.70	13
09-Nov-86	ARROW LIMOUSINE	68.43	12
09-Nov-86	JOHNSON, ALFRED	55.00	17
23-Nov-86	ALLEN, GEORGE	616.00	13
23-Nov-86	JOHNSON, ALFRED	326.08	17
23-Nov-86	JOHNSON, ALFRED	326.09	16
23-Nov-86	JOHNSON, ALFRED	326.09	15
23-Nov-86	JOHNSON, ALFRED	326.09	14
23-Nov-86	ALLEN, GEORGE	935.50	13
07-Dec-86	VIP TRAVEL AGENCY	301.50	17
07-Dec-86	VIP TRAVEL AGENCY	301.50	17
07-Dec-86	VIP TRAVEL AGENCY	301.50	12
07-Dec-86	VIP TRAVEL AGENCY	(301.50)	17
07-Dec-86	VIP TRAVEL AGENCY	301.50	12
07-Dec-86	VIP TRAVEL AGENCY	301.50	12

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
07-Dec-86	MCGEE, MARVIN	396.35	12
07-Dec-86	ARROW LIMOUSINE	78.00	14
07-Dec-86	ALLEN, GEORGE	1,906.51	13
21-Dec-86	JOHNSON, ALFRED	747.51	17
21-Dec-86	ALLEN, GEORGE	2,193.35	13
21-Dec-86	JOHNSON, ALFRED	812.79	10
21-Dec-86	JOHNSON, ALFRED	65.29	12
21-Dec-86	JOHNSON, ALFRED	812.80	13
04-Jan-87	ALLEN, GEORGE	622.75	13
04-Jan-87	ALLEN, GEORGE	935.70	13
18-Jan-87	ALLEN, GEORGE	1,239.50	13
18-Jan-87	VIP TRAVEL AGENCY	293.00	12
18-Jan-87	VIP TRAVEL AGENCY	293.00	17
01-Feb-87	HELWIG, GLENN	213.16	12
01-Feb-87	HELWIG, GLENN	213.16	17
01-Feb-87	VIP TRAVEL AGENCY	326.00	14
01-Feb-87	ALLEN, GEORGE	1,873.80	13
01-Feb-87	ALLEN, GEORGE	935.20	13
01-Feb-87	YENOWINE, DAVID	512.29	14
15-Feb-87	ALLEN, GEORGE	1,936.95	13
15-Feb-87	JOHNSON, ALFRED	264.13	13
01-Mar-87	VIP TRAVEL AGENCY	316.50	17
01-Mar-87	THORNTON, RUFUS	330.98	17
01-Mar-87	VIP TRAVEL AGENCY	244.00	12
01-Mar-87	VIP TRAVEL AGENCY	244.00	17
01-Mar-87	VIP TRAVEL AGENCY	316.50	12
01-Mar-87	THORNTON, RUFUS	330.98	12
15-Mar-87	ALLEN, GEORGE	994.50	13
15-Mar-87	MONMOUTH WORLD TRAVEL	158.00	17
15-Mar-87	JONES, EVERETT	275.25	17
15-Mar-87	ALLEN, GEORGE	1,005.00	13
15-Mar-87	ASHLEY, RICHARD	453.96	12
15-Mar-87	JOHNSON, ALFRED	737.38	13
15-Mar-87	JOHNSON, ALFRED	737.39	10
15-Mar-87	ALLEN, GEORGE	1,276.00	13
15-Mar-87	JOHNSON, ALFRED	737.39	15
15-Mar-87	JONES, EVERETT	275.25	12
24-Mar-87	JOHNSON, ALFRED	1,729.50	10
24-Mar-87	JOHNSON, ALFRED	991.72	10
29-Mar-87	THORNTON, RUFUS	165.82	12
29-Mar-87	VIP TRAVEL AGENCY	171.50	12
29-Mar-87	THORNTON, RUFUS	101.55	12
29-Mar-87	THORNTON, RUFUS	165.82	17
29-Mar-87	THORNTON, RUFUS	101.55	17
29-Mar-87	VIP TRAVEL AGENCY	171.50	17
29-Mar-87	ALLEN, GEORGE	934.70	13
12-Apr-87	ALLEN, GEORGE	933.70	13
26-Apr-87	ALLEN, GEORGE	934.00	13
26-Apr-87	ALLEN, GEORGE	937.40	13
26-Apr-87	ALLEN, GEORGE	932.20	13
10-May-87	ALLEN, GEORGE	936.00	13
10-May-87	VIP TRAVEL AGENCY	250.00	12
10-May-87	JONES, EVERETT	169.67	17
10-May-87	JONES, EVERETT	169.64	12
10-May-87	ALLEN, GEORGE	935.00	13
10-May-87	THORNTON, RUFUS	413.37	12
10-May-87	VIP TRAVEL AGENCY	250.00	17
24-May-87	JOHNSON, ALFRED	1,048.55	9
24-May-87	BELL, EDWARD	168.18	17
24-May-87	JOHNSON, ALFRED	643.12	13
24-May-87	JOHNSON, ALFRED	1,729.52	15
24-May-87	JOHNSON, ALFRED	643.13	12
24-May-87	JONES, EVERETT	249.43	17
24-May-87	JOHNSON, ALFRED	991.73	13
24-May-87	JOHNSON, ALFRED	871.85	11
24-May-87	JOHNSON, ALFRED	1,048.55	14
24-May-87	JONES, EVERETT	249.43	12
24-May-87	BELL, EDWARD	168.19	12
24-May-87	ALLEN, GEORGE	1,980.80	13
07-Jun-87	JONES, EVERETT	291.70	17
07-Jun-87	VIP TRAVEL AGENCY	275.00	17
		342.00	17

TIME RELATED TRAVEL .

PERIOD ENDING	NAME	AMOUNT \$	TASK
07-Jun-87	JOHNSON, ALFRED	392.21	15
07-Jun-87	JOHNSON, ALFRED	392.21	10
07-Jun-87	ALLEN, GEORGE	1,026.40	13
07-Jun-87	JONES, EVERETT	291.69	12
07-Jun-87	VIP TRAVEL AGENCY	275.00	12
07-Jun-87	VIP TRAVEL AGENCY	342.00	12
21-Jun-87	THORNTON, RUFUS	358.27	12
21-Jun-87	JOHNSON, ALFRED	656.01	12
21-Jun-87	ALLEN, GEORGE	707.00	13
21-Jun-87	VIP TRAVEL AGENCY	359.00	14
21-Jun-87	JOHNSON, ALFRED	656.01	16
21-Jun-87	THORNTON, RUFUS	522.73	14
21-Jun-87	VIP TRAVEL AGENCY	277.50	12
21-Jun-87	ALLEN, GEORGE	1,344.51	13
21-Jun-87	VIP TRAVEL AGENCY	277.50	17
28-Jun-87	VIP TRAVEL AGENCY	420.00	14
28-Jun-87	VIP TRAVEL AGENCY	420.00	14
28-Jun-87	ALLEN, GEORGE	1,027.05	13
28-Jun-87	ALLEN, GEORGE	1,024.95	13
28-Jun-87	BELL, EDWARD	251.99	14
28-Jun-87	HISE, W.	5,550.64	13
28-Jun-87	ALLEN, GEORGE	1,029.18	13
28-Jun-87	VIP TRAVEL AGENCY	760.00	12
28-Jun-87	THORNTON, RUFUS	197.87	14
28-Jun-87	JONES, EVERETT	328.83	12
19-Jul-87	ALLEN, GEORGE	707.00	13
19-Jul-87	BELL, EDWARD	797.38	14
19-Jul-87	VIP TRAVEL AGENCY	348.00	14
02-Aug-87	ALLEN, GEORGE	1,331.50	13
02-Aug-87	THORNTON, RUFUS	429.30	14
02-Aug-87	ALLEN, GEORGE	1,165.52	13
16-Aug-87	THORNTON, RUFUS	615.41	12
16-Aug-87	VIP TRAVEL AGENCY	298.25	12
16-Aug-87	ALLEN, GEORGE	1,026.45	13
16-Aug-87	VIP TRAVEL AGENCY	298.25	17
16-Aug-87	THOMAS, KENNETH	267.41	12
16-Aug-87	THOMAS, KENNETH	267.42	17
16-Aug-87	VIP TRAVEL AGENCY	298.25	17
16-Aug-87	VIP TRAVEL AGENCY	298.25	17
16-Aug-87	JONES, EVERETT	241.62	12
16-Aug-87	VIP TRAVEL AGENCY	298.25	12
16-Aug-87	JONES, EVERETT	241.62	17
16-Aug-87	VIP TRAVEL AGENCY	298.25	17
16-Aug-87	ALLEN, GEORGE	1,026.95	13
16-Aug-87	VIP TRAVEL AGENCY	298.25	12
16-Aug-87	VIP TRAVEL AGENCY	298.25	12
30-Aug-87	ALLEN, GEORGE	202.62	13
13-Sep-87	CATLIN, BLAIRE	697.61	10
13-Sep-87	CATLIN, BLAIRE	697.62	17
13-Sep-87	VIP TRAVEL AGENCY	224.00	17
13-Sep-87	VIP TRAVEL AGENCY	224.00	12
13-Sep-87	JOHNSON, ALFRED	822.00	10
13-Sep-87	VIP TRAVEL AGENCY	344.00	11
13-Sep-87	CATLIN, BLAIRE	697.61	12
13-Sep-87	JOHNSON, ALFRED	1,036.25	12
13-Sep-87	VIP TRAVEL AGENCY	352.00	12
13-Sep-87	JOHNSON, ALFRED	821.99	17
13-Sep-87	ALLEN, GEORGE	3,083.65	13
13-Sep-87	ELLIS, DONALD	1,266.60	12
27-Sep-87	VIP TRAVEL AGENCY	563.00	13
27-Sep-87	THORNTON, RUFUS	435.57	12
27-Sep-87	VIP TRAVEL AGENCY	239.00	12
27-Sep-87	JONES, EVERETT	261.80	12
27-Sep-87	VIP TRAVEL AGENCY	225.00	17
27-Sep-87	JONES, EVERETT	261.81	17
27-Sep-87	VIP TRAVEL AGENCY	225.00	12
27-Sep-87	VIP TRAVEL AGENCY	182.00	12
27-Sep-87	VIP TRAVEL AGENCY	224.00	17
27-Sep-87	VIP TRAVEL AGENCY	239.00	17

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
11-Oct-87	ALLEN, GEORGE	1,216.20	13
11-Oct-87	ELLIS, DONALD	689.57	10
11-Oct-87	VIP TRAVEL AGENCY	963.00	10
11-Oct-87	THORNTON, RUFUS	380.78	12
11-Oct-87	ELLIS, DONALD	915.40	12
11-Oct-87	JONES, EVERETT	160.07	17
11-Oct-87	FOURNEY, GARY	434.98	13
11-Oct-87	BELL, EDWARD	423.60	12
25-Oct-87	VIP TRAVEL AGENCY	478.00	10
25-Oct-87	THORNTON, RUFUS	260.58	19
25-Oct-87	VIP TRAVEL AGENCY	607.00	19
25-Oct-87	VIP TRAVEL AGENCY	609.00	19
25-Oct-87	CATLIN, BLAIRE	505.16	12
25-Oct-87	ALLEN, GEORGE	3,541.40	13
25-Oct-87	CATLIN, BLAIRE	505.15	17
08-Nov-87	ALLEN, GEORGE	1,866.45	13
08-Nov-87	THORNTON, RUFUS	517.75	19
08-Nov-87	ELLIS, DONALD	706.88	10
08-Nov-87	JOHNSON, ALFRED	916.70	12
08-Nov-87	BELL, EDWARD	256.81	19
08-Nov-87	JOHNSON, ALFRED	1,879.63	12
08-Nov-87	JOHNSON, ALFRED	1,879.62	17
22-Nov-87	BELL, EDWARD	411.97	19
22-Nov-87	VIP TRAVEL AGENCY	378.00	13
22-Nov-87	VIP TRAVEL AGENCY	934.00	19
22-Nov-87		(117.25)	12
22-Nov-87	ALLEN, GEORGE	2,490.55	13
22-Nov-87	VIP TRAVEL AGENCY	358.00	13
22-Nov-87	VIP TRAVEL AGENCY	358.00	13
22-Nov-87	THORNTON, RUFUS	1,154.76	13
22-Nov-87		(117.25)	17
02-Dec-87	VIP TRAVEL AGENCY	(364.00)	11
06-Dec-87	ELLIS, DONALD	1,757.14	13
06-Dec-87	JOHNSON, ALFRED	974.12	8
06-Dec-87	JOHNSON, ALFRED	131.38	12
06-Dec-87	JOHNSON, ALFRED	561.69	10
06-Dec-87	JOHNSON, ALFRED	561.68	16
06-Dec-87	JOHNSON, ALFRED	1,772.17	9
06-Dec-87	ALLEN, GEORGE	1,088.70	13
06-Dec-87	ELLIS, DONALD	753.16	13
20-Dec-87	VIP TRAVEL AGENCY	734.00	13
20-Dec-87	VIP TRAVEL AGENCY	988.00	19
20-Dec-87	VIP TRAVEL AGENCY	428.00	19
20-Dec-87		(576.00)	19
20-Dec-87	ELLIS, DONALD	1,660.60	13
20-Dec-87	VIP TRAVEL AGENCY	734.00	13
20-Dec-87	ALLEN, GEORGE	2,177.45	13
20-Dec-87	BELL, EDWARD	211.42	19
20-Dec-87	ALLEN, GEORGE	1,088.45	13
20-Dec-87	VIP TRAVEL AGENCY	189.00	12
20-Dec-87	VIP TRAVEL AGENCY	189.00	17
03-Jan-88	AIRPORT WHEELS	43.12	8
03-Jan-88	BELL, EDWARD	432.81	19
03-Jan-88	BELL, EDWARD	321.96	19
03-Jan-88	JOHNSON, ALFRED	117.58	9
03-Jan-88	JOHNSON, ALFRED	749.66	12
03-Jan-88	THORNTON, RUFUS	843.33	13
03-Jan-88	AIRPORT WHEELS	43.13	9
03-Jan-88	JONES, EVERETT	501.75	17
03-Jan-88	JOHNSON, ALFRED	867.23	16
03-Jan-88	JONES, EVERETT	501.75	12
03-Jan-88	VIP TRAVEL AGENCY	564.00	19
03-Jan-88	ALLEN, GEORGE	1,849.20	13
03-Jan-88	ELLIS, DONALD	(734.00)	13
03-Jan-88	JOHNSON, ALFRED	867.24	10
17-Jan-88	ALLEN, GEORGE	2,308.84	13
17-Jan-88	ALLEN, GEORGE	4,388.05	13
17-Jan-88	ALLEN, GEORGE	1,349.80	13
17-Jan-88	ALLEN, GEORGE	1,096.90	13
17-Jan-88		189.43	13

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
14-Feb-88	VIP TRAVEL AGENCY	(479.00)	19
14-Feb-88	VIP TRAVEL AGENCY	(150.33)	10
14-Feb-88	VIP TRAVEL AGENCY	(244.84)	17
14-Feb-88	ALLEN, GEORGE	1,094.85	13
14-Feb-88	JOHNSON, ALFRED	1,343.38	10
14-Feb-88	JOHNSON, ALFRED	1,040.61	12
28-Feb-88	VIP TRAVEL AGENCY	390.00	9
28-Feb-88	ALLEN, GEORGE	1,087.45	13
28-Feb-88	ALLEN, GEORGE	1,090.60	13
13-Mar-88	BELL, EDWARD	282.56	19
13-Mar-88	JONES, EVERETT	189.06	12
13-Mar-88	ALLEN, GEORGE	1,087.95	13
13-Mar-88	JONES, EVERETT	189.09	17
13-Mar-88	ALLEN, GEORGE	1,088.70	13
13-Mar-88	THORNTON, RUFUS	1,207.13	9
27-Mar-88	VIP TRAVEL AGENCY	684.00	19
27-Mar-88	VIP TRAVEL AGENCY	226.50	17
27-Mar-88	VIP TRAVEL AGENCY	90.00	12
27-Mar-88	JOHNSON, ALFRED	60.10	8
27-Mar-88	VIP TRAVEL AGENCY	224.50	12
27-Mar-88	JOHNSON, ALFRED	168.97	17
27-Mar-88	VIP TRAVEL AGENCY	667.00	13
27-Mar-88	ALLEN, GEORGE	2,732.65	13
27-Mar-88	BELL, EDWARD	595.92	19
27-Mar-88	VIP TRAVEL AGENCY	90.00	17
10-Apr-88	JONES, EVERETT	316.65	17
10-Apr-88	JONES, EVERETT	316.60	12
24-Apr-88	VIP TRAVEL AGENCY	1,005.00	23
24-Apr-88	VIP TRAVEL AGENCY	1,254.25	12
24-Apr-88	THORNTON, RUFUS	229.95	23
24-Apr-88	VIP TRAVEL AGENCY	145.75	17
08-May-88	VIP TRAVEL AGENCY	390.00	18
08-May-88	ELLIS, DONALD	345.09	12
08-May-88	THORNTON, RUFUS	692.21	9
08-May-88	BELL, EDWARD	679.79	12
08-May-88	ELLIS, DONALD	753.04	13
08-May-88	ELLIS, DONALD	398.54	23
22-May-88	VIP TRAVEL AGENCY	616.00	9
22-May-88	VIP TRAVEL AGENCY	616.00	13
22-May-88	VIP TRAVEL AGENCY	2,320.00	13
22-May-88	BELL, EDWARD	202.14	9
22-May-88	BELL, EDWARD	1,018.73	10
22-May-88	ELLIS, DONALD	251.53	13
22-May-88	THORNTON, RUFUS	242.38	13
22-May-88	VIP TRAVEL AGENCY	616.00	9
22-May-88	ROSE, RALPH	1,116.94	9
05-Jun-88	BELL, EDWARD	413.07	19
05-Jun-88	VIP TRAVEL AGENCY	496.00	9
05-Jun-88	JONES, EVERETT	443.61	12
05-Jun-88	VIP TRAVEL AGENCY	556.00	13
05-Jun-88	VIP TRAVEL AGENCY	630.00	19
19-Jun-88	VIP TRAVEL AGENCY	1,623.00	12
19-Jun-88	ELLIS, DONALD	248.93	12
26-Jun-88	VIP TRAVEL AGENCY	1,800.00	12
26-Jun-88	JOHNSON, ERNEST	779.54	13
26-Jun-88	JOHNSON, ERNEST	2,083.20	13
26-Jun-88	NISE, WILLIAM	1,798.10	13
26-Jun-88	ELLIS, DONALD	625.17	12
26-Jun-88	JONES, EVERETT	591.96	12
03-Jul-88	ELLIS, DONALD	62.31	21
03-Jul-88	ELLIS, DONALD	62.31	22
03-Jul-88	THORNTON, RUFUS	12.50	21
17-Jul-88	JOHNSON, ERNEST	2,461.00	13
31-Jul-88	JOHNSON, ERNEST	1,239.84	13
31-Jul-88	THORNTON, RUFUS	326.55	12
31-Jul-88	JONES, EVERETT	813.95	12
31-Jul-88	JOHNSON, ERNEST	1,502.00	13
31-Jul-88	ELLIS, DONALD	598.26	12
31-Jul-88	BELL, EDWARD	725.99	12
14-Aug-88	JOHNSON, ERNEST	781.00	13
14-Aug-88	VIP TRAVEL AGENCY	800.00	12
14-Aug-88	JONES, EVERETT	356.97	12
14-Aug-88	VIP TRAVEL AGENCY	404.00	12

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
14-Aug-88	JOHNSON, ERNEST	780.00	13
14-Aug-88	VIP TRAVEL AGENCY	496.00	12
14-Aug-88	VIP TRAVEL AGENCY	496.00	12
14-Aug-88	VIP TRAVEL AGENCY	496.00	12
14-Aug-88	VIP TRAVEL AGENCY	900.00	12
28-Aug-88	JOHNSON, ERNEST	1,466.57	13
28-Aug-88	JOHNSON, ERNEST	780.00	13
11-Sep-88	JOHNSON, ERNEST	1,620.32	13
11-Sep-88	JOHNSON, ERNEST	3,069.18	13
11-Sep-88	BELL, EDWARD	502.76	19
11-Sep-88	VIP TRAVEL AGENCY	516.00	12
11-Sep-88	VIP TRAVEL AGENCY	476.00	19
11-Sep-88	VIP TRAVEL AGENCY	(90.00)	12
25-Sep-88	ROSE, RALPH	1,481.87	9
25-Sep-88	JOHNSON, ERNEST	1,389.11	13
25-Sep-88	JOHNSON, ERNEST	783.20	13
25-Sep-88	VIP TRAVEL AGENCY	496.00	24
25-Sep-88	ROSE, RALPH	1,166.74	11
25-Sep-88	ROSE, RALPH	450.55	12
25-Sep-88	ELLIS, DONALD	92.19	12
09-Oct-88	ELLIS, DONALD	246.01	24
09-Oct-88	JOHNSON, ERNEST	1,139.44	13
09-Oct-88	JOHNSON, ERNEST	781.00	13
09-Oct-88	VIP TRAVEL AGENCY	910.00	11
23-Oct-88	JOHNSON, ERNEST	3,002.12	13
06-Nov-88	JOHNSON, ERNEST	845.15	13
06-Nov-88	ROSE, RALPH	5,276.46	8
06-Nov-88	THORNTON, RUFUS	291.30	12
06-Nov-88	JOHNSON, ERNEST	926.50	13
06-Nov-88	JONES, EVERETT	637.55	12
06-Nov-88	ELLIS, DONALD	368.00	12
06-Nov-88	BELL, EDWARD	650.13	12
06-Nov-88	JOHNSON, ERNEST	2,794.52	13
20-Nov-88	VIP TRAVEL AGENCY	694.00	12
20-Nov-88	VIP TRAVEL AGENCY	351.00	25
20-Nov-88	VIP TRAVEL AGENCY	172.33	9
20-Nov-88	VIP TRAVEL AGENCY	271.00	9
20-Nov-88	JOHNSON, ERNEST	826.43	13
20-Nov-88	VIP TRAVEL AGENCY	488.00	12
20-Nov-88	VIP TRAVEL AGENCY	694.00	12
04-Dec-88	JOHNSON, ERNEST	4,075.88	13
18-Dec-88	JOHNSON, ERNEST	3,826.48	13
18-Dec-88	VIP TRAVEL AGENCY	369.00	24
18-Dec-88	THORNTON, RUFUS	20.50	24
18-Dec-88	ROSE, RALPH	225.91	21
18-Dec-88	ELLIS, DONALD	72.47	24
18-Dec-88	JOHNSON, ERNEST	789.40	13
18-Dec-88	MCGEE, MARVIN	10.00	12
18-Dec-88	VIP TRAVEL AGENCY	369.00	24
01-Jan-89	JOHNSON, ERNEST	3,578.06	13
01-Jan-89	JOHNSON, ERNEST	790.00	13
01-Jan-89	NISE, WILLIAM	1,489.91	13
01-Jan-89	JOHNSON, ERNEST	817.98	13
01-Jan-89	ROSE, RALPH	91.87	24
01-Jan-89	ELLIS, DONALD	333.84	12
01-Jan-89	VIP TRAVEL AGENCY	460.00	12
15-Jan-89	JOHNSON, ERNEST	2,295.68	13
15-Jan-89	VIP TRAVEL AGENCY	370.50	24
15-Jan-89	THORNTON, RUFUS	77.55	24
29-Jan-89	JOHNSON, ERNEST	3,320.37	13
29-Jan-89		(277.00)	13
29-Jan-89		(277.00)	19
12-Feb-89	ROSE, RALPH	200.83	21
12-Feb-89	JOHNSON, ERNEST	934.71	13
12-Feb-89	JOHNSON, ERNEST	1,151.00	13
12-Mar-89	JOHNSON, ERNEST	1,649.65	13
12-Mar-89	JOHNSON, ERNEST	932.25	13
12-Mar-89	BELL, EDWARD	84.65	12
12-Mar-89	JOHNSON, ERNEST	3,444.75	13
12-Mar-89	ELLIS, DONALD	118.95	12
26-Mar-89	ROSEN, MAX	258.00	13
26-Mar-89	JOHNSON, ERNEST	1,546.72	13
26-Mar-89	ELLIS, DONALD	171.18	12

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
26-Mar-89	BELL, EDWARD	635.30	19
26-Mar-89	ELLIS, DONALD	376.44	12
26-Mar-89	BELL, EDWARD	681.10	12
29-Mar-89	THORNTON, RUFUS	101.55	12
29-Mar-89	THORNTON, RUFUS	165.83	12
09-Apr-89	JONES, EVERETT	988.97	12
09-Apr-89	JOHNSON, ERNEST	808.00	13
09-Apr-89	JOHNSON, ERNEST	1,007.49	13
09-Apr-89	JOHNSON, ERNEST	3,632.91	13
09-Apr-89	ROSE, RALPH	205.64	21
23-Apr-89	VIP TRAVEL AGENCY	439.00	12
23-Apr-89	JOHNSON, ERNEST	788.50	13
23-Apr-89	JOHNSON, ERNEST	3,074.85	13
23-Apr-89	VIP TRAVEL AGENCY	440.00	12
23-Apr-89	VIP TRAVEL AGENCY	440.00	12
23-Apr-89	VIP TRAVEL AGENCY	456.00	12
23-Apr-89	JOHNSON, ERNEST	790.25	13
23-Apr-89	VIP TRAVEL AGENCY	520.00	19
23-Apr-89	ROSE, RALPH	201.86	21
23-Apr-89	VIP TRAVEL AGENCY	520.00	12
23-Apr-89	VIP TRAVEL AGENCY	662.00	12
23-Apr-89	VIP TRAVEL AGENCY	440.50	13
07-May-89	THORNTON, RUFUS	177.75	12
07-May-89	JOHNSON, ERNEST	1,805.04	13
07-May-89	ELLIS, DONALD	350.16	12
07-May-89	JOHNSON, ERNEST	1,600.03	13
21-May-89	JOHNSON, ERNEST	3,105.00	13
21-May-89	JOHNSON, ERNEST	787.41	13
04-Jun-89	ELLIS, DONALD	770.85	12
04-Jun-89	VIP TRAVEL AGENCY	662.00	12
04-Jun-89	ROSE, RALPH	406.04	24
04-Jun-89	JOHNSON, ERNEST	1,205.00	13
04-Jun-89	JOHNSON, ERNEST	781.00	13
04-Jun-89	VIP TRAVEL AGENCY	662.00	12
18-Jun-89	JOHNSON, ERNEST	794.15	13
18-Jun-89	JOHNSON, ERNEST	2,035.01	13
25-Jun-89	JOHNSON, ERNEST	1,000.00	13
25-Jun-89	VIP TRAVEL AGENCY	127.90	13
25-Jun-89	ROSE, RALPH	4,668.05	13
25-Jun-89	ROSE, RALPH	1,371.55	13
25-Jun-89	VIP TRAVEL AGENCY	540.00	12
16-Jul-89	JOHNSON, ERNEST	522.56	13
30-Jul-89	JOHNSON, ERNEST	906.65	13
30-Jul-89	VIP TRAVEL AGENCY	520.00	12
30-Jul-89	ROSE, RALPH	105.15	13
30-Jul-89	ROSE, RALPH	5.40	22
13-Aug-89	JOHNSON, ERNEST	826.58	13
13-Aug-89	JOHNSON, ERNEST	784.00	13
13-Aug-89	ELLIS, DONALD	329.48	12
27-Aug-89	BELL, EDWARD	459.89	19
27-Aug-89	JOHNSON, ERNEST	5,032.24	13
27-Aug-89	VIP TRAVEL AGENCY	842.00	22
27-Aug-89	THORNTON, RUFUS	279.00	22
27-Aug-89	THORNTON, RUFUS	288.39	21
27-Aug-89	VIP TRAVEL AGENCY	842.00	21
10-Sep-89	JOHNSON, ERNEST	851.58	13
10-Sep-89	ROSE, RALPH	400.00	13
10-Sep-89	JOHNSON, ERNEST	770.00	13
10-Sep-89	JOHNSON, ERNEST	780.00	13
10-Sep-89	VIP TRAVEL AGENCY	478.00	19
24-Sep-89	JOHNSON, ERNEST	807.68	13
08-Oct-89	JOHNSON, ERNEST	780.50	13
08-Oct-89	JOHNSON, ERNEST	780.00	13
08-Oct-89	JOHNSON, ERNEST	807.68	13
08-Oct-89	JOHNSON, ERNEST	1,893.21	13
08-Oct-89	JOHNSON, ERNEST	3,937.08	13
08-Oct-89	VIP TRAVEL AGENCY	1,214.00	13
22-Oct-89	JOHNSON, ERNEST	780.00	13
22-Oct-89	VIP TRAVEL AGENCY	787.00	12
22-Oct-89	VIP TRAVEL AGENCY	787.00	12
22-Oct-89	ELLIS, DONALD	524.00	12

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
05-Nov-89	VIP TRAVEL AGENCY	581.00	12
05-Nov-89	JONES, EVERETT	317.56	12
05-Nov-89	JOHNSON, ERNEST	782.00	13
03-Dec-89	ROSE, RALPH	5,257.59	27
17-Dec-89	ELLIS, DONALD	516.83	12
17-Dec-89	JONES, EVERETT	340.05	18
17-Dec-89	VIP TRAVEL AGENCY	956.00	12
17-Dec-89	VIP TRAVEL AGENCY	454.00	12
17-Dec-89	JOHNSON, ERNEST	2,370.25	13
31-Dec-89	JOHNSON, ERNEST	(780.00)	13
31-Dec-89	ELLIS, DONALD	194.05	12
31-Dec-89	JOHNSON, ERNEST	(807.68)	13
31-Dec-89	ROSE, RALPH	234.47	21
31-Dec-89	VIP TRAVEL AGENCY	320.50	12
31-Dec-89	JOHNSON, ERNEST	7,295.66	13
14-Jan-90	JOHNSON, ERNEST	1,074.63	13
14-Jan-90	JOHNSON, ERNEST	2,679.62	13
14-Jan-90	THORNTON, RUFUS	87.66	9
14-Jan-90	JOHNSON, ERNEST	531.32	13
28-Jan-90	JOHNSON, ERNEST	539.75	13
28-Jan-90	THORNTON, RUFUS	87.66	9
28-Jan-90	JOHNSON, ERNEST	532.95	13
28-Jan-90	MCGEE, MARVIN	42.00	12
11-Feb-90	UNIGLOBE DIXIELAND TRAVEL	275.00	22
11-Feb-90	UNIGLOBE DIXIELAND TRAVEL	275.00	21
11-Feb-90	JOHNSON, ERNEST	234.17	13
11-Feb-90	JOHNSON, ERNEST	526.00	13
21-Feb-90	VIP TRAVEL AGENCY	69.00	22
25-Feb-90	ELLIS, DONALD	262.50	22
25-Feb-90	ELLIS, DONALD	389.27	12
25-Feb-90	ELLIS, DONALD	65.18	22
25-Feb-90	VIP TRAVEL AGENCY	69.00	21
25-Feb-90	THORNTON, RUFUS	175.00	22
25-Feb-90	JOHNSON, ERNEST	2,083.65	13
25-Feb-90	VIP TRAVEL AGENCY	275.00	12
25-Feb-90	VIP TRAVEL AGENCY	550.00	12
25-Feb-90	ELLIS, DONALD	65.18	21
25-Feb-90	THORNTON, RUFUS	180.59	21
25-Feb-90	ELLIS, DONALD	262.49	21
25-Feb-90	JOHNSON, ERNEST	3,560.77	13
25-Feb-90	JONES, EVERETT	630.45	12
11-Mar-90	ROSE, RALPH	99.42	22
11-Mar-90	ELLIS, DONALD	46.35	21
11-Mar-90	JOHNSON, ERNEST	1,233.66	13
11-Mar-90	ELLIS, DONALD	46.35	22
11-Mar-90	JOHNSON, ERNEST	528.80	13
25-Mar-90	VIP TRAVEL AGENCY	359.17	21
25-Mar-90	VIP TRAVEL AGENCY	359.17	22
25-Mar-90	THORNTON, RUFUS	199.53	21
25-Mar-90	THORNTON, RUFUS	199.53	22
25-Mar-90	VIP TRAVEL AGENCY	359.17	21
25-Mar-90	VIP TRAVEL AGENCY	359.17	22
25-Mar-90	ELLIS, DONALD	282.77	22
25-Mar-90	ELLIS, DONALD	282.77	21
08-Apr-90	MCGEE, MARVIN	151.20	12
08-Apr-90	JOHNSON, ERNEST	534.81	13
22-Apr-90	MCGEE, MARVIN	58.80	12
22-Apr-90	JOHNSON, ERNEST	107.26	13
22-Apr-90	JOHNSON, ERNEST	2,439.44	13
22-Apr-90	ROSE, RALPH	14.40	22
06-May-90	UNIGLOBE DIXIELAND TRAVEL	298.00	21
06-May-90	ELLIS, DONALD	88.24	12
06-May-90	JOHNSON, ERNEST	557.71	13
06-May-90	MCGEE, MARVIN	42.00	12
20-May-90	JOHNSON, ERNEST	1,522.48	13
20-May-90	JOHNSON, ERNEST	1,165.44	13
03-Jun-90	JOHNSON, ERNEST	1,217.87	13
03-Jun-90	JOHNSON, ERNEST	604.38	13
03-Jun-90	MCGEE, MARVIN	42.00	12
17-Jun-90	JOHNSON, ERNEST	587.55	13
17-Jun-90	RAS S/F CAR RENTAL	5,060.00	13

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
24-Jun-90	JOHNSON, ERNEST	1,350.63	13
24-Jun-90	JOHNSON, ERNEST	835.01	13
24-Jun-90	ELLIS, DONALD	598.04	12
24-Jun-90	JOHNSON, ERNEST	583.55	13
24-Jun-90	UNIGLOBE DIXIELAND TRAVEL	825.00	12
24-Jun-90	UNIGLOBE DIXIELAND TRAVEL	825.00	12
24-Jun-90	JONES, EVERETT	407.21	12
24-Jun-90	RAS S/F CAR RENTAL	1,650.00	13
01-Jul-90	UNIGLOBE DIXIELAND TRAVEL	865.00	12
13-Jul-90	JONES, EVERETT	653.70	12
29-Jul-90	RAS S/F CAR RENTAL	1,705.00	13
29-Jul-90	CARLSON TRAVEL	684.00	12
12-Aug-90	UNIGLOBE DIXIELAND TRAVEL	684.00	12
12-Aug-90	JONES, EVERETT	793.74	12
12-Aug-90	ELLIS, DONALD	246.28	12
26-Aug-90	MCGEE, MARVIN	8.40	12
26-Aug-90	CARLSON TRAVEL	684.00	12
26-Aug-90	UNIGLOBE DIXIELAND TRAVEL	684.00	12
26-Aug-90	JONES, EVERETT	533.68	12
26-Aug-90	RAS S/F CAR RENTAL	1,705.00	13
09-Sep-90	UNIGLOBE DIXIELAND TRAVEL	1,524.59	22
09-Sep-90	ELLIS, DONALD	376.92	12
09-Sep-90	JOHNSON, ERNEST	656.45	13
23-Sep-90	ELLIS, DONALD	277.81	12
23-Sep-90	JOHNSON, ERNEST	599.90	13
23-Sep-90	CARLSON TRAVEL	1,440.00	12
23-Sep-90	BELL, EDWARD	3,771.82	22
23-Sep-90	ROSE, RALPH	568.10	12
23-Sep-90	CARLSON TRAVEL	514.00	12
07-Oct-90	JOHNSON, ERNEST	631.83	13
07-Oct-90	JOHNSON, ERNEST	588.58	13
07-Oct-90	ROSE, RALPH	27.60	21
07-Oct-90	RAS S/F CAR RENTAL	1,650.00	13
07-Oct-90	JOHNSON, ERNEST	1,600.60	13
07-Oct-90	BELL, EDWARD	(3,771.82)	22
07-Oct-90	JONES, EVERETT	697.66	12
21-Oct-90	JOHNSON, ERNEST	600.55	13
21-Oct-90	CARTER, JAMES	865.82	13
21-Oct-90	CARLSON TRAVEL	1,212.00	12
21-Oct-90	JOHNSON, ERNEST	81.65	13
21-Oct-90	RAS S/F CAR RENTAL	1,705.00	13
04-Nov-90	JOHNSON, ERNEST	3,300.53	13
04-Nov-90	JOURNAL ENTRY - CJ-56	9,244.14	22
04-Nov-90	CARTER, JAMES	853.00	13
04-Nov-90	CARTER, JAMES	860.57	13
04-Nov-90	JONES, EVERETT	725.02	12
18-Nov-90	CARTER, JAMES	1,074.90	13
18-Nov-90	CARTER, JAMES	853.50	13
18-Nov-90	JONES, EVERETT	707.50	12
18-Nov-90	CARTER, JAMES	1,049.68	13
02-Dec-90	RAS S/F CAR RENTAL	1,650.00	13
02-Dec-90	CARTER, JAMES	1,008.00	13
02-Dec-90	UNIGLOBE DIXIELAND TRAVEL	(375.36)	22
02-Dec-90	UNIGLOBE DIXIELAND TRAVEL	1,129.00	12
16-Dec-90	CARTER, JAMES	1,978.27	13
16-Dec-90	CARTER, JAMES	853.55	13
16-Dec-90	CARTER, JAMES	864.75	13
30-Dec-90	CARTER, JAMES	1,702.29	13
30-Dec-90	CARTER, JAMES	853.15	13
30-Dec-90	RAS S/F CAR RENTAL	1,705.00	13
13-Jan-91	CARTER, JAMES	384.56	13
27-Jan-91	CARTER, JAMES	1,083.01	13
27-Jan-91	RAS S/F CAR RENTAL	1,705.00	13
27-Jan-91	CARTER, JAMES	1,068.76	13
10-Feb-91	CARTER, JAMES	1,544.81	13
10-Feb-91	CARTER, JAMES	1,081.76	13
10-Feb-91	CARLSON TRAVEL	1,032.00	11
10-Feb-91	BELL, EDWARD	692.84	11
24-Feb-91	CARLSON TRAVEL	408.50	21
24-Feb-91	CARTER, JAMES	1,088.76	13

TIME RELATED TRAVEL

PERIOD ENDING	NAME	AMOUNT \$	TASK
10-Mar-91	BELL, EDWARD	1,212.40	22
10-Mar-91	BELL, EDWARD	2,257.40	21
10-Mar-91	CARTER, JAMES	1,704.17	13
10-Mar-91	CARTER, JAMES	1,088.51	13
10-Mar-91	CARLSON TRAVEL	1,023.00	12
24-Mar-91	CARLSON TRAVEL	863.00	21
24-Mar-91	CARTER, JAMES	2,075.75	13
24-Mar-91	CARLSON TRAVEL	863.00	22
24-Mar-91	JONES, EVERETT	669.95	12
24-Mar-91	BELL, EDWARD	1,397.95	21
07-Apr-91	BELL, EDWARD	8,671.06	21
07-Apr-91	ELLIS, DONALD	559.87	22
07-Apr-91	ELLIS, DONALD	559.88	21
07-Apr-91	THORNTON, RUFUS	664.38	21
07-Apr-91	THORNTON, RUFUS	664.38	22
07-Apr-91	CARTER, JAMES	230.70	13
05-May-91	SPRINGFIELD TRAVEL SERVICE	996.00	12
05-May-91	JONES, EVERETT	721.53	12
19-May-91	SPRINGFIELD TRAVEL SERVICE	992.00	11
19-May-91	ROSE, RALPH	519.82	13
19-May-91	BELL, EDWARD	602.33	11
19-May-91	ROSE, RALPH	1,089.65	13
02-Jun-91	SPRINGFIELD TRAVEL SERVICE	863.00	13
TOTALS		8631,562.09	

TIME-RELATED CONSULTANT COSTS

PERIOD	NAME	HOURS	AMOUNT \$
28-Aug-86 29-Aug-86	ASHLEY, RICHARD	8.0	224.00
02-Sep-86 03-Sep-86	ASHLEY, RICHARD	17.0	476.00
08-Sep-86 11-Sep-86	ASHLEY, RICHARD	28.2	791.00
15-Sep-86 18-Sep-86	ASHLEY, RICHARD	24.0	672.00
22-Sep-86 25-Sep-86	ASHLEY, RICHARD	30.3	861.00
30-Sep-86 03-Oct-86	ASHLEY, RICHARD	28.5	805.00
06-Oct-86 10-Oct-86	ASHLEY, RICHARD	16.0	448.00
13-Oct-86 16-Oct-86	ASHLEY, RICHARD	30.0	840.00
10-Nov-86 14-Nov-86	ASHLEY, RICHARD	34.3	1,057.00
17-Nov-86 21-Nov-86	ASHLEY, RICHARD	41.3	1,162.00
24-Nov-86 30-Nov-86	ASHLEY, RICHARD	50.0	1,400.00
01-Dec-86 06-Dec-86	ASHLEY, RICHARD	52.2	1,463.00
08-Dec-86 13-Dec-86	ASHLEY, RICHARD	45.0	1,267.00
15-Dec-86 21-Dec-86	ASHLEY, RICHARD	32.3	910.00
22-Dec-86 26-Dec-86	ASHLEY, RICHARD	27.0	756.00
29-Dec-86 03-Jan-87	ASHLEY, RICHARD	22.3	623.00
03-Jan-87 03-Jan-87	ASHLEY, RICHARD	4.0	112.00
05-Jan-87 11-Jan-87	ASHLEY, RICHARD	52.2	1,463.00
12-Jan-87 17-Jan-87	ASHLEY, RICHARD	46.2	1,295.00
19-Jan-87 24-Jan-87	ASHLEY, RICHARD	44.2	1,239.00
27-Jan-87 31-Jan-87	ASHLEY, RICHARD	35.3	994.00
01-Feb-87 07-Feb-87	ASHLEY, RICHARD	45.3	1,281.00
09-Feb-87 13-Feb-87	ASHLEY, RICHARD	41.2	1,155.00
16-Feb-87 20-Feb-87	ASHLEY, RICHARD	34.3	973.00
24-Feb-87 28-Feb-87	ASHLEY, RICHARD	32.3	917.00
02-Mar-87 08-Mar-87	ASHLEY, RICHARD	50.2	1,407.00
09-Mar-87 13-Mar-87	ASHLEY, RICHARD	41.3	1,162.00
16-Mar-87 21-Mar-87	ASHLEY, RICHARD	52.0	1,456.00
23-Mar-87 28-Mar-87	ASHLEY, RICHARD	44.0	1,232.00
30-Mar-87 04-Apr-87	ASHLEY, RICHARD	49.3	1,393.00
06-Apr-87 10-Apr-87	ASHLEY, RICHARD	32.3	917.00
16-Apr-87 18-Apr-87	ASHLEY, RICHARD	22.3	637.00
20-Apr-87 24-Apr-87	ASHLEY, RICHARD	22.3	630.00
27-Apr-87 01-May-87	ASHLEY, RICHARD	25.0	700.00
04-May-87 08-May-87	ASHLEY, RICHARD	40.3	1,134.00
11-May-87 15-May-87	ASHLEY, RICHARD	35.0	980.00
18-May-87 22-May-87	ASHLEY, RICHARD	40.8	1,141.00
26-May-87 29-May-87	ASHLEY, RICHARD	36.8	1,029.00
		1314.2	37,002.00

24-Oct-86 31-Oct-86	MELWIG, GLEN	43.3	1,087.50
03-Nov-86 07-Nov-86	MELWIG, GLEN	38.0	950.00
10-Nov-86 14-Nov-86	MELWIG, GLEN	40.0	1,000.00
17-Nov-86 21-Nov-86	MELWIG, GLEN	40.0	1,000.00
24-Nov-86 05-Dec-86	MELWIG, GLEN	64.0	1,600.00
06-Dec-86 12-Dec-86	MELWIG, GLEN	44.8	1,168.75
15-Dec-86 19-Dec-86	MELWIG, GLEN	40.0	1,000.00
22-Dec-86 26-Dec-86	MELWIG, GLEN	32.0	800.00
29-Dec-86 02-Jan-87	MELWIG, GLEN	32.0	800.00
05-Jan-87 09-Jan-87	MELWIG, GLEN	40.0	1,000.00
12-Jan-87 16-Jan-87	MELWIG, GLEN	40.0	1,000.00
20-Jan-87 30-Jan-87	MELWIG, GLEN	35.0	875.00
02-Feb-87 06-Feb-87	MELWIG, GLEN	40.0	1,000.00
09-Feb-87 13-Feb-87	MELWIG, GLEN	34.0	900.00
18-Feb-87 27-Feb-87	MELWIG, GLEN	43.3	1,087.50
02-Mar-87 06-Mar-87	MELWIG, GLEN	39.0	975.00
09-Mar-87 13-Mar-87	MELWIG, GLEN	40.0	1,000.00
16-Mar-87 20-Mar-87	MELWIG, GLEN	38.3	962.50
23-Mar-87 27-Mar-87	MELWIG, GLEN	40.0	1,000.00
30-Mar-87 03-Apr-87	MELWIG, GLEN	39.3	987.50
06-Apr-87 10-Apr-87	MELWIG, GLEN	40.0	1,000.00
13-Apr-87 17-Apr-87	MELWIG, GLEN	36.0	900.00
20-Apr-87 24-Apr-87	MELWIG, GLEN	40.0	1,000.00
27-Apr-87 01-May-87	MELWIG, GLEN	40.0	1,000.00
04-May-87 08-May-87	MELWIG, GLEN	40.0	1,000.00
11-May-87 15-May-87	MELWIG, GLEN	40.0	1,000.00

TIME-RELATED CONSULTANT COSTS

PERIOD	NAME	HOURS	AMOUNT \$
07-Dec-87 11-Dec-87	HELWIG, GLEN	38.0	950.00
14-Dec-87 18-Dec-87	HELWIG, GLEN	40.0	1,000.00
21-Dec-87 22-Dec-87	HELWIG, GLEN	12.0	300.00
06-Jan-88 15-Jan-88	HELWIG, GLEN	56.0	1,400.00
19-Jan-88 22-Jan-88	HELWIG, GLEN	32.0	800.00
23-Jan-88 29-Jan-88	HELWIG, GLEN	39.0	975.00
01-Feb-88 05-Feb-88	HELWIG, GLEN	37.5	937.50
08-Feb-88 12-Feb-88	HELWIG, GLEN	34.0	850.00
16-Feb-88 26-Feb-88	HELWIG, GLEN	31.5	787.50
29-Feb-88 04-Mar-88	HELWIG, GLEN	40.0	1,000.00
07-Mar-88 11-Mar-88	HELWIG, GLEN	40.0	1,000.00
14-Mar-88 18-Mar-88	HELWIG, GLEN	40.0	1,000.00
21-Mar-88 25-Mar-88	HELWIG, GLEN	36.5	912.50
28-Mar-88 01-Apr-88	HELWIG, GLEN	38.5	962.50
04-Apr-88 08-Apr-88	HELWIG, GLEN	36.5	912.50
11-Apr-88 15-Apr-88	HELWIG, GLEN	40.0	1,000.00
18-Apr-88 22-Apr-88	HELWIG, GLEN	40.0	1,000.00
25-Apr-88 29-Apr-88	HELWIG, GLEN	39.5	987.50
02-May-88 06-May-88	HELWIG, GLEN	39.0	975.00
09-May-88 20-May-88	HELWIG, GLEN	59.0	1,475.00
23-May-88 27-May-88	HELWIG, GLEN	40.0	1,000.00
31-May-88 03-Jun-88	HELWIG, GLEN	32.0	800.00
06-Jun-88 10-Jun-88	HELWIG, GLEN	40.0	1,000.00
13-Jun-88 17-Jun-88	HELWIG, GLEN	36.5	912.50
20-Jun-88 26-Jun-88	HELWIG, GLEN	40.0	1,000.00
27-Jun-88 01-Jul-88	HELWIG, GLEN	40.0	1,000.00
05-Jul-88 08-Jul-88	HELWIG, GLEN	32.0	800.00
11-Jul-88 15-Jul-88	HELWIG, GLEN	40.0	1,000.00
18-Jul-88 22-Jul-88	HELWIG, GLEN	40.0	1,000.00
25-Jul-88 29-Jul-88	HELWIG, GLEN	40.0	1,000.00
01-Aug-88 05-Aug-88	HELWIG, GLEN	40.0	1,000.00
16-Aug-88 19-Aug-88	HELWIG, GLEN	31.0	775.00
22-Aug-88 26-Aug-88	HELWIG, GLEN	40.0	1,000.00
29-Aug-88 02-Sep-88	HELWIG, GLEN	40.0	1,000.00
06-Sep-88 09-Sep-88	HELWIG, GLEN	32.0	800.00
12-Sep-88 16-Sep-88	HELWIG, GLEN	40.0	1,000.00
19-Sep-88 23-Sep-88	HELWIG, GLEN	40.0	1,000.00
26-Sep-88 30-Sep-88	HELWIG, GLEN	35.5	887.50
03-Oct-88 07-Oct-88	HELWIG, GLEN	40.0	1,000.00
10-Oct-88 14-Oct-88	HELWIG, GLEN	39.0	975.00
17-Oct-88 21-Oct-88	HELWIG, GLEN	40.0	1,000.00
24-Oct-88 28-Oct-88	HELWIG, GLEN	38.0	950.00
31-Oct-88 04-Nov-88	HELWIG, GLEN	40.0	1,000.00
07-Nov-88 11-Nov-88	HELWIG, GLEN	40.0	1,000.00
14-Nov-88 18-Nov-88	HELWIG, GLEN	38.5	962.50
21-Nov-88 23-Nov-88	HELWIG, GLEN	24.0	600.00
28-Nov-88 02-Dec-88	HELWIG, GLEN	36.0	900.00
05-Dec-88 09-Dec-88	HELWIG, GLEN	40.0	1,000.00
12-Dec-88 16-Dec-88	HELWIG, GLEN	38.0	950.00
19-Dec-88 23-Dec-88	HELWIG, GLEN	36.0	900.00
27-Dec-88 30-Dec-88	HELWIG, GLEN	28.8	718.75
03-Jan-89 05-Jan-89	HELWIG, GLEN	24.0	600.00
09-Jan-89 13-Jan-89	HELWIG, GLEN	40.0	1,000.00
17-Jan-89 18-Jan-89	HELWIG, GLEN	16.0	400.00
06-Feb-89 10-Feb-89	HELWIG, GLEN	40.0	1,000.00
13-Feb-89 17-Feb-89	HELWIG, GLEN	40.0	1,000.00
21-Feb-89 24-Feb-89	HELWIG, GLEN	32.0	800.00
27-Feb-89 03-Mar-89	HELWIG, GLEN	40.0	1,000.00
06-Mar-89 10-Mar-89	HELWIG, GLEN	28.0	700.00
16-Mar-89 17-Mar-89	HELWIG, GLEN	16.0	400.00
20-Mar-89 24-Mar-89	HELWIG, GLEN	40.0	1,000.00
27-Mar-89 31-Mar-89	HELWIG, GLEN	40.0	1,000.00
03-Apr-89 07-Apr-89	HELWIG, GLEN	38.5	962.50
10-Apr-89 14-Apr-89	HELWIG, GLEN	38.0	950.00
17-Apr-89 21-Apr-89	HELWIG, GLEN	37.5	937.50
01-May-89 05-May-89	HELWIG, GLEN	40.0	1,000.00
08-May-89 12-May-89	HELWIG, GLEN	40.0	1,000.00
15-May-89 19-May-89	HELWIG, GLEN	40.0	1,000.00
22-May-89 26-May-89	HELWIG, GLEN	40.0	1,000.00

TIME-RELATED CONSULTANT COSTS

PERIOD	NAME	HOURS	AMOUNT \$
12-Jun-89 16-Jun-89	HELWIG, GLEN	40.0	1,000.00
19-Jun-89 23-Jun-89	HELWIG, GLEN	38.5	962.50
26-Jun-89 28-Jun-89	HELWIG, GLEN	24.0	600.00
05-Jul-89 07-Jul-89	HELWIG, GLEN	20.0	500.00
10-Jul-89 14-Jul-89	HELWIG, GLEN	40.0	1,000.00
17-Jul-89 21-Jul-89	HELWIG, GLEN	40.0	1,000.00
24-Jul-89 28-Jul-89	HELWIG, GLEN	40.0	1,000.00
31-Jul-89 04-Aug-89	HELWIG, GLEN	40.0	1,000.00
07-Aug-89 11-Aug-89	HELWIG, GLEN	38.5	962.50
14-Aug-89 18-Aug-89	HELWIG, GLEN	40.0	1,000.00
21-Aug-89 25-Aug-89	HELWIG, GLEN	40.0	1,000.00
28-Aug-89 31-Aug-89	HELWIG, GLEN	32.0	800.00
05-Sep-89 08-Sep-89	HELWIG, GLEN	32.0	800.00
11-Sep-89 15-Sep-89	HELWIG, GLEN	40.0	1,000.00
18-Sep-89 22-Sep-89	HELWIG, GLEN	40.0	1,000.00
25-Sep-89 29-Sep-89	HELWIG, GLEN	40.0	1,000.00
02-Oct-89 06-Oct-89	HELWIG, GLEN	30.5	762.50
09-Oct-89 13-Oct-89	HELWIG, GLEN	40.0	1,000.00
16-Oct-89 20-Oct-89	HELWIG, GLEN	40.0	1,000.00
23-Oct-89 27-Oct-89	HELWIG, GLEN	40.0	1,000.00
30-Oct-89 03-Nov-89	HELWIG, GLEN	40.0	1,000.00
06-Nov-89 09-Nov-89	HELWIG, GLEN	32.0	800.00
13-Nov-89 17-Nov-89	HELWIG, GLEN	40.0	1,000.00
20-Nov-89 22-Nov-89	HELWIG, GLEN	24.0	600.00
27-Nov-89 01-Dec-89	HELWIG, GLEN	40.0	1,000.00
04-Dec-89 08-Dec-89	HELWIG, GLEN	35.5	887.50
11-Dec-89 15-Dec-89	HELWIG, GLEN	34.0	850.00
18-Dec-89 18-Dec-89	HELWIG, GLEN	8.0	200.00
04-Jan-90 05-Jan-90	HELWIG, GLEN	16.0	400.00
08-Jan-90 12-Jan-90	HELWIG, GLEN	39.0	975.00
16-Jan-90 19-Jan-90	HELWIG, GLEN	19.5	487.50
01-Feb-90 02-Feb-90	HELWIG, GLEN	16.0	400.00
05-Feb-90 09-Feb-90	HELWIG, GLEN	20.0	500.00
12-Feb-90 16-Feb-90	HELWIG, GLEN	16.0	400.00
20-Feb-90 23-Feb-90	HELWIG, GLEN	16.0	400.00
26-Feb-90 02-Mar-90	HELWIG, GLEN	20.0	500.00
05-Mar-90 09-Mar-90	HELWIG, GLEN	20.0	500.00
12-Mar-90 16-Mar-90	HELWIG, GLEN	28.0	700.00
19-Mar-90 23-Mar-90	HELWIG, GLEN	37.0	925.00
26-Mar-90 30-Mar-90	HELWIG, GLEN	40.0	1,000.00
		5,084.0	127,100.0
25-Sep-90 02-Nov-90	McGEE, HARVIN	19.0	760.00
03-Nov-90 08-Dec-90	McGEE, HARVIN	17.0	680.00
26-Dec-90 16-Feb-91	McGEE, HARVIN	21.0	840.00
18-Feb-91 03-Apr-91	McGEE, HARVIN	26.5	1,060.00
06-Apr-91 20-Apr-91	McGEE, HARVIN	18.0	720.00
		101.5	4,060.00
24-Mar-91 26-Mar-91	ROSE, RALPH	32.0	800.00
06-May-91 10-May-91	ROSE, RALPH	40.0	1,000.00
16-Apr-91 03-May-91	ROSE, RALPH	84.0	2,100.00
		156.0	3,900.00
14-Oct-85 25-Oct-85	THOMAS, KEN	80.0	2,160.00
28-Oct-85 01-Nov-85	THOMAS, KEN	40.0	1,080.00
04-Nov-85 15-Nov-85	THOMAS, KEN	80.0	2,160.00
18-Nov-85 02-Dec-85	THOMAS, KEN	96.0	2,592.00
06-Dec-85 13-Dec-85	THOMAS, KEN	96.0	2,592.00
16-Dec-85 31-Dec-85	THOMAS, KEN	80.0	2,160.00
02-Jan-86 15-Jan-86	THOMAS, KEN	91.0	2,457.00
16-Jan-86 02-Feb-86	THOMAS, KEN	88.0	2,376.00
03-Feb-86 18-Feb-86	THOMAS, KEN	88.0	2,376.00
19-Feb-86 05-Mar-86	THOMAS, KEN	08.0	2,016.00

TIME-RELATED CONSULTANT COSTS

PERIOD	NAME	HOURS	AMOUNT \$
12-May-86 27-May-86	THOMAS, KEN	94.0	2,538.00
28-May-86 11-Jun-86	THOMAS, KEN	88.0	2,376.00
12-Jun-86 26-Jun-86	THOMAS, KEN	87.0	2,349.00
27-Jun-86 15-Jul-86	THOMAS, KEN	89.0	2,403.00
16-Jul-86 31-Jul-86	THOMAS, KEN	88.0	2,376.00
04-Aug-86 18-Aug-86	THOMAS, KEN	88.0	2,376.00
19-Aug-86 04-Sep-86	THOMAS, KEN	88.0	2,376.00
05-Sep-86 05-Oct-86	THOMAS, KEN	186.0	5,022.00
13-Oct-86 27-Oct-86	THOMAS, KEN	89.3	2,416.50
28-Oct-86 11-Nov-86	THOMAS, KEN	90.0	2,430.00
12-Nov-86 26-Nov-86	THOMAS, KEN	93.0	2,511.00
01-Dec-86 12-Dec-86	THOMAS, KEN	93.0	2,511.00
15-Dec-86 31-Dec-86	THOMAS, KEN	76.0	2,052.00
02-Jan-87 16-Jan-87	THOMAS, KEN	90.0	2,430.00
20-Jan-87 04-Feb-87	THOMAS, KEN	91.0	2,457.00
05-Feb-87 20-Feb-87	THOMAS, KEN	80.0	2,160.00
26-Feb-87 10-Mar-87	THOMAS, KEN	85.0	2,295.00
11-Mar-87 25-Mar-87	THOMAS, KEN	96.0	2,592.00
26-Mar-87 10-Apr-87	THOMAS, KEN	81.0	2,187.00
13-Apr-87 27-Apr-87	THOMAS, KEN	85.0	2,295.00
28-Apr-87 12-May-87	THOMAS, KEN	89.0	2,403.00
13-May-87 28-May-87	THOMAS, KEN	88.0	2,376.00
29-May-87 12-Jun-87	THOMAS, KEN	88.0	2,376.00
15-Jun-87 19-Jun-87	THOMAS, KEN	40.0	1,080.00
22-Jun-87 29-Jun-87	THOMAS, KEN	42.0	1,190.70
30-Jun-87 07-Jul-87	THOMAS, KEN	42.0	1,190.70
08-Jul-87 15-Jul-87	THOMAS, KEN	48.0	1,360.80
16-Jul-87 24-Jul-87	THOMAS, KEN	48.0	1,360.80
27-Jul-87 31-Jul-87	THOMAS, KEN	36.0	1,020.60
03-Aug-87 10-Aug-87	THOMAS, KEN	53.0	1,502.55
11-Aug-87 26-Aug-87	THOMAS, KEN	96.0	2,721.60
27-Aug-87 04-Sep-87	THOMAS, KEN	48.0	1,360.80
08-Sep-87 15-Sep-87	THOMAS, KEN	48.0	1,360.80
16-Sep-87 23-Sep-87	THOMAS, KEN	48.0	1,360.80
24-Sep-87 01-Oct-87	THOMAS, KEN	48.0	1,360.80
02-Oct-87 09-Oct-87	THOMAS, KEN	48.0	1,360.80
12-Oct-87 19-Oct-87	THOMAS, KEN	48.0	1,360.80
20-Oct-87 27-Oct-87	THOMAS, KEN	48.0	1,360.80
28-Oct-87 06-Nov-87	THOMAS, KEN	64.0	1,814.40
09-Nov-87 20-Nov-87	THOMAS, KEN	71.0	2,012.85
23-Nov-87 04-Dec-87	THOMAS, KEN	64.0	1,814.40
07-Dec-87 15-Dec-87	THOMAS, KEN	56.0	1,587.60
16-Dec-87 24-Dec-87	THOMAS, KEN	55.0	1,559.25
28-Dec-87 04-Jan-88	THOMAS, KEN	41.0	1,162.35
05-Jan-88 15-Jan-88	THOMAS, KEN	74.0	2,097.90
19-Jan-88 29-Jan-88	THOMAS, KEN	65.0	1,842.75
01-Feb-88 05-Feb-88	THOMAS, KEN	40.0	1,134.00
08-Feb-88 09-Feb-88	THOMAS, KEN	47.5	1,346.63
17-Feb-88 25-Feb-88	THOMAS, KEN	56.0	1,587.60
26-Feb-88 04-Mar-88	THOMAS, KEN	48.0	1,360.80
		4,714.5	129,157.88
TOTAL		11,370.2	8301,219.88

TIME-RELATED CONTRACT LABOR

WEEK ENDING	HOURS	AMOUNT (\$)
23-Nov-87	13.50	226.53
07-Dec-87	40.00	671.20
14-Dec-87	40.00	671.20
21-Dec-87	32.00	536.96
28-Dec-87	32.00	536.96
04-Jan-88	36.00	604.08
11-Jan-88	38.00	637.64
19-Jan-88	32.00	536.96
25-Jan-88	40.00	671.20
01-Feb-88	40.00	671.20
08-Feb-88	40.00	671.20
15-Feb-88	40.00	671.20
22-Feb-88	40.00	671.20
29-Feb-88	40.00	671.20
11-Mar-88	40.00	671.20
18-Mar-88	40.00	671.20
25-Mar-88	40.00	671.20
01-Apr-88	40.00	671.20
08-Apr-88	40.00	671.20
15-Apr-88	40.00	671.20
22-Apr-88	40.00	671.20
06-May-88	40.00	671.20
13-May-88	35.00	587.30
20-May-88	40.00	671.20
26-May-88	29.00	486.62
03-Jun-88	30.00	503.40
10-Jun-88	40.00	671.20
17-Jun-88	21.00	352.38
24-Jun-88	36.00	604.08
01-Jul-88	40.00	671.20
08-Jul-88	40.00	671.20
15-Jul-88	40.00	671.20
22-Jul-88	39.00	654.42
19-Aug-88	39.50	662.81
26-Aug-88	37.00	620.86
02-Sep-88	36.50	619.77
09-Sep-88	37.75	590.06
16-Sep-88	36.00	611.28
23-Sep-88	40.00	679.20
30-Sep-88	37.00	628.26
07-Oct-88	16.00	271.68
13-Oct-88	32.00	543.36
21-Oct-88	35.00	619.28
28-Oct-88	36.25	633.29
04-Nov-88	36.50	619.77
11-Nov-88	32.00	543.30
18-Nov-88	40.00	679.20
22-Nov-88	16.00	279.52
02-Dec-88	40.00	698.80
09-Dec-88	36.50	637.66
16-Dec-88	36.50	637.66
23-Dec-88	17.00	296.99
30-Dec-88	34.00	593.98
06-Jan-89	32.00	559.04
13-Jan-89	39.50	690.07
19-Jan-89	31.00	541.57
27-Jan-89	40.00	698.80
03-Feb-89	40.00	698.80
10-Feb-89	16.00	279.52
24-Feb-89	40.00	698.80
03-Mar-89	40.00	698.80
10-Mar-89	40.00	698.80
17-Mar-89	38.50	672.60
24-Mar-89	36.00	628.92
31-Mar-89	40.00	698.80
07-Apr-89	36.50	602.72
14-Apr-89	40.00	698.80

TIME-RELATED CONTRACT LABOR

WEEK ENDING	HOURS	AMOUNT (\$)
-----	-----	-----
21-Apr-89	24.00	419.28
28-Apr-89	34.50	602.72
03-May-89	24.75	432.38
12-May-89	40.00	698.80
18-May-89	37.75	659.49
26-May-89	38.50	672.60
02-Jun-89	31.00	541.57
09-Jun-89	40.00	698.80
16-Jun-89	40.00	698.80
23-Jun-89	40.00	698.80
29-Jun-89	32.00	559.04
07-Jul-89	22.00	384.34
14-Jul-89	36.50	637.66
21-Jul-89	23.00	401.81
28-Jul-89	32.00	559.04
04-Aug-89	39.00	681.33
11-Aug-89	39.00	681.33
18-Aug-89	40.00	698.80
25-Aug-89	40.00	698.80
30-Aug-89	14.00	244.58
08-Sep-89	32.00	559.04
15-Sep-89	37.00	646.39
22-Sep-89	39.00	681.33
28-Sep-89	24.00	419.28
06-Oct-89	28.50	497.90
13-Oct-89	36.50	637.66
20-Oct-89	32.00	559.04
27-Oct-89	40.00	698.80
03-Nov-89	39.00	681.33
09-Nov-89	32.00	559.04
17-Nov-89	38.00	663.86
22-Nov-89	24.00	419.28
01-Dec-89	32.00	559.04
08-Dec-89	35.00	611.45
15-Dec-89	38.00	663.86
22-Dec-89	33.00	576.51
29-Dec-89	30.00	524.10
05-Jan-90	32.00	559.04
10-Jan-90	24.00	419.28
19-Jan-90	32.00	559.04
26-Jan-90	39.00	681.33
02-Feb-90	29.00	506.63
09-Feb-90	30.00	524.10
16-Feb-90	34.25	633.29
23-Feb-90	31.25	545.94
01-Mar-90	28.00	489.16
09-Mar-90	29.00	506.63
16-Mar-90	26.00	454.22
23-Mar-90	39.00	681.33
30-Mar-90	38.00	663.86
05-Apr-90	31.50	550.31
13-Apr-90	37.00	646.39
20-Apr-90	37.00	646.39
27-Apr-90	30.00	524.10
04-May-90	38.00	663.89
11-May-90	40.00	698.80
18-May-90	35.00	611.45
25-May-90	39.00	681.33
01-Jun-90	18.50	288.25
08-Jun-90	33.00	576.51
15-Jun-90	23.00	401.81
22-Jun-90	27.50	480.43
01-Jul-90	31.00	541.57
06-Jul-90	24.00	419.28
13-Jul-90	38.00	663.86
20-Jul-90	35.50	620.19
27-Jul-90	40.00	698.80

TIME-RELATED CONTRACT LABOR

WEEK ENDING	HOURS	AMOUNT (\$)
03-Aug-90	37.50	655.13
10-Aug-90	37.50	655.13
17-Aug-90	37.00	646.39
24-Aug-90	33.00	576.51

DIANNE BARCHES' TOTAL	4,745.00	81,596.55
03-Feb-91	30.00	432.00
10-Feb-91	37.00	533.00
17-Feb-91	31.75	457.00
24-Feb-91	32.00	440.00
03-Mar-91	40.00	576.00
10-Mar-91	40.00	576.00
17-Mar-91	8.00	115.00

EXECUTIVE SECRETARY TOTAL	218.75	3,149.00

TOTAL	4,963.75	84,745.55
=====		

TIME RELATED OTHER DIRECT COSTS

DATE	TASK	VENDOR	AMOUNT
EQUIPMENT RENTAL			
17-Dec-89	9	GJ-83	(68.55)
08-Apr-90	21	CONTINENTAL RESOURCES (TMS UNITS)	96.46
25-Mar-90	21	CONTINENTAL RESOURCES (TMS UNITS)	135.66
22-Apr-90	21	CONTINENTAL RESOURCES (TMS UNITS)	96.46
08-Apr-90	21	CONTINENTAL RESOURCES (TMS UNITS)	119.53
08-Apr-90	22	CONTINENTAL RESOURCES (TMS UNITS)	119.53
08-Apr-90	22	CONTINENTAL RESOURCES (TMS UNITS)	96.46
28-Jan-90	22	CONTINENTAL RESOURCES (TMS UNITS)	192.92
22-Apr-90	22	CONTINENTAL RESOURCES (TMS UNITS)	335.52
11-Mar-90	22	CONTINENTAL RESOURCES (TMS UNITS)	192.92
27-Aug-89	22	CONTINENTAL RESOURCES (TMS UNITS)	192.92
31-Dec-89	22	CONTINENTAL RESOURCES (TMS UNITS)	192.92
20-May-90	22	CONTINENTAL RESOURCES (TMS UNITS)	431.98
30-Jul-89	22	CONTINENTAL RESOURCES (TMS UNITS)	192.92
24-Jun-90	22	CONTINENTAL RESOURCES (TMS UNITS)	192.92
11-Mar-90	22	CONTINENTAL RESOURCES (TMS UNITS)	192.92
12-Aug-90	22	CONTINENTAL RESOURCES (TMS UNITS)	192.82
04-Jun-89	22	CONTINENTAL RESOURCES (TMS UNITS)	225.14
25-Mar-90	22	CONTINENTAL RESOURCES (TMS UNITS)	135.65
24-Sep-89	22	CONTINENTAL RESOURCES (TMS UNITS)	192.92
17-Dec-89	22	GJ-83	192.92
25-Jun-89	22	CONTINENTAL RESOURCES (TMS UNITS)	192.92
23-Sep-90	21	CONTINENTAL RESOURCES (TMS UNITS)	281.00
18-Nov-90	21	CONTINENTAL RESOURCES (TMS UNITS)	158.00
09-Sep-90	22	CONTINENTAL RESOURCES (TMS UNITS)	239.00
09-Sep-90	22	CONTINENTAL RESOURCES (TMS UNITS)	193.00
23-Sep-90	22	CONTINENTAL RESOURCES (TMS UNITS)	478.00
07-Oct-90	22	CONTINENTAL RESOURCES (TMS UNITS)	432.00
18-Nov-90	22	CONTINENTAL RESOURCES (TMS UNITS)	158.00
16-Dec-90	22	CONTINENTAL RESOURCES (TMS UNITS)	432.00
16-Dec-90	22	CONTINENTAL RESOURCES (TMS UNITS)	193.00
30-Dec-90	22	CONTINENTAL RESOURCES (TMS UNITS)	432.00

TOTAL TIME-RELATED EQUIPMENT RENTAL 26,841.86

INSURANCE

22-Nov-87	8	GJ-68	5,908.00
26-Mar-89	8	GJ-110	4,430.97
25-Jun-89	8	GJ-209	984.66
23-Apr-89	8	GJ-127	492.33
02-Mar-86	13	L.R.N. & C. INSURANCE	1,860.00
08-Jun-86	14	L.R.N. & C. INSURANCE	5,408.00
29-Jun-86	14	GJ-296	(5,408.00)
29-Jun-86	20	GJ-296	5,408.00

TOTAL TIME-RELATED INSURANCE 819,083.96

PROJECT SUPPLIES

07-Jul-85	2	ADCON	248.56
07-Jul-85	2	NOVA BLUE	295.60
29-Sep-85	2	KROY INC.	355.79
31-Jul-88	8	VISUAL SYSTEMS	125.30
03-Jan-88	8	NOVA BLUE	79.16
15-Jan-89	9	VISUAL SYSTEMS	131.57
26-Jun-88	9	VISUAL SYSTEMS	62.64
23-Oct-88	9	VISUAL SYSTEMS	80.08
08-May-88	9	VISUAL SYSTEMS	62.65
05-Jun-88	12	LANIER BUSINESS PRODUCTS	69.70
28-Feb-88	12	NOVA BLUE	79.16
09-Nov-86	12	NOVA BLUE	26.88
13-Aug-89	12	VISUAL SYSTEMS	197.35
15-Mar-87	12	VISUAL SYSTEMS	77.60

2130

PLAINTIFF'S
EXHIBIT

015

TIME RELATED OTHER DIRECT COSTS

DATE	TASK	VENDOR	AMOUNT
09-Apr-89	12	VISUAL SYSTEMS	270.01
28-Sep-86	12	CARROLL'S STATIONERS	78.03
28-Aug-88	12	LANIER BUSINESS PRODUCTS	38.35
05-Jun-88	12	LANIER BUSINESS PRODUCTS	314.17
24-Apr-88	12	VISUAL SYSTEMS	23.28
31-Jul-88	12	LANIER BUSINESS PRODUCTS	75.66
10-Nov-85	13	DORN'S PHOTO SHOP	71.93
13-Apr-86	13	LANIER BUSINESS PRODUCTS	93.60
28-Sep-86	13	CARROLL'S STATIONERS	41.71
11-May-86	14	DOCUMENT ENGINEERING	27.79
09-Nov-86	14	CARROLL'S STATIONERS	1.56
23-Nov-86	14	CARROLL'S STATIONERS	30.96
21-Dec-86	14	LANIER BUSINESS PRODUCTS	62.60
28-Feb-88	17	VISUAL SYSTEMS	27.94
15-Mar-87	17	MARYLAND BLUEPRINT CO.	83.60
23-Nov-86	17	NOVA BLUE	26.87
28-Sep-86	17	CARROLL'S STATIONERS	26.10
05-Jun-88	17	LANIER BUSINESS PRODUCTS	314.17
24-Apr-88	17	VISUAL SYSTEMS	23.29
31-Jan-88	17	VISUAL SYSTEMS	26.11
07-Oct-90	21	NOVA BLUE	60.00
25-Mar-90	21	NOVA BLUE	87.08
12-Aug-90	21	VISUAL SYSTEMS	31.00
26-Aug-90	21	NOVA BLUE	114.00
07-Oct-90	21	NOVA BLUE	204.00
05-Nov-89	21	NOVA BLUE	87.08
27-Aug-89	21	NOVA BLUE	87.09
25-Mar-90	21	VISUAL SYSTEMS	13.69
22-Apr-90	21	VISUAL SYSTEMS	49.00
17-Jun-90	21	VISUAL SYSTEMS	125.40
22-Apr-90	21	ACCUPRINT INC.	65.84
17-Dec-89	21	VISUAL SYSTEMS	117.18
26-Jun-88	21	VISUAL SYSTEMS	10.31
07-Oct-90	21	VISUAL SYSTEMS	184.00
25-Mar-90	22	NOVA BLUE	87.08
22-Apr-90	22	VISUAL SYSTEMS	49.00
07-Oct-90	22	NOVA BLUE	60.00
05-Nov-89	22	NOVA BLUE	87.08
07-Oct-90	22	VISUAL SYSTEMS	184.00
27-Aug-89	22	NOVA BLUE	87.08
10-Sep-89	22	NOVA BLUE	114.00
17-Dec-89	22	VISUAL SYSTEMS	117.17
17-Jun-90	22	VISUAL SYSTEMS	125.40
22-Apr-90	22	ACCUPRINT INC.	65.83
25-Mar-90	22	VISUAL SYSTEMS	13.69
06-May-90	22	NOVA BLUE	205.00
23-Sep-90	22	VISUAL SYSTEMS	31.00
TOTAL TIME-RELATED PROJECT SUPPLIES			26,373.12
TIME-RELATED POSTAGE COSTS			1,800.00 1\
TIME-RELATED COURIER COSTS			10,336.00 2\
TOTAL TIME-RELATED "OTHER DIRECT COSTS"			844,434.94

1\ CALCULATED AS \$300/YEAR FOR 6 YEARS, BASED ON RECORDED COST TRENDS FOR FISCAL YEARS 1986-1991.

2\ CALCULATED AS \$2000/YEAR FOR 5 YEARS, BASED ON RECORDED COST TRENDS FOR FISCAL YEARS 1986-1990, PLUS RECORDED COST THROUGH MAY, 1991 OF \$336.

**BUDGETED TIME-RELATED COSTS FOR CONTRACT MODIFICATIONS OTHER THAN
MODIFICATION #3 AND FIXED PRICE LEVEL OF EFFORT**

DESCRIPTION	MOD #10	MOD #31	MOD #32	MOD #35	MOD #36	MOD #38	MOD #44	TOTAL
ON-SITE DIRECT LABOR:								
TECHNICAL DIRECTOR	1,983	7,240						9,224
PROJECT MANAGER		30,406	34	476	44,088	37	441	75,482
PROJECT COORDINATOR	16,590							16,590
SR LOGISTICS ENGINEER		11,199		890			94	12,183
SR LOGISTICS ANALYST						96		96
LOGISTICS MGT SPECIALIST		4,975	104					5,079
SR SYSTEMS ENGINEER		10,120		2,537			447	13,124
SYSTEMS ENGINEER TEST				1,262			333	1,594
SR TELECOMM ENGINEER		8,363						8,363
SR ENGINEER	3,497							3,497
CONFIGURATION MGR				659			554	1,213
CONFIGURATION MGT SPECIALIST		8,510						8,510
TEST DIRECTOR		7,466						7,466
T & E ENGINEER		6,386						6,386
COST ANALYST	1,016							1,016
SECRETARY/WORD PROCESSOR	840	20,961	33	661	7,413	74	79	30,061
CONTRACT ADMIN (COMPOSITE)	2,427	5,427	64	948		203		9,068
SUBCONTRACT ADMIN (COMPOSITE)	1,322	3,612	34	657		169		5,794
TOTAL TIME-RELATED DIRECT LABOR, ON-SITE	27,675	124,665	268	8,090	51,501	579	1,967	214,744
TOTAL OVERHEAD	28,284	129,813	334	10,082	60,364	637	2,718	232,231
TIME-RELATED TRAVEL	7,489	36,490	0	0	0	0	9,090	53,069
TIME-RELATED CONSULTANTS	0	15,168	0	672	0	0	9,737	25,577
TIME-RELATED DIRECT COSTS AND OVERHEAD	63,449	306,137	603	18,844	111,865	1,217	23,513	525,621
TOTAL GENERAL & ADMINISTRATIVE	5,349	35,634	55	1,572	9,162	93	2,438	54,302
TOTAL TIME-RELATED COSTS	68,798	341,771	658	20,416	121,027	1,310	25,951	579,923

**SUMMARY OF TIME-RELATED COSTS FOR
REMOTE CONTROL ELEMENT REPROCUREMENT**

	RCE

DIRECT LABOR	67,198 (EXHIBIT 982)
ON-SITE OVERHEAD	88,533 (EXHIBIT 982)
TRAVEL	4,993

	160,724
 GENERAL & ADMINISTRATIVE	 12,263

 TOTAL	 172,987

1 performance of the PDFA potion of the contract.

2 BY MR. BOEHLERT:

3 Q Could you read the second paragraph of this
4 letter, please?

5 A "Any assistance given to you on this contract, or
6 any acceptance by TechDyn Systems Corporation, of delinquent
7 goods or services, will be solely for the purpose of
8 mitigating damages and it is not the intention of TechDyn
9 Systems Corporation to condone any delinquency, or waive any
10 rights that TechDyn Systems Corporation has under the
11 contract."

12 Q What did you mean by that?

13 A We basically were putting Whittaker on notice that
14 regardless of whether we terminated for default, or didn't,
15 that we were not waiving any of our rights for
16 nonperformance.

17 Q Has Whittaker's performance on the subcontract had
18 any impact on TechDyn?

19 A Yes.

20 Q What way?

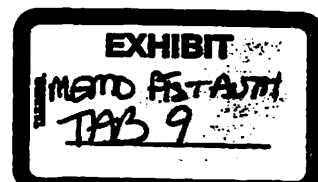
21 A Well, it has increased the cost of our performance
22 under this project.

23 Q Have you been able to assess those costs?

24 MR. WORK: Objection. Strike that, Your Honor.

25 MR. BOEHLERT: Have you been able to assess --

2134



1 THE WITNESS: Yes, I have.

2 BY MR. BOEHLERT:

3 Q How did you do that?

4 A We had gone through the financial records of the
5 company, virtually every document that relates to this
6 contract. We've looked at the schedules and the periods of
7 delay that were being incurred. And have come up with our
8 assessment of the damage impact, against the Corporation.

9 MR. WORK: Your Honor, I would like to approach
10 the bench, please.

11 JUDGE BROWN: All right.

12 (Bench conference.)

13 JUDGE BROWN: Are we done with --

14 MR. BOEHLERT: Yes, sir.

15 JUDGE BROWN: What is that?

16 MR. BOEHLERT: That is 1017.

17 JUDGE BROWN: Okay, we are done with that.

18 MR. BOEHLERT: Yes.

19 (Pause.)

20 BY MR. BOEHLERT:

21 Q Mr. Hise, you said that you, that TechDyn has
22 computed its costs associated with --

23 MR. WORK: Objection, he does not have to repeat
24 what he said.

25 JUDGE BROWN: Just ask the next question.

1 MR. BOEHLERT: How did TechDyn compute those
2 costs?

3 THE WITNESS: As I was beginning to state, we
4 reviewed all the costs documents that relate to the ICCE
5 program. We --

6 BY MR. BOEHLERT:

7 Q Who was involved in that process?

8 A I was involved. My accounting staff was involved.
9 And we utilized the assistance of Scott Gray, who is with a
10 company called Barrington. He is a cost specialist.

11 Q What did you do to accumulate those costs?

12 A We took, as I said, all the documents that relate
13 to the ICCE program, we took those and then did analysis of
14 those costs that we felt were attributable to the delay that
15 had been caused to TechDyn by the subcontractor on this job.

16 Q What materials were reviewed, Mr. Hise? t

17 A Specifically, we reviewed all of the time sheets.
18 We reviewed all of the labor distribution reports that
19 result from the week, or the bi-weekly time sheets. We
20 reviewed all of the travel vouchers. We reviewed all of the
21 direct expenditure documents, invoices, the subcontract
22 payments, the material costs. We virtually looked at
23 hundreds and hundreds of documents, and the accounting files
24 that relate to this contract.

25 MR. WORK: Objection, and move to strike, Your

1 BY MR. BOEHLERT:

2 Q What else did you review, Mr. Hise?

3 A We reviewed the schedule, the performance
4 schedules that were prepared over time. We looked at the
5 price -- cost status report which was prepared on a
6 repetitive basis on this contract.

7 Q For what purpose?

8 A The purpose of that was -- that was a report that
9 was required by the prime contract which was a management
10 tool. It established for TechDyn a budget on this contract
11 from day one and it was used as a budget and a projection of
12 the costs that would be incurred as we went along. TechDyn
13 had other budget documents but this was one that had been
14 directed by the Government under the contract so we used it
15 as the primary tool for managing the contract.

16 Q Any other documents reviewed?

17 A We reviewed virtually every document that relates
18 to this contract. It was a very exhaustive time -- task of
19 going back and looking and determining what had happened as
20 relates to the non-performance of the directed
21 subcontractor.

22 Q Were you able to reach any conclusions regarding
23 TechDyn's damages as a result of that review?

24 A Yes, we were.

25 Q And were those conclusions reduced to writing?

1 A Yes, they have been.

2 JUDGE BROWN: Before we get to that, so that I
3 don't interrupt it, let's take our morning recess now.
4 We'll take 15 minutes and then we'll get to that later.

5 (Brief recess.)

6 BAILIFF: Remain seated and come to order.

7 JUDGE BROWN: Okay. Bring them in.

8 (Pause while jury is seated.)

9 JUDGE BROWN: Okay. We're ready to go -- oh,
10 we're not ready to go. We're almost ready to go.

11 (Pause.)

12 BY MR. BOEHLERT:

13 Q Were the conclusions you reached regarding damages
14 reduced to writing?

15 A Yes, they have been.

16 Q Mr. Hise, I place in front of you a document -- a
17 group of documents that have been previously marked as
18 Plaintiff's Exhibits 950 through 987 and also Exhibit 912.
19 And I ask you to look at those documents and tell me if you
20 can identify them.

21 (Pause.)

22 A Yes, I can.

23 Q Did you participate in the preparation of these
24 documents?

25 A Yes, I did.

1 A As an example, when we were waiting for the
2 counsel for Whittaker to come and review these documents, we
3 laid out the expense reports alone in one room, a vacant
4 room that we had, and that room was probably 10 by 30 and
5 they were in stacks -- they covered the entire floor. The
6 time sheets were of equal volume. The invoices that were
7 paid over the period of performance on this contract would
8 be file cabinets full. So there were just a lot of records.

9 Q And what was the purpose of these documents that
10 sit in front of you now, Plaintiff's Exhibit 950 through
11 987?

12 A The purpose was to take the pertinent documents
13 from those voluminous records that I indicated and condense
14 them down to the ones that were selected or used in coming
15 up with our damage analysis.

16 Q And do these documents truly and accurately
17 reflect the information contained in those source documents?

18 A They truly reflect the information in those
19 documents. To the extent that they're listed here on the
20 documents in this notebook, they are accurate to the last
21 degree.

22 MR. BOEHLERT: Your Honor, I move Plaintiff's
23 Exhibits 950 through 987 into evidence.

24 JUDGE BROWN: Any objection to 950 to 987?

25 MR. WORK: Objection to all of them, Your Honor.

1 down in the bottom right-hand corner. Not every page has a
2 page number but the exhibits are independently numbered so
3 if I'm talking about 950 or 951, and I'll probably be
4 referring to them pretty much like pages in a book -- would
5 you turn to page 951 or Exhibit 951. And if you would
6 follow along with me, I'd appreciate it.

7 If you have any questions or you get lost in this
8 process, please let me know or the judge know. The purpose
9 of those is to help you not to hinder you looking through
10 paper.

11 BY MR. BOEHLERT:

12 Q Mr. Hise, looking at Plaintiff's Exhibit 950, it
13 says summary of damages. Do you recognize this document?

14 A Yes, I do.

15 Q And what is it?

16 A It is a summary of the four categories that we
17 have collected the damages against -- used in collecting the
18 damages as a result from Whittaker non-performance.

19 Q The first category of damages there -- PDFA
20 damages -- claim amount -- \$3,240,611.

21 A Yes.

22 Q What does that refer to? What are PDFA damages?

23 A These are the damages that result from the
24 non-performance of the processing display functional area of
25 the subcontract with Whittaker.

1 Q And are those damages further defined?

2 A Yes, they are.

3 Q Would you turn to -- please turn to page 951 or
4 Exhibit 951.

5 A Yes.

6 Q The next page. At the very top, it says summary
7 of Whittaker caused PDFA damages. Do you recognize this
8 document?

9 A Yes, I do.

10 Q Now, on the left-hand side, it says description
11 and below it there are four entries: delay, excess
12 overhead, relocation of test beds, replacement of keyboard
13 and printer. Do you recognize those items?

14 A Yes, I do. Those are the four subcategories of
15 the damages that relate to the processing display functional
16 area.

17 Q Let's take them one by one if we might, please,
18 and I'd like you to explain to us how you computed the
19 amount being demanded.

20 Let's take delay first. What does delay mean?

21 A Delay means the extension of the program, the
22 delay in meeting the required contract delivery dates and
23 it's the damages in this case that result from that extended
24 delay.

25 Q And have you been able to quantify that delay?

1 A Yes.

2 Q And would you turn to page 952, please?

3 A Yes.

4 Q On this document, it says delay damages per day
5 and there's \$2,068 and delay days attributable to Whittaker
6 and there's 1243. What does the 1243 represent?

7 A Okay. The 1243 are the days that we feel that
8 Whittaker is totally responsible for as a result of their
9 non-performance.

10 Q How did you arrive at the number 1243 days?

11 A Okay. You take the start date of the contract and
12 go to the end. There are a certain number of days. What we
13 did is take the performance period of the basic contract,
14 including CENTAF, which would have been through February of
15 1987, and we further subtracted from the total number of
16 days during the period from the inception of the contract to
17 the end of the contract -- or, not to the end of the
18 contract but through the date that these were prepared,
19 which was in May of 1991 -- and we further took out of there
20 9.75 months.

21 Q Why did you do that?

22 A In MOD 36 to our contract, as a result of the
23 request for equitable adjustment that we had made to the Air
24 Force, they indicated to us or led us to believe that there
25 was -- they were recognizing that Whittaker had caused 9.75

1 months of delay to this contract. And in order not to
2 duplicate --

3 MR. WORK: Objection, Your Honor. There's no
4 foundation for what the Air Force did. Unless he wants to
5 pull out a document and show us that, that's just absolutely
6 improper evidence.

7 JUDGE BROWN: I sustain the objection to stating
8 that the Air Force believed that Whittaker caused delay and
9 ask the jury to disregard that. However, he may state why
10 he took out the 9.75 months without reference to what
11 somebody else said the cause was.

12 BY MR. BOEHLERT:

13 Q And why was that taken out?

14 A That was taken out because in the modification
15 that was issued by the Air Force, as a result of the
16 negotiations of that modification, it was our belief that
17 there was included in those dollars the costs associated
18 with 9.75 months of delay.

19 Q Are any of those dollars being demanded in this
20 lawsuit at all?

21 A Absolutely not. There are no costs that were
22 obtained from that modification included in the current
23 assessment of our damages.

24 Q The top number on this page 952, delay damages per
25 day, \$2068 --

1 reviewed those records to get familiar with the way they're
2 set up and the way the costs are accumulated.

3 Q What documents did you review?

4 A Well, as a generic category, I'll say just about
5 all the accounting and cost documents but the ones we
6 primarily relied on included summaries of the ICCE contract
7 costs, the general ledger for the ICCE project as well as
8 indirect departments. All the detailed cost information
9 such as invoices, purchase orders, time sheets, things of
10 that nature.

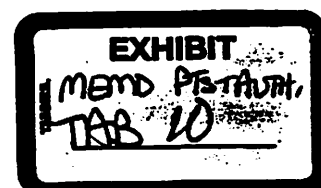
11 We reviewed the budgets from project schedule
12 status reports. Proposal modifications that were submitted,
13 submissions to the DCAA for indirect rates. All the
14 documents that go into the accounting system in the
15 recording of costs.

16 Q Okay. Based upon the review of those documents,
17 what did you next do?

18 A Well, once we were familiar with them, we set out
19 to understand cost increases or cost overruns on the job and
20 then to try to understand what caused the cost to overrun
21 and try to specifically identify the increased costs that
22 came about from delays on the project and specific breaches
23 on the project.

24 Q Were you able to do that?

25 A Yes, we were.



1 Q What did you do next?

2 A Well, the next step is really to identify the
3 methodology that you're going to employ to price each
4 discrete claim item and I worked with Mr. Hise as well as
5 with my colleagues to identify the most appropriate
6 methodology to use and then basically followed it through --
7 went to the cost records and --

8 Q Did you arrive at a methodology?

9 A Yes.

10 Q What was it?

11 A Well, we've got five discrete claim areas and the
12 methodology --

13 MR. WORK: Objection, Your Honor. May we approach
14 the bench, please?

15 JUDGE BROWN: Yes.

16 MR. WORK: Again, I'm looking at the description
17 and the substance of his testimony and although it says he
18 will testify to his methodology, he does not satisfy the
19 Virginia rule in explaining what his opinions are with
20 regard to methodology and what the basis for those opinions
21 is.

22 That's the entire description of the substance of
23 his -- the summary of his opinion.

24 JUDGE BROWN: Okay.

25 MR. BOEHLERT: Your Honor, he is entitled to

1 cross-examination and I overrule the objection. He may
2 testify.

3 So we need to get all this stuff back. We need to
4 get the jury back and we need to get the witness back.
5 Maybe one of you would get the witness.

6 (Pause while jury and witness are seated.)

7 DIRECT EXAMINATION (Resumed)

8 BY MR. BOEHLERT:

9 Q Mr. Gray, what methodology did you use to compute
10 TechDyn's costs?

11 A We really relied on three basic principles. The
12 first is reliance on the actual costs or the historical
13 costs incurred by the company and recorded during the normal
14 course of business in the regular business records and using
15 those to identify the damage amount.

16 The second basic principle is to do discrete claim
17 calculations or to do separate claim calculations for each
18 area of damages.

19 And the third is to include in our claims only
20 those costs that are attributable to the actions that are
21 being alleged against Whittaker.

22 Q In your experience, Mr. Gray, is that a generally
23 accepted method of computing damages?

24 A Yes. Those are the principles and guidelines that
25 are accepted and are generally used in calculating a claim.

1 Q What about delay claims?

2 A Well, for a delay claim, what we've done is
3 analyzed the time related costs on the job and identified
4 those which were increased or really incurred due to the
5 PDFA delays attributable to Whittaker.

6 Q How did you do that?

7 A Again, the first step is the identification of
8 time related costs.

9 Q How did you do that?

10 A That -- it's a narrative process. It begins with
11 an understanding of why costs on the project are being
12 incurred. There are many costs on a project that are not
13 time related costs, that relate only to performing a
14 specific activity.

15 Q What type of costs are those?

16 A Well, we often refer to them as activity related
17 costs and that would be a cost that relates to specifically
18 performing a discrete item and work, such as purchasing a
19 piece of hardware that is going to be installed. That is
20 not affected by delay. You purchased that hardware and the
21 cost stays the same regardless of whether the contract is
22 pushed back or not.

23 Q So what, if anything, did you do in this process
24 with those type of costs?

25 A Well, again, here we're trying to identify the

1 delay costs attributable to Whittaker. So any costs that
2 aren't affected by delays, we excluded from our analysis and
3 didn't include them.

4 Q What costs were included?

5 A Just what we referred to as time related costs.

6 Q What did you identify as time related costs in
7 this case?

8 A Well, in this case, there's a very significant
9 component of time related labor and that relates to the
10 project personnel that are on the project for substantially
11 the whole period and each month, each day, each week, the
12 project gets pushed out, those people need to remain on the
13 project and the costs for those people increase.

14 Q So did you use all project personnel?

15 A No. No. Just --

16 Q What project personnel did you use?

17 A Just the core group of people that were required
18 to maintain the contract, if you will. The core group of
19 people that were required to stay on this contract for the
20 essential duration of the contract.

21 Q Were there other time related costs that you
22 identified?

23 A Yes. There is the on-site overhead or the
24 indirect overhead that relates to that labor that we
25 identified.

1 methodology field, which is the field that this man was
2 offered as an expert.

3 JUDGE BROWN: Well, I guess I got him off it,
4 because I didn't understand what claims meant. What claims
5 methodology meant. Ask the question, I am lost.

6 MR. BOEHLERT: Okay, I will.

7 (Pause.)

8 BY MR. BOEHLERT:

9 Q Are there various methodologies to compute
10 damages, delay related damages?

11 A Yes.

12 Q And are you familiar with those methodologies?

13 A Yes.

14 Q And what are some of them?

15 A Well, the method that is commonly used and is
16 generally used in the industry, is to determine a daily rate
17 of delay damages. And to apply that to the number of days
18 of delay that are being attributed to the defendant to
19 calculate the delay.

20 Q Is that what was done in this case?

21 A Yes, it is.

22 Q You mentioned a remote control element. What, if
23 anything, did you do to assess the remote control aspect of
24 this project?

25 A We went into the cost records, and identified the

1 right?

2 A That's correct.

3 Q As part of the remote control element point.

4 A Yes.

5 Q Thank you. Would you please resume the stand?

6 (Pause.)

7 Q Now, I see up in the box there, additional time
8 related costs attributable to Whittaker, \$2,315,153.

9 A Yes.

10 Q Now, turning to Plaintiff's Exhibit 953, if you
11 have that in front of you.

12 A Yes, sir, I do.

13 Q And coming down the page about half way, do you
14 see that same number, \$2,315,153?

15 A Yes, I do.

16 Q You just explain to us how you arrived at that
17 number, correct?

18 A Correct. Those are the time related costs that
19 are attributable to Whittaker.

20 Q Now, the next entry is divided by the number of
21 days in the delay period, 1,243 days.

22 A Yes.

23 Q How was that number arrived at?

24 A The entire contract period, for which these costs
25 related, for which this \$5,153,000 of the time related costs

1 relate, run from August 31 of 1985 up through May 19 of this
2 year, May 19, 1991. And that is 2,088 days, calendar days,
3 during that period.

4 Q All right.

5 A Now, again, part of that was originally
6 anticipated, and part of it was compensated by the Air
7 Force. So, we removed 18 months worth of days, 548 days
8 from the 2,088 and also 9.75 months worth of days, which is
9 297, to arrive at this number of days in this delay period.

10 Q To get at this number of delay days, what is the
11 ending date that you used, Mr. Gray?

12 A May 19 of 1991.

13 Q Of 1991. We have heard testimony that delays have
14 gone beyond May 19, 1991. In this calculation, is there any
15 compensation being demanded for that?

16 A No. Because when this was done, the most recent
17 cost data available was May 19. And so we needed to rely on
18 the costs that we had in hand at the time.

19 Q So, you had actual costs at that time to prepare
20 that number?

21 A That's right --

22 MR. WORK: Objection, Your Honor, we didn't have
23 actual costs. And again, we have a problem with relying on
24 some things that we didn't receive in discovery.

25 JUDGE BROWN: I overrule the objection.

1 BY MR. BOEHLERT:

2 Q The next entry is delay cost per day, \$1863. Do
3 you see that?

4 A Yes.

5 Q Okay. And is that the result of the division of
6 the two prior numbers?

7 A Yes. That's taking the same \$315,153 and dividing
8 it by the number of days and coming up with the average
9 delay cost per day.

10 Q Do you know why the profit rate of 11 percent was
11 used?

12 A Yes. That was the negotiated rate that was used
13 by TechDyn on this contract and also supported by historic
14 profitability of the company.

15 Q So you arrive at delay damages per day \$2068 per
16 day.

17 A That's correct.

18 Q What does that mean?

19 A That means that every extra day that TechDyn had
20 to stay out on the project they were damaged by that amount.

21 Q And turning now to Exhibit 952? Do you have that
22 document in front of you?

23 A Yes, I do.

24 Q And what does this document reflect?

25 A Well, this reflects the calculation of the delay

1 BY MR. BOEHLERT:

2 Q And did you personally have these conversations?

3 A Yes, I did.

4 Q And with whom did you speak?

5 A I spoke with Mr. Morrison. As well as Mr. Ellis
6 and Mr. Thornton. Mr. Everett Jones. And Mr. Rosen.

7 Q Did you ever have occasion to speak with Mr. Hise?

8

9 A Yes, I spoke to Mr. Hise on many occasions.

10 Q Are you familiar with the term total cost claim?

11 A Yes, I am.

12 Q What is a total cost claim?

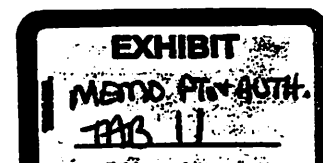
13 A Well, that's a methodology. A simple claim
14 methodology in which a contractor would calculate his
15 damages by taking total cost incurred on the project,
16 subtracting out the bid cost or the budgeted costs, to
17 determine an overrun and adding to that profit and interest
18 in mark ups to come up with a claim amount.

19 Q Did TechDyn use a total cost approach to compute
20 its damages?

21 A No, not on this project.

22 Q How did the TechDyn approach differ from a total
23 cost claim?

24 A First of all, it differed by identifying discreet
25 areas or discreet claim items. Identifying a delay claim,



1 identifying increase costs related to overhead. Increased
2 costs related to the test beds. Added costs for the RCE. By
3 identifying discreet claims and pricing them out, rather
4 than taking an aggregate approach and saying here is what we
5 lost doing everything, we identified specific items and just
6 found the increased cost for that.

7 That's one method. But I tell you the primary way
8 is just, you know, we did employ the top down approach,
9 which says, here is cost, minus bid, is the actual. We
10 built up to what the increased costs were, rather than just
11 subtracting down and claiming an entire overrun.

12 Q And was it by the method you just described that
13 you did this bottom up building of these damages?

14 A Yes. It is more the identification going in and
15 identifying increased costs, rather than just identifying an
16 overrun.

17 Q Have you used that methodology on other occasions,
18 Mr. Gray?

19 A Which methodology?

20 Q The methodology of the ground up approach to
21 damages?

22 A Oh, yes.

23 Q And that is the approach that TechDyn used in this
24 case?

25 A Yes.

1 methodology field, which is the field that this man was
2 offered as an expert.

3 JUDGE BROWN: Well, I guess I got him off it,
4 because I didn't understand what claims meant. What claims
5 methodology meant. Ask the question, I am lost.

6 MR. BOEHLERT: Okay, I will.

7 (Pause.)

8 BY MR. BOEHLERT:

9 Q Are there various methodologies to compute
10 damages, delay related damages?

11 A Yes.

12 Q And are you familiar with those methodologies?

13 A Yes.

14 Q And what are some of them?

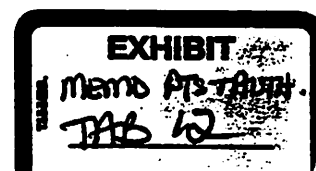
15 A Well, the method that is commonly used and is
16 generally used in the industry, is to determine a daily rate
17 of delay damages. And to apply that to the number of days
18 of delay that are being attributed to the defendant to
19 calculate the delay.

20 Q Is that what was done in this case?

21 A Yes, it is.

22 Q You mentioned a remote control element. What, if
23 anything, did you do to assess the remote control aspect of
24 this project?

25 A We went into the cost records, and identified the



1 specific instances of costs that arose, or were incurred
2 because of TechDyn's need to go and compete the RCE work.

3 (Pause.)

4 Q In your analysis, Mr. Gray, were you asked to
5 prepare a graft to depict the time related costs that were
6 accumulated by you and Mr. Hise in your analysis and then to
7 demonstrate which portion of those costs are being claimed
8 against Whittaker?

9 A Yes.

10 Q I present to you what has been marked as
11 Plaintiff's Exhibit 988 for identification and ask if you
12 can identify that document?

13 A Yes, I can.

14 Q What is it?

15 A This is a document I prepared --

16 MR. WORK: Could you please wait a moment? Thank
17 you.

18 THE WITNESS: This is a document that I prepared
19 to help graphically or pictorially present the methodology
20 or the delay claim that we calculated.

21 BY MR. BOEHLERT:

22 Q I am going to present to you what's previously
23 been marked as Plaintiff's Exhibit 953.

24 (Pause.)

25 Q I ask you whether the document you have in front

1 of you, Plaintiff's Exhibit 988, graphically depicts the
2 information on Plaintiff's Exhibit 953?

3 A Yes, it does.

4 MR. BOEHLERT: Your Honor, I move Plaintiff's
5 Exhibit 988 into evidence.

6 JUDGE BROWN: Any objection to 988?

7 MR. WORK: Yes. It is not an exhibit. It's a
8 visual aid. It's not evidence, it's a visual aid.

9 MR. BOEHLERT: It is based on evidence, Your
10 Honor. It's a graphic depiction of what is in evidence,
11 what has been received in evidence.

12 JUDGE BROWN: I don't think that's an objection,
13 unless there is something I am missing. I mean, he prepared
14 it. It is based on another exhibit. I don't understand the
15 objection, I guess.

16 MR. WORK: The understanding, the objection, Your
17 Honor, is that this is a visual aid, the same type that has
18 been used through the course of this hearing. It is simply
19 prepared to explain, conceptualize something. It is not
20 evidence. It is not real evidence. It is simply a
21 document.

22 JUDGE BROWN: I don't think a visual aid always
23 can't come into evidence. And I don't hear any other
24 objection to this one, so it is received. What number is
25 it?

1 MR. BOEHLERT: Nine - 88.

2 JUDGE BROWN: Plaintiff's Exhibit 988 is received.

3 (The document referred to, having
4 been previously marked for
5 identification as Plaintiff's
6 Exhibit 988, was received in
7 evidence.)

8 MR. BOEHLERT: Mr. Gray, I am going to put that on
9 the overhead projector here, and ask that you please step
10 down and I am also going to ask that the jury resume their -
11 - do you still have those exhibit books? The 900 series?
12 If you please would refer to page 953.

13 (Pause.)

14 MR. BOEHLERT: Mr. Gray, what is the purpose of
15 Plaintiff's Exhibit 953, calculation of delay damages per
16 day.

17 THE WITNESS: Well, the purpose of 953 is to show
18 the calculation of the daily delay damages that were
19 incurred by TechDyn on the ICCE program.

20 BY MR. BOEHLERT:

21 Q Now, with respect to that, would you please
22 explain this chart, and please explain with respect to all
23 of these time related costs, which you assembled for TechDyn
24 on this project, which portion of that is being claimed
25 against Whittaker in this law suit?

1 A As I said, the first step that we did was to
2 review the project and identify the time related costs of
3 the project. And that is essentially what this whole box
4 represents, \$5,153,000 from exhibit 953.

5 But you are not done when you get there. What you
6 are trying to get at are the added costs that came, that are
7 due to the delays attributable to Whittaker. So, when we
8 got in that and analyzed the time related costs, this \$5
9 million of time related costs, 1,352,000 related to
10 performance of the original contract, the 18 months that
11 were in the original contract between the Air Force and
12 TechDyn.

13 That is not attributable to Whittaker. That has
14 nothing to do with any delays that are cause.

15 Q Why isn't that being demanded against Whittaker?

16 A Well, because they were not caused by Whittaker.

17 Q TechDyn would have been there any way?

18 A That's correct. Those costs would have been
19 incurred regardless of --

20 Q Now, I'd like to take you to the next category
21 there. Caption, time related costs for modification number
22 36, \$733,079. What does that refer to?

23 A Those are the time related costs that were
24 incurred during the time period that was compensated by the
25 Air Force, the 9.75 month period, compensated by the Air

1 Force in MOD 36. So, again, those are costs that at this
2 point, are not being attributed to Whittaker because they
3 were reimbursed by the Air Force.

4 Q And TechDyn paid for that, so it is not being
5 claimed again?

6 A That's correct.

7 Q Now, in this bottom, on the bottom here. Time
8 related costs included in other MODs and claims. What are
9 MODs.

10 A Well those are modifications tot he contract
11 between TechDyn and the Air Force.

12 Q And there is a number there, \$753,910. Is that
13 being claimed against Whittaker?

14 A No, it is not.

15 Q Why not?

16 A Well, during the period following the 18 month
17 original contract period and the 9.75 month period
18 recognized by the Air Force, there were some selected
19 modifications to the contract that needed to be performed by
20 TechDyn. So, TechDyn would have, out in this period, some
21 low level of people, time related people, out there working.
22 Time related people, such as the project manager, part of
23 his time, Don Ellis, etc.

24 Q Were you able to determine what that level left
25 would have been for purposes of contract modifications?

1 A Yes.

2 Q What did you do with those costs?

3 A Well, we had not included them in the claim
4 calculation against Whittaker.

5 Q Why?

6 A Because once again, they weren't caused by
7 Whittaker.

8 Q Okay, is there an aspect of these time related
9 costs that you assembled that are being claimed against
10 Whittaker?

11 A Yes.

12 Q And what box is that?

13 A Well, that's this box right here.

14 Q How did you compute that, Mr. Gray?

15 A Those are the costs incurred during this extended
16 period that don't relate to modifications from the Air Force
17 or to other claims that TechDyn has against Whittaker.
18 There is another issue in this box, right here, which is,
19 one of TechDyn's claims against Whittaker for procurement of
20 the RCE. And some of those re-procurement costs were
21 incurred during this extended period. And it is not
22 appropriate to include them on this delay claim where they
23 would be being claimed twice. So, also included them in
24 here and removed them.

25 Q Those are being claimed somewhere else, is that

1 right?

2 A That's correct.

3 Q As part of the remote control element point.

4 A Yes.

5 Q Thank you. Would you please resume the stand?

6 (Pause.)

7 Q Now, I see up in the box there, additional time
8 related costs attributable to Whittaker, \$2,315,153.

9 A Yes.

10 Q Now, turning to Plaintiff's Exhibit 953, if you
11 have that in front of you.

12 A Yes, sir, I do.

13 Q And coming down the page about half way, do you
14 see that same number, \$2,315,153?

15 A Yes, I do.

16 Q You just explain to us how you arrived at that
17 number, correct?

18 A Correct. Those are the time related costs that
19 are attributable to Whittaker.

20 Q Now, the next entry is divided by the number of
21 days in the delay period, 1,243 days.

22 A Yes.

23 Q How was that number arrived at?

24 A The entire contract period, for which these costs
25 related, for which this \$5,153,000 of the time related costs

CALCULATION OF DELAY DAMAGES PER DAY

DESCRIPTION	AMOUNT
RECORDED TIME-RELATED COSTS, 9/85 TO 5/91	\$5,153,759 (Exh. 9)
LESS: TIME-RELATED COSTS IN ORIGINAL CONTRACT PERIOD	1,352,617
TIME-RELATED COSTS IN DELAY PERIOD COMPENSATED BY AIR FORCE	733,079
TIME-RELATED COSTS IN OTHER CONTRACT MODIFICATIONS	579,923 (Exh. 9)
TIME-RELATED COSTS IN REMOTE CONTROL ELEMENT REPROCUREMENT	172,987 (Exh. 9)
TIME-RELATED COSTS ATTRIBUTABLE TO WHITTAKER DELAYS	2,315,153
DIVIDED BY: NUMBER OF DAYS IN DELAY PERIOD	1,243
DELAY COST PER DAY	1,863
PROFIT AT 11%	205
DELAY DAMAGES PER DAY	\$2,068 per day

2163



SUMMARY OF TIME-RELATED COSTS FOR
REMOTE CONTROL ELEMENT REPROCUREMENT

	RCE
DIRECT LABOR	67,198 (EXHIBIT 982)
ON-SITE OVERHEAD	88,533 (EXHIBIT 982)
TRAVEL	4,993
	160,724
GENERAL & ADMINISTRATIVE	12,263
	172,987
TOTAL	

1 methodology field, which is the field that this man was
2 offered as an expert.

3 JUDGE BROWN: Well, I guess I got him off it,
4 because I didn't understand what claims meant. What claims
5 methodology meant. Ask the question, I am lost.

6 MR. BOEHLERT: Okay, I will.

7 (Pause.)

8 BY MR. BOEHLERT:

9 Q Are there various methodologies to compute
10 damages, delay related damages?

11 A Yes.

12 Q And are you familiar with those methodologies?

13 A Yes.

14 Q And what are some of them?

15 A Well, the method that is commonly used and is
16 generally used in the industry, is to determine a daily rate
17 of delay damages. And to apply that to the number of days
18 of delay that are being attributed to the defendant to
19 calculate the delay.

20 Q Is that what was done in this case?

21 A Yes, it is.

22 Q You mentioned a remote control element. What, if
23 anything, did you do to assess the remote control aspect of
24 this project?

25 A We went into the cost records, and identified the

1 A Yes.

2 Q What did you do with those costs?

3 A Well, we had not included them in the claim
4 calculation against Whittaker.

5 Q Why?

6 A Because once again, they weren't caused by
7 Whittaker.

8 Q Okay, is there an aspect of these time related
9 costs that you assembled that are being claimed against
10 Whittaker?

11 A Yes.

12 Q And what box is that?

13 A Well, that's this box right here.

14 Q How did you compute that, Mr. Gray?

15 A Those are the costs incurred during this extended
16 period that don't relate to modifications from the Air Force
17 or to other claims that TechDyn has against Whittaker.
18 There is another issue in this box, right here, which is,
19 one of TechDyn's claims against Whittaker for procurement of
20 the RCE. And some of those re-procurement costs were
21 incurred during this extended period. And it is not
22 appropriate to include them on this delay claim where they
23 would be being claimed twice. So, also included them in
24 here and removed them.

25 Q Those are being claimed somewhere else, is that

1 right?

2 A THAT's correct.

3 Q As part of the remote control element point.

4 A Yes.

5 Q Thank you. Would you please resume the stand?

6 (Pause.)

7 Q Now, I see up in the box there, additional time

8 related costs attributable to Whittaker, \$2,315,153.

9 A Yes.

10 Q Now, turning to Plaintiff's Exhibit 953, if you

11 have that in front of you.

12 A Yes, sir, I do.

13 Q And coming down the page about half way, do you

14 see that same number, \$2,315,153?

15 A Yes, I do.

16 Q You just explain to us how you arrived at that

17 number, correct?

18 A Correct. Those are the time related costs that

19 are attributable to Whittaker.

20 Q Now, the next entry is divided by the number of

21 days in the delay period, 1,243 days.

22 A Yes.

23 Q How was that number arrived at?

24 A The entire contract period, for which these costs

25 related, for which this \$5,153,000 of the time related costs

1 A Yes.

2 Q What did you do with those costs?

3 A Well, we had not included them in the claim
4 calculation against Whittaker.

5 Q Why?

6 A Because once again, they weren't caused by
7 Whittaker.

8 Q Okay, is there an aspect of these time related
9 costs that you assembled that are being claimed against
10 Whittaker?

11 A Yes.

12 Q And what box is that?

13 A Well, that's this box right here.

14 Q How did you compute that, Mr. Gray?

15 A Those are the costs incurred during this extended
16 period that don't relate to modifications from the Air Force
17 or to other claims that TechDyn has against Whittaker.
18 There is another issue in this box, right here, which is,
19 one of TechDyn's claims against Whittaker for procurement of
20 the RCE. And some of those re-procurement costs were
21 incurred during this extended period. And it is not
22 appropriate to include them on this delay claim where they
23 would be being claimed twice. So, also included them in
24 here and removed them.

25 Q Those are being claimed somewhere else, is that

1 right?

2 A That's correct.

3 Q As part of the remote control element point.

4 A Yes.

5 Q Thank you. Would you please resume the stand?

6 (Pause.)

7 Q Now, I see up in the box there, additional time
8 related costs attributable to Whittaker, \$2,315,153.

9 A Yes.

10 Q Now, turning to Plaintiff's Exhibit 953, if you
11 have that in front of you.

12 A Yes, sir, I do.

13 Q And coming down the page about half way, do you
14 see that same number, \$2,315,153?

15 A Yes, I do.

16 Q You just explain to us how you arrived at that
17 number, correct?

18 A Correct. Those are the time related costs that
19 are attributable to Whittaker.

20 Q Now, the next entry is divided by the number of
21 days in the delay period, 1,243 days.

22 A Yes.

23 Q How was that number arrived at?

24 A The entire contract period, for which these costs
25 related, for which this \$5,153,000 of the time related costs

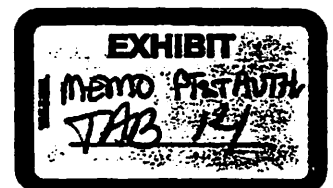
**CALCULATION OF EXCESS ON-SITE OVERHEAD
ABSORBED BY ICCE PROJECT**

DESCRIPTION -----	CLAIM AMOUNT -----	
BUDGETED DIRECT LABOR, ON-SITE	\$1,170,594	(EXHIBIT 968-A)
ACTUAL ON-SITE OVERHEAD RATE, FY1986-1990	x 1.293	(EXHIBIT 969)

ACTUAL ON-SITE OVERHEAD ON BUDGETED LABOR	1,513,578	
LESS: SHOULD-HAVE-BEEN ON-SITE OVERHEAD AT ANTICIPATED RATES	1,251,169	(EXHIBIT 968-A)

DIFFERENCE	\$262,409	

2168



CONTROL BUDGET FOR JOB 125

COST CENTER	CONTROL BUDGET
DIRECT LABOR	1,170,594
OVERHEAD	1,251,169
TRAVEL	680,011
CONSULTANT	548,252
SUBCONTRACTORS	8,565,105
MATERIALS	1,514,137
OTHER DIRECTS	611,773
SUBTOTAL	14,341,041
GENERAL & ADMINISTRATIVE	1,218,425
TOTAL COST	15,559,466

2169

PLAINTIFF'S
EXHIBIT
968-A

**TECHDYN SYSTEMS CORP.
CALCULATION OF ACTUAL ON-SITE OVERHEAD RATE
FISCAL YEARS 1986 - 1991**

	(A) RECORDED COSTS FISCAL YEARS 1986 - 1990	(B) RECORDED COSTS FISCAL YEARS 1991 (1)	(C) = (A)+(B) TOTAL RECORDED COSTS FISCAL YEARS 1986 - 1991
ON-SITE OVERHEAD COSTS (2)	\$4,499,790	\$188,128	\$4,687,918
DIRECT ON-SITE LABOR COSTS	3,426,866	198,019	3,624,885

ON-SITE OVERHEAD RATE			129.3%

NOTES:

- 1) FISCAL YEAR 1991 DATA REPRESENTS COSTS FOR FISCAL YEAR-TO-DATE AT 19-MAY-91.
- 2) EXCLUDING PROFESSIONAL FEES.

2170



1 exhibit page number 951. And you've explained that number
2 in the delay column \$2,570,524. Just to the right of that,
3 there's a column captioned interest \$349,224. What is that
4 referencing?

5 A That is the amount that we feel would be the
6 appropriate interest on that money as a result of not having
7 it. And that's been computed at 10 percent per year not
8 compounded but just a straight 10 percent which is below the
9 average that we over time have paid in borrowing money to
10 run this contract.

11 Q Turning to exhibit page number 979, please, what
12 does that page show?

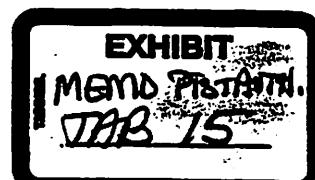
13 A That is the manner in which we computed the total
14 of \$349,224 of interest.

15 Q Mr. Hise, I'm going to refer you back again to
16 page 951. And, again, this is the summary of Whittaker
17 caused PDFA damages.

18 A Yes.

19 Q And I'm going to come down to the next line item,
20 please, which says excess overhead -- \$262,409. What does
21 that mean, excess overhead?

22 A When we entered into this contract, we entered
23 into it on the basis of an indirect overhead rate based on a
24 certain level of performance, of direct labor within the
25 company.



1 Q What does that mean, a certain indirect overhead
2 rate? Let's explain that to the jury if we could, please.

3 A The indirect costs of a company are those costs
4 that are established in a pool and I think I testified
5 earlier that there is a separate ledger within the company
6 that we keep those costs and those costs are not
7 specifically identifiable to a particular contract but they
8 are costs that support all of the contract and they are
9 allocated based on the direct labor that's being incurred on
10 each of the individual contracts. So to the extent that
11 those costs --

12 Q May I refer your attention, please, Mr. Hise, to
13 page 970?

14 A Yes.

15 Q Do you recognize that document?

16 A Yes.

17 Q What is it?

18 A This is a compilation of the indirect costs for
19 the years 1986 through 1990.

20 Q So if we look at the column on the left-hand side,
21 it says account -- there's a number and then description
22 below that. Are those the costs that you were just
23 describing?

24 A Those are exactly the costs that I was describing.
25 They are those costs that it would not be practical to try

1 to allocate as you are incurring those costs to a particular
2 contract. You put them in a pool and then they're allocated
3 based on the direct labor that's performed on that contract.

4 Q Okay. If we can go back to your explanation,
5 please. You were on page 951 and you were explaining to us
6 how you arrived at the number \$262,409 for excess overhead.

7 A Yes.

8 Q How did you do that?

9 A Well, okay. Certain indirect costs remained
10 fixed. In there is rent, there are utilities -- there are
11 those kinds of things in the indirect pool which stay pretty
12 much the same even though your base of business or your
13 contracts that you normally would be performing on gets
14 reduced. And during this period because of the problems of
15 this subcontract with Whittaker, we were not able to
16 maintain the volume of the labor base that we had projected
17 at the time we negotiated the contract.

18 Q At the time the contract was negotiated, what were
19 TechDyn's overhead rates?

20 A Our overhead rate at the time that we negotiated
21 this was approximately 108 percent.

22 Q And did that change?

23 A That changed and the rate over the period of this
24 performance was roughly 130 percent.

25 Q And is it compensation for that difference that's

1 being demanded there?

2 A That is correct.

3 Q The next item, going back to page 951, please,
4 summary of Whittaker caused PDFA damages, is relocation of
5 test beds.

6 A Those are the costs that we've determined were
7 directly associated with the matter of the two relocations
8 of the test bed. One, if you recall I indicated it was from
9 Torrance, California down to Carlsbad and then there came a
10 point in time when we were told to get out of the Carlsbad
11 facility and we moved to a rented facility that we obtained
12 from another contractor in Simi Valley. So those costs
13 associated with dismantling the test bed, reestablishing the
14 test bed, moving the equipment are the costs that we have
15 put against that item of damage.

16 Q And you've assessed that damage at \$48,742.

17 A Correct.

18 Q Would you please turn to Exhibit 973? What does
19 Exhibit 973 show?

20 A Exhibit 973 breaks down the \$48,742. It breaks it
21 down into direct labor, the overhead, the travel, the
22 subcontract, the consultants -- those items of cost that
23 were directly associated with those relocations.

24 Q And are those costs further explained in Exhibits
25 975 and 976?

1 damages attributed to Whittaker by taking that \$2068 per day
2 and multiplying it times the number of days of delay that
3 are being attributed to Whittaker.

4 Q To arrive at what total?

5 A \$2,570,524.

6 Q Would you turn to Exhibit 951, please?

7 A Yes.

8 (Pause.)

9 Q This is captioned "Summary of Whittaker Caused
10 PDFA Damages" and the first entry on this page is delay.
11 And I see in the first column there, claim amount before
12 interest, the same number you just read, \$2,570,524?

13 A Yes. That number is carried forward from schedule
14 952.

15 Q Now, there's interest added to that. Why, Mr.
16 Gray?

17 A As with all these CLIN sections, TechDyn has
18 incurred these costs, has been unreimbursed for them and
19 this is basically the cost of being out of pocket for that
20 money.

21 Q So the claim amount, including interest, for that
22 aspect is \$2,919,748. Is that right?

23 A Including interest. That's correct.

24 Q Another aspect of this claim that I'd like you to
25 explain to us if you would, please, is this concept of

1 excess overhead that's being demanded. TechDyn is asking
2 for \$262,409 of excess overhead. Why is TechDyn asking for
3 that?

4 A Well, those are additional overhead costs that
5 were incurred or paid for by the ICCE contract because of
6 PDFA problems.

7 MR. WORK: Objection, Your Honor. No foundation
8 for that from this witness.

9 BY MR. BOEHLERT:

10 Q From your study, were you able to determine
11 whether --

12 JUDGE BROWN: I'll reserve the ruling until I hear
13 what the foundation is.

14 BY MR. BOEHLERT:

15 Q From your study, were you able to determine
16 whether TechDyn incurred excess overhead costs?

17 A Yes, I did.

18 Q And how did you perform that study?

19 A Well, the anticipated overhead rate for TechDyn
20 for this period was 107 percent.

21 MR. WORK: Your Honor, again, he's testifying
22 about facts that aren't in evidence.

23 JUDGE BROWN: I think he's testifying to a fact
24 that is in evidence. I heard -- I think it was Mr. Hise --
25 testify to this, didn't I?

1 MR. BOEHLERT: He did, sir.

2 JUDGE BROWN: All right. So I think it's already
3 been testified to and I overrule the objection.

4 BY MR. BOEHLERT:

5 Q Then what happened?

6 A Well, the actual rate was approximately 130
7 percent and so --

8 Q What effect does that have on TechDyn?

9 A Well, the effect it has is the ICCE contract pays
10 for a lot more of TechDyn's overhead than it would have.

11 Q And what's the reason for that happening?

12 A Basically a reduction in the amount of work, the
13 volume of work performed by TechDyn.

14 Q The next two items are relocation of test beds and
15 replacement of keyboard and printer.

16 MR. WORK: Your Honor -- excuse me. That fact
17 certainly isn't in evidence, the reduction of work performed
18 by TechDyn. I think he's talking about an unabsorbed
19 overhead claim but there is no factual foundation for a
20 reduction of work performed by TechDyn.

21 MR. BOEHLERT: I've asked him how he computed the
22 claim, Your Honor.

23 JUDGE BROWN: Well, lay a further foundation.

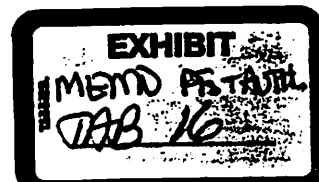
24 MR. BOEHLERT: Well, I'm moving on to the next --

25 JUDGE BROWN: Well, I sustain the objection.

SUMMARY OF CLAIM FOR RELOCATION OF TEST BED

DESCRIPTION	CLAIM AMOUNT
DIRECT LABOR	\$1,218 (EXHIBIT 975)
ON-SITE OVERHEAD	1,692 (EXHIBIT 975)
CONSULTANTS	6,121 (EXHIBIT 975)
TRAVEL	7,477 (EXHIBIT 975)
SUBCONTRACT - RENT	23,948 (EXHIBIT 976)
SUBTOTAL	40,456
GENERAL & ADMINISTRATIVE	3,455
SUBTOTAL	43,911
PROFIT	4,831
TOTAL	\$48,742

2178



CALCULATION OF CLAIM FOR TEST BED RELOCATION

COST CENTER	FY 1988	FY 1989	FY 1990	FY 1991	TOTAL
DIRECT LABOR, ON-SITE	\$0	\$1,218	\$0	\$0	\$1,218
ON-SITE OVERHEAD	0	1,692	0	0	1,692
TRAVEL	3,315	4,162	0	0	7,477
CONSULTANTS	3,374	2,747	0	0	6,121
SUBCONTRACTS (1)	0	7,617	7,355	8,976	23,948
SUBTOTAL	6,689	17,436	7,355	8,976	40,456
G&A (2)	464	1,151	710	1,130	3,455
SUBTOTAL	7,153	18,587	8,065	10,106	43,911
PROFIT (2)	787	2,045	887	1,112	4,831
TOTAL	\$7,940	\$20,632	\$8,952	\$11,218	\$48,742

NOTES:

- (1) RENTAL OF SPACE FOR TEST BED FROM VEDA.
- (2) CALCULATED USING TECHDYN'S ACTUAL OVERHEAD AND G&A RATES FOR EACH YEAR.

2179

PLAINTIFF'S
EXHIBIT

974

LABOR, CONSULTANT & TRAVEL COSTS TO RELOCATE TEST BED

DESCRIPTION	DISASSEMBLE 10/87	REASSEMBLE 1/88	DISASSEMBLE & REASSEMBLE 8/88	TOTAL
DIRECT LABOR:				
J. CARTER	-	-	1,218	1,218
ON-SITE OVERHEAD	-	-	1,692	1,692
CONSULTANTS:				
W. CLARK	569	-	-	569
L. TILLEY	496	864	1,235	2,595
D. SOUTHARD	527	918	1,512	2,957
TOTAL CONSULTANTS	1,592	1,782	2,747	6,121
TRAVEL:				
W. CLARK	585	-	-	585
L. TILLEY	530	530	1,204	2,264
D. SOUTHARD	532	1,138	1,246	2,916
J. CARTER	-	-	1,712	1,712
TOTAL TRAVEL	\$1,647	\$1,668	\$4,162	\$7,477

INVOICE

TechDyn Systems Corporation
6564 Loisdale Court, Suite 600
Springfield, VA 22150

Purchase Order: 12546

Attention: Max S. Rosen

P4393

INVOICE NO: 109928

DATE: 07/31/89

TERMS: Net 30 days

SHIPMENT NO: 11

DATE SHIPPED: ~~Aug - 1 1989~~

ARTICLES OR SERVICES	AMOUNT	CUMULATIVE
----------------------	--------	------------

Rental of space for ICCE CFA Equipment:


July 1989	\$761.67	
-----------	----------	--

Total Billings to Date		\$8,378.37
------------------------	--	------------

Previous Invoice Total		\$7,616.70
------------------------	--	------------

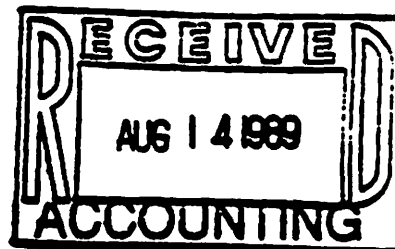
Total Claimed:	<u>\$761.67</u>	
----------------	-----------------	--

This is to certify that the services set forth herein were performed during the period stated.


Debra A. Sweeney
Cash Management Accountant

AUG - 1 1989
Date

**ORIGINAL
INVOICE**



**PLAINTIFF'S
EXHIBIT**

976

2181

Veda Incorporated

INVOICE

TechDyn Systems Corporation
6564 Loisdale Court, Suite 600
Springfield, VA 22150

Purchase Order: 12546

Attention: Max S. Rosen

P4393

INVOICE NO: 4561112290

DATE: 03/31/90

TERMS: NET 30 DAYS

SHIPMENT NO: 18

DATE SHIPPED: MAR 13 1990

ARTICLES OR SERVICES	AMOUNT	CUMULATIVE
----------------------	--------	------------

Rental of space for ICCE CFA Equipment:

March 1990

\$833.05

Total Billings to Date

\$14,971.37

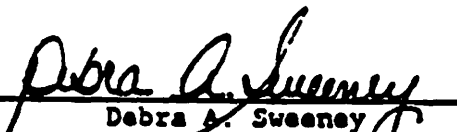
Previous Invoice Total

\$14,138.32

Total Claimed:

\$833.05

This is to certify that the services set forth herein were performed during the period stated.


Debra A. Sweeney
Cash Management Accountant

MAR 13 1990

Date

ORIGINAL
INVOICE

2182

Veda Incorporated

11 Canal Center Plaza • Suite 300 • Alexandria, Virginia 22314-1538 • 703/684-8005

FINAL
INVOICE

KK
4/1/91

TechDyn Systems Corporation
6564 Loisdale Court, Suite 600
Springfield, VA 22150

Purchase Order: 12546

Attention: Max S. Rosen

P4393

INVOICE NO: 4561500015

DATE: 03/31/91

TERMS: NET 30 DAYS

SHIPMENT NO: 262

DATE SHIPPED: MAR 31 1991

ARTICLES OR SERVICES

CURRENT

CUMULATIVES

Rental of space for ICCE CFA Equipment:
(2/18 - 2/28/91)

Total Billings to Date

\$23,947.45

Previously Billed

(\$23,510.10)

Total Claimed:

\$437.35

This is to certify that the services set forth herein were performed during the period stated.

Marian A. Watson

Marian A. Watson
Cash Management Accountant

MAR 31 1991

Date

**ORIGINAL
INVOICE**

02-75200

2183

Veda Incorporated

11 Canal Center Plaza • Suite 300 • Alexandria, Virginia 22314-1538 • 703/684-8005

..

**CALCULATION OF INTEREST ON DAMAGES
ASSOCIATED WITH RELOCATION OF TEST BEDS**

YEAR IN WHICH CLAIMED AMOUNTS WERE INCURRED	CLAIMED AMOUNT	INTEREST INCURRED THROUGH FY 1991
FY 1988	\$7,940	\$2,628
FY 1989	20,632	4,333
FY 1990	8,952	895
FY 1991	11,218	0
	\$48,742	\$7,856

2184

**PLAINTIFF'S
EXHIBIT**

980

Whittaker

Whittaker Electronic Systems
1785 Voyager Avenue
Post Office Box 8000
Simi Valley, California 93063-8000
Telephone (805) 584-8200
Telex 65-1329 TWX 910-494-1214

18 July 1988

TechDyn Systems Corporation
6564 Loisdale Court
Suite 600
Springfield, VA 22150

Attention: William Hise, Vice President

Subject: Subcontract 125-001 CFA Equipment

Reference: TechDyn letter of 9 July 1985.

Subject: Testbed Facilities



*-no copy
GCC side*

Dear Sir:

An agreement which set up a test bed for the ICCE IOC System was reached between WES (then 4C Corp.) and TechDyn Systems as a result of reference letter and the stated ESD desire for an IOC test bed. This agreement was extended by mutual consent during negotiation of modification 003 to subject subcontract to encompass FOC testing and training.

Inasmuch as the original period of four months has been extended to, at present time, more than twenty-two months, it is requested that TechDyn remove the CFA equipment from the Whittaker facility and make arrangements for the FOC System test and training at another facility.

Please address any questions regarding arrangements for this relocation to the undersigned at (805) 584-8200, extension 355.

Sincerely,

WHITTAKER ELECTRONIC SYSTEMS

Frank L. Bohler

Frank L. Bohler
Director of Contracts

cc: T. Brancati
D. Christensen
D. Moeller

2185

PLAINTIFF'S
EXHIBIT
385

Whittaker

05 August 1988

Tasker Systems Division
Whittaker Corporation
1785 Voyager Avenue
Post Office Box 8000
Simi Valley, California 93083-8000
Telephone (805) 584-8200
Telex 65-1329 TWX 810-494-1214
8808-1018-FB/ICCE

TechDyn Systems Corporation
6564 Loisdale Court
Suite 600
Springfield, VA 22150



Attention: William Hise, Vice President

Subject: Subcontract 125-001, CFA Equipment

Reference: A) TechDyn letter to WES (4Cs)
dated 18 July, 1988

B) WES letter to TechDyn dated 18 July, 1988

Gentlemen:

By Reference A), TechDyn requested WES facility space and facilities in order to establish a test bed for the IOC. The original four months period has been extended five times over this period.

By Reference B), WES requested that TechDyn remove the CFA equipment from WES facilities. As of 01 July 1988, the WES facility at 6190 Yarrow Drive in Carlsbad was vacated. If TechDyn does not remove its equipment immediately, it will be liable for the \$20,000 per month rent for the Yarrow Street building.

Please respond with TechDyn's intended action by return message to the undersigned.

Very truly yours,

WHITTAKER ELECTRONIC SYSTEMS

Frank L. Bohler
Frank L. Bohler
Director of Contracts

FLB:lm

2186

PLAINTIFF'S
EXHIBIT
394

TechDyn

SYSTEMS

9 July 1985

Command, Control
and Communications Corporation
23670 Hawthorne Boulevard
Torrance, CA 90505

Attn: Ms. Marie E. Raymond
Manager of Contracts

Subj: Subcontract 125-001; Testbed Facilities

Dear Ms. Raymond:

In order to set up the testbed for the subject Subcontract, TechDyn has certain space and power requirements. During a visit by our engineers to your facilities, Bay Area 5 appeared to be best suited for our needs. Our requirement for approximately 300 square feet, power and cabling to the crypto room would be satisfied if this area was reserved for use by TechDyn.

TechDyn has also arranged for shipments of equipment for testing to be marked to the attention of Mr. Craig Smith. It is requested that all shipments be placed in a reserved and secure area. Further, all shipments should remain unopened until TechDyn personnel arrive at 4C.

The contents of this letter are in no way meant to be used as a basis to change the cost of the subject subcontract.

If you have any questions, please contact the undersigned at (703) 922-5100. Thank you for your cooperation in this matter.

Sincerely,



David E. Xenowine
Supervisor
Subcontracts/Purchasing



2187

1 A I understood Mr. Brancati to be president of
2 Whittaker and I recall a letter that WCCS was no longer
3 WCCS. They were now WES. A letter about the 4th or 5th of
4 July making that organizational change effective 1 July '88.

5 Q Prior to that meeting had you met Mr. Brancati?

6 A No, I hadn't.

7 Q What happened at that meeting?

8 A At the claims meeting the discussions had started
9 taking place concerning the claim issues; those issues that
10 the Government wanted to discuss with the three parties.
11 And some place in that meeting Mr. Brancati said something
12 to the effect that, we have bigger issues to talk about
13 here. I am withdrawing that. I don't like the division of
14 money on this contract. We don't understand it. I'm
15 quitting work and get your stuff out of here.

16 Q What did he mean "get your stuff out of here"?

17 A At that particular time the test bed was set up in
18 the facility in a building owned by Whittaker. In that test
19 bed we had some ground inter-stations, basically three
20 cabinets of various communications equipment and another
21 couple of cabinets of a communication console. It was set
22 in this configuration because we were supposed to be doing
23 some testing there. So when he said, "get your equipment
24 out of here," he is referring to communications equipment
25 purchased by TechDyn to be used in testing.



1 Q Did TechDyn respond?

2 A Yes. We didn't have any choice. He told us to
3 get it out with 30 days, and started making arrangements
4 with another subcontractor that we had on this contract,
5 VEDA, Incorporated, whose facilities are in Camarella,
6 California. And I started making arrangements with him to
7 see if we could use their facility for setting up a test
8 bed.

9 Q And were arrangements made to do that?

10 A Finally arranged to do that, yes.

11 Q What response, if any, did TechDyn have to Mr.
12 Brancati's statement that Whittaker was stopping work?

13 A Basically, as I recall is that they had a valid
14 contract.

15 Q What happened next that day?

16 A Then we went on to -- there were ongoing
17 discussions between Mr. Morrison and Mr. Brancati, and the
18 Government people were later excused from that meeting. And
19 then the IADs meeting, that was already going on. Then we
20 moved into the program management review.

21 Q Who attended that meeting?

22 A A whole host of government personnel. The people
23 that I remember from Whittaker -- I might be wrong -- is
24 Dave Christensen, Ken Turry and Ms. Raymond.

25 Q And what transpired at that meeting?

1 (Pause.)

2 MR. BOEHLERT: Your Honor, I'd like to just check
3 with your clerk to confirm something and then I can move on
4 quickly.

5 Is Exhibit 117 in evidence? I think it is.

6 THE CLERK: Yes.

7 MR. BOEHLERT: Thank you very much.

8 BY MR. BOEHLERT:

9 Q Mr. Hise, did there come a time during subcontract
10 performance that the issue of test beds arose?

11 A Yes.

12 Q What happened?

13 A Originally as part of the negotiation between
14 TechDyn and 4C Corporation, the subcontractor, directed
15 subcontract Whittaker or 4C, agreed that they would furnish
16 as part of the joint negotiation a facility to TechDyn to
17 operate the test bed for the ICCE system.

18 Q Was there any agreement on whether or not
19 Whittaker would charge TechDyn for that?

20 A There was definitely an agreement that they would
21 not charge TechDyn for use of that facility.

22 Q And was space indeed provided by Whittaker for a
23 test bed?

24 A Space was indeed provided and there was no charge
25 made to TechDyn for a considerable period of time.

1 MR. BOEHLERT: Mr. Hise, I want to place in front
2 of you a document that's been marked as Plaintiff's Exhibit
3 1560 for identification.

4 (Pause.)

5 JUDGE BROWN: The witness wants some water we're
6 at it.

7 (Pause.)

8 THE WITNESS: Thanks.

9 (Pause.)

10 MR. WORK: What was the number?

11 MR. BOEHLERT: 1560.

12 BY MR. BOEHLERT:

13 Q Mr. Hise, I place in front of you Plaintiff's
14 Exhibit 1560, which purports to be a one-page letter from
15 TechDyn to Whittaker dated 9 July 1985. Do you recognize
16 that document?

17 A Yes, I do.

18 Q Okay. And what is it?

19 A It was a letter that we sent to 4C on 9 July 1985
20 to the attention of Ms. Raymond.

21 MR. BOEHLERT: Your Honor, I move Plaintiff's
22 Exhibit 1560 into evidence.

23 JUDGE BROWN: Any objection to 1560?

24 MR. WORK: No objection.

25 JUDGE BROWN: It's received.

1 (The document referred to, having
2 been previously marked for
3 identification as Plaintiff's
4 Exhibit 1560, was received in
5 evidence.)

6 THE WITNESS: The letter is subject subcontract
7 125-001; test bed facilities.

8 BY MR. BOEHLERT:

9 Q Would you please read paragraph 1?

10 A "In order to set up the test bed for the subject
11 subcontract, TechDyn has certain space and power
12 requirements. During a visit by our engineers to your
13 facilities, bay area 5 appeared to be best suited for our
14 needs. Our requirement for approximately 300 square feet,
15 power and cabling to the crypto room would be satisfied if
16 this area was reserved for use by TechDyn."

17 Q And was such a space reserved?

18 A Such space was reserved.

19 Q Did TechDyn set up a test bed?

20 A TechDyn did set up a test bed at the 4C facility.

21 Q Did there come a time that this situation changed?

22 A Yes.

23 Q What happened?

24 A There came a point in time when the 4C Corporation
25 which I think by that time had been acquired by Whittaker

1 closed a part of its facilities in Torrance, California and
2 moved most of their operation or a substantial portion of
3 their operation to Carlsbad, California, down near not too
4 far from San Diego.

5 Q At the time of contracting, was that move
6 foreseen?

7 A That move was not foreseen at all.

8 Q What, if anything, did TechDyn do in response to
9 that move?

10 A TechDyn did in fact move its facility to the
11 Whittaker facility at Carlsbad and reestablished the test
12 bed in a facility that Whittaker had at Carlsbad.

13 Q Did TechDyn incur any costs associated with that?

14 A Yes, they did. They incurred the cost of
15 dismantling -- reestablishing the test bed, testing it out,
16 getting it operational and, in addition, the actual movement
17 of the equipment from Torrance to Carlsbad.

18 Q Did there come a time again that the issue of the
19 test bed arose?

20 A There came a point in time, again, when Whittaker
21 decided that they no longer were going to permit TechDyn to
22 have a test bed in its facility at Carlsbad or for that
23 matter any place else and we were told --

24 MR. WORK: Objection. No foundation.

25 MR. BOEHLERT: Your Honor, he's explaining what

1 happened.

2 JUDGE BROWN: Well, I guess it's when he got to
3 the "we were told" part.

4 MR. WORK: That's right. Just that.

5 JUDGE BROWN: He'll have to establish who told who
6 what.

7 BY MR. BOEHLERT:

8 Q What happened, Mr. Hise, with respect to this
9 issue regarding the test bed?

10 MR. WORK: Objection. That's not a foundation
11 question.

12 JUDGE BROWN: Lay a foundation for his
13 participation in whatever he's going to testify to and then
14 we can get around it.

15 MR. BOEHLERT: Okay.

16 BY MR. BOEHLERT:

17 Q Mr. Hise, did you again personally participate in
18 any issue with Whittaker concerning the test bed?

19 A Yes.

20 Q What happened?

21 A In a meeting that was held in Carlsbad --

22 MR. WORK: Objection. No foundation.

23 BY MR. BOEHLERT:

24 Q Were you at the meeting?

25 A Yes. In a meeting in Carlsbad in which I was in

1 attendance, we were told by the president of the Whittaker
2 division that we were to get out of their facility.

3 Q When did that meeting occur?

4 A If I recall, it was in the July '88 timeframe.
5 The exact date I don't recall.

6 MR. BOEHLERT: I have a document that I'd like to
7 place in front of you that I've marked as Plaintiff's
8 Exhibit 385 for identification.

9 (Pause.)

10 (Continued on next page.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. BOEHLERT: Please turn to tab 385.

2 THE WITNESS: What is the number?

3 BY MR. BOEHLERT:

4 Q Three eighty-five. Do you recognize that
5 document?

6 A Yes, I do.

7 Q It's a letter from the Whittaker Corporation in
8 July of 1988, dated 18 July, to be exact, to TechDyn, to my
9 attention. And the subject of the letter is test bed
10 facilities.

11 MR. BOEHLERT: I'd like to put Plaintiff's Exhibit
12 385 into evidence.

13 MR. WORK: No objection.

14 JUDGE BROWN: Plaintiff's Exhibit 385 is received.

15 (The document referred to, having
16 been previously marked for
17 identification as Plaintiff's
18 Exhibit 385, was received in
19 evidence.)

20 BY MR. BOEHLERT:

21 Q Would you please read the first paragraph?

22 A "An agreement which set up a test bed for the ICCE
23 IOC System, was reached between WES, then 4C Corporation and
24 TechDyn Systems as a result of referenced letter and the
25 stated ESD desire for an IOC test bed. This agreement was

1 extended by mutual consent during negotiation of
2 modification 003, to subject sub-contract to encompass FOC
3 testing and training."

4 Q Do you agree with that last statement? This
5 agreement was extended by mutual consent during negotiation
6 of modification 003, to subject subcontract to encompass FOC
7 testing and training?

8 A I agree with it, and I would have been a party to
9 that negotiation, and I think I indicated earlier in my
10 testimony that that had taken place.

11 Q Okay. As of the date of this letter, 18 July
12 1988, had FOC testing and training been completed?

13 A It had not.

14 Q Would you read the next paragraph please?

15 A In as much as the original period of four months
16 has been extended to the present time, more than 22 months,
17 it is requested that TechDyn remove the CFA equipment from
18 the Whittaker facility and make arrangements for the FOC
19 system test and training at another facility.

20 Q What, if anything, did TechDyn do in response to
21 this letter?

22 A We did remove our equipment from the facility.
23 And we rented a facility at another contractor building in
24 the, namely the VEDA Corporation, in Simi Valley.

25 Q I ask you to look at the document marked as

1 Plaintiff's Exhibit 394 for identification.

2 (Pause.)

3 A Yes.

4 Q It is dated 5 August 1988, from Whittaker to
5 TechDyn.

6 A Yes.

7 Q Do you recognize this document?

8 A Yes.

9 Q What is it?

10 A It's a letter form the Whittaker Corporation dated
11 5 August 1988, to TechDyn Systems Corporation, to my
12 attention. And the subject is subcontract 125001, CFA
13 equipment.

14 MR. BOEHLERT: Your Honor, I move Plaintiff's
15 Exhibit 394 into evidence.

16 JUDGE BROWN: Any objection to Plaintiff's Exhibit
17 394?

18 MR. WORK: No objection, Your Honor.

19 JUDGE BROWN: Plaintiff's Exhibit 394 is received.

20 (The document referred to, having
21 been previously marked for
22 identification as Plaintiff's
23 Exhibit 394, was received in
24 evidence.)

25 BY MR. BOEHLERT:

1 Q Please read the second paragraph there.

2 A The second paragraph reads, "By reference B, WES
3 requested that TechDyn remove the CFA equipment from WES
4 facilities. As of 1 July 1988, the WES facility at 6190
5 Yarrow Drive in Carlsbad, California, was vacated. If
6 TechDyn does not remove its equipment immediately, it will
7 be liable for the \$20,000 per month rent for the Yarrow
8 Street building."

9 Q Prior to this time, had TechDyn been either
10 requested to pay rent, or had it paid any rent for that test
11 bed?

12 A We had not paid any rent, and we had not been
13 requested to pay any rent until I -- to the best of my
14 recollection, until we received this letter.

15 Q And did TechDyn respond to this letter?

16 A We responded by getting out as soon as we could.

17 Q Are there any costs associated with that move?

18 A The costs of tearing down the test bed facility at
19 Carlsbad, and the re-establishing of an operational test bed
20 at the facility that we had rented in Simi Valley, was a
21 cost that we bore as a result of this eviction from the
22 Whittaker facility. And the actual cost of transporting the
23 equipment from Carlsbad to Simi Valley area, which was, the
24 Los Angeles area.

25 Q Do you know whether the subcontract contained a

1 being demanded there?

2 A That is correct.

3 Q The next item, going back to page 951, please,
4 summary of Whittaker caused PDFA damages, is relocation of
5 test beds.

6 A Those are the costs that we've determined were
7 directly associated with the matter of the two relocations
8 of the test bed. One, if you recall I indicated it was from
9 Torrance, California down to Carlsbad and then there came a
10 point in time when we were told to get out of the Carlsbad
11 facility and we moved to a rented facility that we obtained
12 from another contractor in Simi Valley. So those costs
13 associated with dismantling the test bed, reestablishing the
14 test bed, moving the equipment are the costs that we have
15 put against that item of damage.

16 Q And you've assessed that damage at \$48,742.

17 A Correct.

18 Q Would you please turn to Exhibit 973? What does
19 Exhibit 973 show?

20 A Exhibit 973 breaks down the \$48,742. It breaks it
21 down into direct labor, the overhead, the travel, the
22 subcontract, the consultants -- those items of cost that
23 were directly associated with those relocations.

24 Q And are those costs further explained in Exhibits
25 975 and 976?

1 A Yes. What we did in order to be as accurate as we
2 could was to go back -- this was something that happened
3 previously so we could go back to the cost records, the
4 labor records and travel -- particularly the travel and the
5 labor records and identify specifically the individuals that
6 worked in that test bed that would have been involved in the
7 relocation and that's the way we arrived at the costs
8 associated with that relocation.

9 Q Mr. Hise, I'm still looking at page 973 and I see
10 an entry there for general and administrative, \$345,000.
11 What is that referring to?

12 A General and administrative expense is a level or
13 category of expense which is somewhat corporate wide or it's
14 costs that cannot be associated directly with a particular
15 functional operation of the company such as a facility that
16 you're running a contract out of but is corporate wide.

17 Q Are these costs different than the other indirect
18 costs you mentioned?

19 A It's a separate collection of the costs. Many of
20 the same types of costs would apply but to different people.
21 If you've got a cost for health insurance, then that would
22 apply to the individuals that are in that particular cost
23 center and in the case of TechDyn, we have certain personnel
24 like Mr. Morrison and myself that are in this G&A category
25 because the functions that we do within the company are

1 Strike the last answer.

2 BY MR. BOEHLERT:

3 Q The next two elements are relocation of test beds
4 and replacement of keyboard and printer. Mr. Hise testified
5 to those. Did you also participate in the computation of
6 those damages?

7 A Yes.

8 Q And that amounts claimed -- if you review those,
9 are those the results of those computations as well?

10 A Yes, they are.

11 Q So the claim amount including interest for PDFA
12 damages, Whittaker caused PDFA damages, is how much, Mr.
13 Gray?

14 A \$3,240,611.

15 (Pause.)

16 Q Did you also participate in the calculation of the
17 remote control element damages?

18 A Yes, I did.

19 Q Would you please turn to Exhibit 982?

20 (Pause.)

21 MR. WORK: Your Honor, at this point, I would like
22 to object to this line of testimony because he's simply
23 repeating what Mr. Hise said. He's not adding anything to
24 it. This is not opinion. He's calling out these numbers
25 for the second time.

DAMAGES FOR REPLACEMENT OF KEYBOARD AND PRINTER

DESCRIPTION -----	CLAIM AMOUNT -----
WHISPER WRITER PRINTER	\$635 (EXHIBIT 978)
KEYBOARD	746 (EXHIBIT 978) -----
DIRECT COSTS	1,381
GENERAL & ADMINISTRATIVE	139 -----
TOTAL COSTS	1,520
PROFIT	167 -----
TOTAL DAMAGES	\$1,687 -----

2203



Techdyn Systems Corporation
 6364 Linsdale Court
 Springfield, VA 22150


1313

PURCHASE ORDER/SUBCONTRACT

CUSTOMER R. Rose		DATE 3/22/90	CONTRACT NO. 125-13	GOVERNMENT CONTRACT NO. P19628-85-C-0079
SHIP VIA Origin	SHIP VIA Overnight	TERMS Net 30	SPECIAL INSTRUCTIONS	

VENDOR KINCON COMMUNICATIONS & SERVICE 5845-A Clayton Ave. Pennsauken, NJ 08109 Attn: Cathy	SHIP TO TECDYNE SYSTEMS CORPORATION 6364 Linsdale Court, Suite 600 Springfield, VA 22150 Attn: Max S. Rosen
--	--

ITEM	QUANTITY	DEL. DATE	DESCRIPTION	UNIT PRICE	TOTAL
1	1 ea.	3/26/90	Trandem Whisper Writer & RS232 Interface (Including model 1945 keyboard) Model 1980	395.00	395.00
			Overnight Shipping	40.00	40.00

DATE 3/22/90	ITEM 1	QUANTITY X	UNIT PRICE 395.00	TOTAL 395.00
ORD. CODE N/A		WORK ORDER NO. N/A		DATE 3/22/90
ACCT. NO. N/A		ADDRESS NO. N/A		VENDOR CODE N/A
AUTHORIZED SIGNATURE  MAX S. ROSEN				

☒ ORIGINAL PURCHASE ORDER
☐ IN REPLY PLEASE CHECKED LETTER

WE ACCEPT THIS ORDER AND WILL SHIP ACCORDING TO YOUR INSTRUCTIONS AND OUR OBLIGATION

PLAINTIFF EXHIBIT
978

TeachDyn Systems Corporation


2234 Laisdale Court
Springfield, VA 22150

13132


PURCHASE ORDER/SUBCONTRACT

REQUESTOR R. Thornton		DATE 10/23/89	CONTRACT NO 129-11	GOVERNMENT CONTRACT NO F19628-85-C-0079
FOR ACCT Origin	SHIP VIA Best Way	TERMS Net 30	SPECIAL INSTRUCTIONS	

VENDOR Data General Corp. 4400 Computer Drive N.E. 1D Westboro, MA 01580	SHIP TO TeachDyn Systems Corporation 6864 Laisdale Court, Suite 600 Springfield, VA 22150
Attn: Cindy Morrissey	Attn: Max Rosen

ITEM	QUANTITY	DEL. DATE	DESCRIPTION	UNIT PRICE	TOTAL
1	1 ea	11/1/89	Keyboard # 118-000-732 Rev 1	745.50	745.
					

DATE	ITEM	QUANTITY	PRICE	TOTAL
10/23/89	1	X		

ORG CODE N/A	WORK ORDER NO N/A	TASK NO 129-11	TOTAL 745.
ACCT NO N/A	REVISION NO N/A	VENDOR CODE N/A	
AUTHOR 		DATE 10/23/89	

WE ACCEPT THE ORDER AND SHIP SHIP ACCORDING TO YOUR INSTRUCTIONS

☒ ORIGINAL PURCHASE ORDER
☐ PURCHASE ORDER CHANGE LETTER

2205

..

**CALCULATION OF INTEREST ON DAMAGES ASSOCIATED
WITH REPLACEMENT OF KEYBOARD AND PRINTER**

YEAR IN WHICH CLAIMED AMOUNTS WERE INCURRED	CLAIMED AMOUNT	INTEREST INCURRED THROUGH FY 1991
-----	-----	-----
FY 1988	\$0	\$0
FY 1989	0	0
FY 1990	1,687	169
FY 1991	0	0
	-----	-----
	\$1,687	\$169
	-----	-----

2206



1 company wide in many cases.

2 Q When you refer to G&A you're referring to what?

3 A General and administrative expense.

4 Q Would you turn, please, to page 972 or Exhibit
5 972? Do you recognize this document?

6 A Yes.

7 Q What is it?

8 A This is a summation of the general and
9 administrative expense for fiscal years 1986 through 1990 as
10 are recorded on the records of the company, the financial
11 records of the company.

12 Q And under the description on this, on the
13 left-hand side of the page, does that describe the
14 categories of costs that are placed in the general and
15 administrative account?

16 A Yes, it does.

17 Q I'd like to take you back, please, to Exhibit 951.
18 The last item there is replacement of keyboard and printer,
19 \$1687. Why did you select that?

20 A Well, as I testified to earlier, there was an
21 occasion where we had to buy a keyboard and a printer to
22 repair the PDFA equipment that was in Iceland. When
23 Whittaker had refused to provide that to us under what we
24 considered was a requirement under their subcontract, we
25 purchased it from another vendor and that's the cost

1 associated with that purchase.

2 Q Would you please turn to Exhibit 977? Do you
3 recognize this document?

4 A Yes.

5 Q What is it?

6 A That is the cost of the Whisper Writer printer and
7 the keyboard, which totaled \$1381. There was the
8 application of the general and administrative cost against
9 that purchase and a profit of \$167 for a total of \$1687.

10 Q And if you'd look at Exhibit 978.

11 A The two pages of Exhibit 978 are the actual
12 purchase orders that were issued to the vendors who provided
13 the two items of equipment.

14 Q Going back to page 951, Exhibit 951, please --

15 A Yes.

16 Q I see in the interest column there there are the
17 numbers \$7856 and \$169, respectively, next to the relocation
18 of test beds and replacement of keyboard and printer.

19 A Yes.

20 Q And what do those represent?

21 A Those represent, again, the interest cost that we
22 associated with not having that money available.

23 Q Still looking at this page, if I read the second
24 column over, it says claim amount before interest
25 \$2,883,362. What's that referring to?

1 Strike the last answer.

2 BY MR. BOEHLERT:

3 Q The next two elements are relocation of test beds
4 and replacement of keyboard and printer. Mr. Hise testified
5 to those. Did you also participate in the computation of
6 those damages?

7 A Yes.

8 Q And that amounts claimed -- if you review those,
9 are those the results of those computations as well?

10 A Yes, they are.

11 Q So the claim amount including interest for PDFA
12 damages, Whittaker caused PDFA damages, is how much, Mr.
13 Gray?

14 A \$3,240,611.

15 (Pause.)

16 Q Did you also participate in the calculation of the
17 remote control element damages?

18 A Yes, I did.

19 Q Would you please turn to Exhibit 982?

20 (Pause.)

21 MR. WORK: Your Honor, at this point, I would like
22 to object to this line of testimony because he's simply
23 repeating what Mr. Hise said. He's not adding anything to
24 it. This is not opinion. He's calling out these numbers
25 for the second time.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION,

Plaintiff,

v.

WHITTAKER CORPORATION,

Defendant.

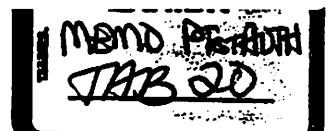
AT LAW NO. 94114

**MEMORANDUM OF LAW IN SUPPORT OF WHITTAKER CORPORATION'S
MOTION TO STRIKE EVIDENCE RELATING TO COUNT ONE OF
TECHDYN SYSTEMS CORPORATION'S AMENDED MOTION FOR JUDGMENT**

In Count One of its Amended Motion for Judgment, TechDyn alleges that Whittaker breached its ICCE subcontract with TechDyn by failing to perform its obligations in a timely manner. As a result of Whittaker's alleged breaches, TechDyn claims that it has incurred unreimbursed costs and the loss of new or other business and profits.

Viewing the evidence in the light most favorable to TechDyn, no reasonable juror could find that Whittaker was the sole cause of the damages that TechDyn claims in Count One. Thus, the burden [wa]s on [TechDyn] to present evidence which [would] show 'within a reasonable degree of certainty' the share of damages for which [Whittaker] [wa]s responsible.'" Hale v. Fawcett, 214 Va. 583,

2210



202 S.E.2d 923, 925 (1974). TechDyn failed to satisfy this burden.^{1/} Accordingly, TechDyn's Count One should not be submitted to the jury, and TechDyn's evidence on that count should be stricken.

Under similar circumstances, the Virginia Supreme Court has repeatedly found that the granting of a motion to strike is appropriate. For instance, in Hale v. Fawcett, the Virginia Supreme Court explained:

Here we have a case in which there is evidence of damages from separate causes, as to a portion of which defendant cannot be held responsible. No evidence was produced to enable the jury to form a reasonable estimate of what portion of the damage was caused by cattle entering through the narrow opening between the cattle guard and the gate post and what portion was caused by cattle entering through and over the division fence. Since the plaintiff did not prove with reasonable certainty that part of damages for which the defendant could be held responsible, the proof was too uncertain to allow a jury to apportion part or all the proved damages to the acts for which the defendant was responsible. Hence the issue should not have been submitted to the jury. Summary judgment should have been entered for the defendant.

202 S.E.2d at 925 (emphasis added). Accord Medcom, Inc. v. C. Arthur Weaver Co., Inc., 232 Va. 80, 348 S.E.2d 243, 247 (1986) ("The trial court ruled that Medcom's evidence relating to these

^{1/} Even if TechDyn had offered evidence that permitted the jury to apportion TechDyn's claimed damages between Whittaker and non-Whittaker sources, that evidence would have to be stricken because Whittaker was never afforded access to it during discovery. To the contrary, during discovery, TechDyn consistently asserted that Whittaker was responsible for all of the damages claimed in Count One.

two elements of damage was insufficient to create a jury issue, and we agree. Although '[p]roof of absolute certainty as to the amount of loss or damage is not essential,' a claimant must prove 'with reasonable certainty the amount of damages and the cause from which they resulted'); Carr v. Citizens Bank and Trust Co., 228 Va. 644, 325 S.E.2d 86, 90 (1985) ("[T]here was no evidence of the damages solely attributable to Carr's obtaining the injunction. Therefore, the court erred in overruling defendants' motion to strike the evidence and improperly allowed the jury to assess their liability without evidence to justify the award"); Cooper v. Whiting Oil Co., Inc., 226 Va. 491, 311 S.E.2d 757, 761 (1984) (holding that "trial court correctly granted the motion to strike the plaintiffs' evidence" where plaintiffs failed "to produce evidence to show within a reasonable degree of certainty the share of damages for which the defendant is responsible").

For the foregoing reasons, Whittaker's motion to strike TechDyn's evidence on Count One of its Amended Motion for Judgment should be granted, and summary judgment should be entered in Whittaker's favor on Count One.

Respectfully submitted,

DEFENDANT, WHITTAKER CORPORATION

BY: Peter B. Work / ajm
Peter B. Work
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 624-2500

-4-

and

~~William L. Carey~~
William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, VA 22030
(703) 352-4300

July 10, 1991

P R O C E E D I N G S

BAILIFF: Everyone please rise. The Circuit Court of Fairfax County is now in session, the Honorable J. Howe Brown presiding. Please be seated and come to order.

JUDGE BROWN: Okay. Mr. Work, you have a motion and let me say that we're going to start at ten with the jury so if each of you would limit yourself to no more than 25 minutes, we can get through and get our jury back.

MR. WORK: Your Honor, we have our first witness in the courtroom, Mike McCune, and if you'd like him to step out, that would be fine.

JUDGE BROWN: Yes.

(Pause.)

MR. BOEHLERT: Your Honor, before Mr. Work starts, it's Plaintiff's position in that these motions are not timely in that Defendant has already introduced evidence into this case and begun its case. And the law in Virginia on motions to strike is that before the defendant's case they may move to strike the evidence.

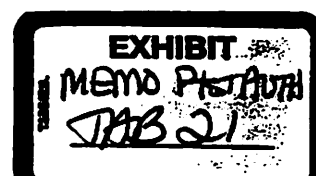
JUDGE BROWN: Let me see the law that says they can't do it later.

MR. BOEHLERT: Okay. Forensby Marbrith.

JUDGE BROWN: Okay. And where specifically does it say that?

MR. BOEHLERT: A motion to strike at the

2214



1 JUDGE BROWN: Did you feel that the Court
2 considered any evidence that the Defendant presented in
3 making that motion?

4 MR. RIDDLES: I do think that it has impact on it.
5 I don't know what's in the purview of the Court's mind but
6 it was definitely within the purview of the Court.

7 JUDGE BROWN: Well, if you can tell me what
8 evidence it was -- I can tell you that it is my position
9 that I did not, that I considered only the evidence
10 presented by the Plaintiff in making that ruling and not on
11 the evidence of the Defendant. If you can tell me what
12 evidence you think the Defendant presented that might have
13 or you think did impact on the Court's decision, then I will
14 hear you.

15 MR. RIDDLES: Well, I'll let Mr. Work finish and
16 we'll think about that for a moment and maybe we can have a
17 chance to respond.

18 JUDGE BROWN: All right. You don't need to argue
19 further that point of count 1 unless they bring something
20 up.

21 MR. WORK: Your Honor, we come now to the basic
22 claim, namely the delay claim. And I have identified for
23 you what I consider to be the basic cases on point in
24 Virginia. There's Hale v. Fawcett, in 1976 and then there
25 are three additional Virginia Supreme Court cases to the

1 same effect.

2 And the rule of Hale v. Fawcett is that the burden
3 is on the plaintiff to present evidence which would allow
4 within a reasonable degree of certainty the jury to identify
5 what specific portion of the damages TechDyn alleged it
6 suffered are attributable to Whittaker and Hale v. Fawcett
7 came up in precisely the same circumstances that we're
8 raising this motion, namely on a motion to strike. And
9 there's a fairly long quotation on page 2 of our motion with
10 respect to this facet of count 1 and I think you can see
11 both from that case and from the Medcon case in 1986 and the
12 Parr v. Citizens Bank case in 1985 and the Cooper v. Whiting
13 Oil case in 1984, that this rule has been consistently
14 followed, that when damages are alleged and there's a prima
15 facie case made that there are other causes -- a cause or
16 multiple causes -- that were unrelated to the acts of the
17 defendant, that in that even the plaintiff must present
18 evidence which would allow a jury within a reasonable range
19 of certainty to identify what portion of those damages are
20 attributable to the defendant.

21 Now, let me just try to review the evidence on
22 that subject very briefly.

23 Mr. Morrison identified that in reference to MOD
24 36 of the prime contract which Plaintiff put in evidence as
25 part of Exhibit 4 that the release clause in that provision

1 excluded provisioning, which Mr. Morrison identified in
2 testimony as being a big item that continued throughout the
3 program and the reason it was excluded from the release in
4 MOD 36 is that they couldn't calculate the cost at that time
5 because it was an ongoing cost. Mr. Morrison, as you will
6 recall, identified that as a big item, millions of dollars.

7
8 Secondly, Mr. Morrison identified with respect to
9 the same release clause that the cost of preparation of the
10 claims and the negotiation of the claims. And you'll recall
11 Mr. Morrison saying there was meeting after meeting after
12 meeting over a period of years to get this claim resolved.
13 And those costs went into the costs of this program and the
14 Government has not resolved that yet and that's still an
15 open item so that is a big body of damages that Mr. Morrison
16 himself identified and thus created a prima facie case of
17 other causes.

18 You will recall that Mr. Morrison testified that
19 throughout the program the Air Force, and I quote, "jerked
20 TechDyn around". It was the Air Force that jerked TechDyn
21 around, caused it to go to a meeting out in Sacramento.
22 What's in Sacramento? An Air Force logistics station. And
23 meetings here and meetings there throughout the program. A
24 big item, according to Mr. Morrison, yet unidentified and
25 not calculated in connection with the damages that are

1 sought to be assessed against Whittaker.

2 Mr. Ellis identified a number of things which
3 increased the cost of TechDyn on this program which were not
4 covered by the claim in MOD 36 which are ongoing. The
5 increase in the requirements for what he called level 3
6 drawings which are production level drawings, the removal of
7 the test bed for Desert Storm which prevented them from
8 testing their new RCE with the CFA and caused a substantial
9 delay of some months. Mr. Ellis testified to that.

10 Mr. Ellis testified that they're still having
11 problems with their O&M manual on the CFA side, still trying
12 to satisfy the Air Force's demands with respect to that
13 element of work.

14 These are all elements that create separate prima
15 facie cases of other causes. And then you'll recall Mr.
16 Crider who had read the depositions and was very forthright
17 in acknowledging that Mr. Thornton, the project engineer on
18 this case, had testified under oath that a big problem in
19 his opinion with respect to the RCE was the lack of a
20 contractual definition as to who was to do what which gave
21 rise to delays and gray hairs on his part, as he said.

22 Mr. Crider also recognized that Mr. Thornton had
23 acknowledge a number of other factors which had caused
24 additional costs that have not been compensated by the Air
25 Force, including nit picking with respect to logistics

1 documents; including additional testing that hadn't been
2 contemplated. And we saw a letter or he testified to a
3 letter in September of -- excuse me -- I don't have the date
4 of it -- reflecting TechDyn's statement that the Air Force
5 was expanding the testing requirements both with respect to
6 Whittaker and TechDyn. Costs reflecting TechDyn's --
7 factors within TechDyn's responsibility.

8 And finally, we've had evidence from several
9 people that the initial people assigned to this program at
10 TechDyn, a Mr. Chisholm, who was the original program
11 manager, was fired after a number of months for
12 incompetence, creating inefficiencies.

13 We've had testimony that the logistics operation
14 at TechDyn which was supposed to get up and running at the
15 beginning of the program didn't get up and running and there
16 was a failure to do any work on this basic logistics plan
17 that we talked about that has caused a lack of a baseline
18 and what Mr. Thornton was testifying about his deposition
19 that Mr. Crider recalled, namely, that there's a lot of nit
20 picking because we've got no baseline.

21 So -- you know, I could go on with this, Your
22 Honor, but countless times in Plaintiff's own case there has
23 been a recognition of other causes. And yet we saw Mr.
24 Gray's chart yesterday and we saw that they were claiming in
25 the category of time related costs, which are all costs

1 really unrelated -- except material, which were already
2 compensated under the original program -- that they are
3 seeking all costs, direct labor, consultants' time, travel,
4 other direct costs, and all excess overhead on this program
5 that haven't been already compensated by the Air Force. No
6 consideration at all of these other causes.

7 That creates the situation, Your Honor, that we
8 have talked about in prior motions, namely, that they have
9 not given the jury a reasonable basis for identifying -- and
10 I think the words in Hale v. Fawcett are "with reasonable
11 certainty" -- the portion of this great mass of additional
12 damages, time related damages and excess overhead, that are
13 attributable specifically to Whittaker. That is their
14 burden. They haven't met that burden. And therefore count
15 1 in its entirety ought to be dismissed.

16 And, finally, that brings me to count 3 and the
17 purported default termination of Whittaker. Under that
18 claim, TechDyn seeks what is known as excess procurement
19 costs. The default termination, and you'll remember the
20 default termination letter, Your Honor, the default
21 termination letter stated pursuant to FAR -- I think it's
22 522498 -- we hereby default terminate you. That clause was
23 a flow down clause from the prime contract into the
24 subcontract and it was incorporated by reference in the
25 subcontract and that is the clause under which TechDyn

1 contract. And for that reason, I'm going to let the jury
2 consider it and of course you can present evidence otherwise
3 and we'll see how it comes out with the jury.

4 I also overrule the motion to strike with regard
5 to the delay damages. In this case, I find that the
6 evidence is sufficient to allow the jury to consider whether
7 the apportionment has been proved by one side and the other
8 side. This is what I said to you up here in a bench
9 conference, Mr. Work, the other day. I think you are
10 confusing your effort to show that this delay was due to
11 other causes from their evidence which taken in the light
12 most favorable to them, even though you made some points on
13 cross-examination, viewed in the light most favorable to the
14 Plaintiff, they have presented sufficient evidence for the
15 jury to consider whether they have made that reasonable
16 apportionment or not or whether they have shown what the
17 cause of the damage is, being Whittaker, to recover.

18 I'll hear you on the counts 3 and 4 argument then
19 and if you've come up with anything where you think I have
20 considered evidence that the Defendant introduced in ruling
21 on count 1, the damages for future loss of business on other
22 work that TechDyn you say lost, I'll hear that, too.

23 (Continued on next page.)
24
25

d. The Contractor shall designate to the Contracting Officer an on-premises representative to serve as point of contact for the Contractor with the Contracting Officer or his duly authorized representative.

e. Performance of work on Government premises shall be confined to the area(s) specified by the Contracting Officer or his duly authorized representative.

1. 51.295-9501 TECHNICAL REVIEW

A. The Government has contracted with The MITRE Corporation for the services of a technical group which, under the program management of the Electronic Systems Division, is responsible to the Government for overall technical review of certain Government programs, including the efforts under this contract.

3. Explanation of MITRE Role.

1. Technical Review is defined as the process of continually reviewing the technical efforts of contractors. It does not include any modification, reassignment or redirection of contractor efforts under this contract; such action may be effected only by the prior written direction of the Contracting Officer.

2. The purpose of the review is to:

a. Evaluate from a technical standpoint whether system concept and performance can be expected to be achieved on schedule and within cost.

b. Assure that the impact of new data, new developments and modified requirements is properly assessed and exploited.

c. Assure that The MITRE Corporation has available data on the status and technology of Government programs and projects to enable it to carry out its inter-system integration responsibilities to the Government.

3. The MITRE Corporation has agreed not to engage in the manufacture or the production of hardware, to abide by FAR Subpart 9.5 entitled, "Organizational Conflicts of Interest", to refrain from disclosing proprietary information to unauthorized personnel, and not to compete with any profit-seeking concern.

4. The Contractor agrees to cooperate with The MITRE Corporation by engaging in technical discussions with MITRE personnel, and permitting MITRE personnel access to information and data relating to technical matters (including cost and schedule) concerning this contract to the same degree such access is accorded Government project personnel.

5. It is expressly understood that the operation of this clause will not be the basis for an equitable adjustment.

2222

MEMO PREPARED
JAB 2/5

1 witnesses about the ESD representatives and the user group
2 representatives but let's just focus on the Mitre
3 representatives.

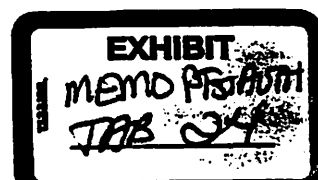
4 You said there were two different groups from
5 Mitre and what were those two different groups?

6 A There was a group of Mitre people that were headed
7 by a gentleman named Charlie Arouchon. He started out at
8 the very first meeting but right after that, the meetings
9 were then attended, as well as his group, by Linda Rosa and
10 her group. There were two different technical groups at
11 Mitre. Linda's group was the group that was responsible for
12 the interface with the AWACS aircraft. I'm not quite
13 certain what Charlie's group was but they were two distinct
14 groups.

15 Q We've heard about conflicts on the user side but
16 on the Mitre side, did those two groups of Mitre people
17 speak with one voice?

18 A No, they did not. They frequently argued in
19 meetings. They had different opinions about what we were to
20 be doing. They argued quite a bit, even to the extent
21 where we were dismissed several times and they had quiet
22 sessions on their own.

23 Q Now, in that period from January of 1986 on
24 through to the end of 1986 during the requirements
25 definition phase, how many meetings were there?



1 A There were a lot of meetings. My best guess would
2 be less than ten but certainly more than five. Probably in
3 the neighborhood of six.

4 Q And let's understand what those meetings were.
5 Were they single day meetings or multiple day meetings?

6 A No, they lasted for days. Some of them lasted
7 over weeks. Even over weekends. We would meet through the
8 weekends.

9 Q And so let's call them series of meetings.

10 A Okay.

11 Q Now, going into -- and those lasted from -- these
12 series of meetings lasted throughout the year of 1986?

13 A Yes, they did.

14 Q Going into the program, when you became the
15 technical director, what had been your expectation with
16 regard to the number of requirements definition meetings
17 that would take place on this program?

18 A We expected only a single meeting. What is
19 normally done is that you write the set of requirement
20 specifications, deliver them to the customer, they review
21 the set and of course they're going to find things that they
22 don't like about it or that they want to discuss.

23 They would then submit to us a set of comments
24 written down. We would go over all those comments. The
25 ones that are typographical errors, there's no sense in

1 talking in a meeting about. We accept some of the
2 comments -- we expected that we would accept some of the
3 comments. The ones that we didn't understand or that we had
4 conflict with, then we would have a meeting with them, iron
5 out those comments, incorporate them into a final document
6 and then deliver this document as a final set of agreed upon
7 requirements.

8 Q And that's what you expected to happen?

9 A That's what we expected. Yes.

10 Q Is that what happened?

11 A No. It's not at all what happened.

12 Q Let me just ask a question. The jury has heard
13 something about these meetings but you were there at all of
14 them as --

15 MR. RIDDLES: Your Honor, I just object to what
16 the jury has heard.

17 MR. WORK: All right. Strike it. Withdrawn.

18 BY MR. WORK:

19 Q Can you just give us a sense of how these meetings
20 proceeded over the course of the year of 1986?

21 A They didn't go well. We never got the comments
22 ahead of time to look at. Everyone would show up at the
23 meeting with a different opinion. We were never given this
24 is the Air Force's position on a problem. We received it
25 from three or four different areas.

1 The comments, like I said, never came ahead of
2 time. The people that attended the meeting were not
3 completely prepared for the review. They would come in with
4 just a portion of the document reviewed, redlines in their
5 own document and we would have to sit down and go on a
6 page-by-page review of these comments.

7 They would argue among themselves about what was
8 right and what was wrong and what should be done. And when
9 we would get to a certain point, they would say I can't go
10 on today, I haven't reviewed past it. They would ask to
11 stay in our facility after hours to read enough to get them
12 straight through the next day.

13 This went on through the meeting until we would
14 end that series and then they'd say yes, that's right --
15 incorporate all those comments, submit it and that's great.
16 They would leave, we would incorporate all the comments,
17 deliver them to the customer again for their review --

18 Q Who was the customer to whom you delivered?

19 A We always delivered our documents to TechDyn.
20 They took care of distribution to the Air Force from there.

21 We would deliver our documents updated to TechDyn
22 of what we felt was all the agreed upon comments from those
23 meetings and they would begin the review process again. And
24 what they would do was they would re-review what we had all
25 agreed upon in days of meetings and oftentimes change their

1 minds completely and say well, yes, I guess we wanted that
2 in the meeting but now we've changed our mind. We don't
3 want it any more. We want it to go back to the original way
4 it was.

5 And then they would pick up at the point where
6 they left off with their real detailed questions and they
7 would review the next --

8 MR. RIDDLES: Your Honor, I'm going to object to
9 long narrative answers without a question being asked and
10 it's time/date specific and so forth.

11 JUDGE BROWN: I think this is responsive to the
12 question and the question is proper and I overrule the
13 objection.

14 BY MR. WORK:

15 Q Would you just continue, please, Ms. Justis?

16 A Okay. We would submit that document. They would
17 review it again, review in detail from the point that they
18 had left off. And if you go through our records, you can
19 tell that the very last meeting in December was when they
20 submitted their comments on the very last portion of our
21 document, which were the mathematical equations. So it took
22 until -- when we delivered them early on in 1986 to the
23 very, very end for them to even get to their first comment
24 about the mathematical equations.

25 So it was extremely frustrating in that we would

1 continually update the document and they agreed this is what
2 we wanted but then they would have something that they
3 wanted in there.

4 Q Could I ask a question? You're speaking of a
5 document. Is this the draft B-spec?

6 A It was the B-specification. Yes. It was in
7 several volumes.

8 Q Okay. How much volume are we talking about that
9 it took a year to get through?

10 A There were four different volumes and the largest
11 one was probably 400 pages. The others were all less than
12 that. All told, I would guess less than 1000 pages.

13 Q Do I understand you correctly to say that it took
14 a whole year to get through that specification?

15 A Yes, it did.

16 Q Now, what did you do during the course of the
17 meetings? I'll ask you first that question and then what
18 did you do between the series of meetings.

19 A I tried to remain calm. The early meetings were
20 not as difficult as we got further on into them. But each
21 time, our goal was to get a system fielded, get the
22 requirements down, get what they wanted in a system. Areas
23 where there was a large amount of arguing on, sometimes it
24 was just simply easier for us to do what they wanted than to
25 take up the time arguing. It seemed more than what it would

1 cost for the software.

2 There were major issues, though. So each time we
3 would update our set of specifications -- and I held the
4 masters -- and then we'd publish that.

5 (Continued on next page.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Q When you updated the specifications, did you do
2 anything with regard to the existing software? By that I
3 mean the actual tape that had been developed.

4 A Because we had an existing program, an existing
5 RADIL program, that we could bring out and show you what it
6 did, after each meeting or series of meetings, I would get
7 together with the programmers, particularly the one that
8 worked in the display area, and we would go over all the
9 changes that were made. Sometimes even in the middle of the
10 meetings on a day-to-day basis, I would go over with the
11 programmers exactly what we were looking and what we were
12 doing.

13 They would immediately go off and correct the
14 program. We had a schedule to keep. It was a short term
15 program and we wanted to try and keep our schedule. So
16 sometimes even -- like we would finish a discussion in a
17 day, by the next day they had the program changes in. So
18 that as -- by the time that the customer showed up at our
19 facility the next time, in order to review the document
20 again, we had a program that incorporated the comments he
21 made last time, that we could take him down into our lab and
22 demonstrate to him.

23 So I feel that we really kept up with the
24 requirements that they wanted changed.

25 Q Let me ask you this: how much effort did you

1 personally put in this in terms of your own personal
2 commitment of time?

3 A I put in a lot of time. The staff as well as
4 myself -- we were working seven days a week, sometimes 14 to
5 16 hour days. When we got on into the testing of the
6 software, we would work through the -- I would work through
7 the night with the test group. The programmers would come
8 in immediately in the morning, five, six o'clock, gather up
9 the trouble reports from us, run off, fix them so that we
10 had those to test with the following evening. So there was
11 a period of time there when the entire staff was working
12 very, very hard to keep up with things.

13 Q Did you observe the level of understanding of the
14 RADIL system exhibited by members of the user community that
15 would descend upon your facilities for these series of
16 meetings?

17 A The majority of them had --

18 MR. RIDDLES: Your Honor, I'm going to object to
19 her understanding of someone else's understanding or her
20 observation of someone else's understanding. It's outside
21 the purview of this witness' knowledge to say what the user
22 group's understanding of the RADIL system as.

23 JUDGE BROWN: I think she can testify to her
24 observation of that and I overrule the objection. It was
25 clear that it was her observation.

1 THE WITNESS: During the meetings, it became
2 evident that -- they had a group at Mitre that really knew
3 the interface with the aircraft quite well and we could get
4 really good review comments from them. None of them -- the
5 majority of them -- had not seen a RADIL before and this was
6 evidenced by when they would come into our facility we would
7 demonstrate it for them.

8 In the user community, they had people from the
9 AWACS, the aircraft end of things and then they also had
10 some ROCC people there. They didn't have anyone that knew
11 how the whole interface between the ROCC ground unit and the
12 aircraft was supposed to take place and how it did in the
13 previous RADIL system.

14 There were times when we had to call Mike McCune
15 into the room to explain this is what the RADIL program
16 does. This is why you can't do this thing or that thing
17 because they're not compatible and this is what the current
18 program does.

19 So it was clear to me that of all the people that
20 attended that meeting on the customer's side there wasn't
21 anyone who had real clear knowledge of what the RADIL did,
22 the thing that we were modifying to bring up to current
23 standard and to document for them.

24 Q Ms. Justis, during the course of these meetings,
25 was there anyone on the Air Force side, be it user community

1 or ESD or Air Force representatives like Mitre, who took
2 control over these meetings?

3 A No. They were pretty chaotic. When you got into
4 the two different groups of Mitre, they each felt they were
5 in control and the ESD people who it was my understanding
6 they were in control, at least on the customer's side, the
7 Air Force side, didn't seem to always take control of the
8 situation and say let's solve this. They may have in their
9 meetings when they threw us out of the room but that
10 happened so often that they seemed so disjointed like they
11 just didn't have common leadership.

12 Q At any time during the period of this year, did
13 the Air Force or any of these people that attended these
14 meetings reject the draft B-spec?

15 A No, they did not. Their job was to
16 authenticate -- what they call authenticate. And when they
17 authenticate the document, it means accept it for all the
18 spelling correct, everything correct. But because they're
19 going to this process of review the first part, then the
20 next part, then the next part, they would never authenticate
21 it until they got all the way through to the end and through
22 the mathematical equations. So to my knowledge, they never
23 rejected it but they never authenticated it. They just said
24 let's continue this review cycle for the rest of our lives.

25 Q Now, let's talk about the interstices, the

1 separations between these series of meetings. Could you
2 make more clear what you and the people working for you did
3 during those periods to prepare for the next series of
4 meetings?

5 A As I had stated before, we updated the
6 specifications, incorporated all the agreed upon redline
7 changes, published the new document and also made the
8 software changes.

9 In publishing the changes to the requirements
10 specifications, because we were also creating the test
11 procedures at the same time and most of these things
12 affected the test procedures, we also had to correct that.

13 So there's a whole group of documents that got
14 corrected in the time period between the deliveries of the
15 B5-specifications.

16 Q Could you give us some sense of the relationship
17 between a change in the actual B-spec and the completion of
18 the work you've just described in terms of making the
19 changes in the tape, changing the test procedures and so
20 forth?

21 A Okay. Because the B-specifications define the
22 requirements that you're going to test to, if you change
23 something on that level, then of course you have to change
24 what you're going to test and you have to change what the
25 software does.

1 Also, when you change the software, you have to
2 change what is called the positional handbook, which is the
3 manual that tells you how to operate the system because
4 obviously that has changed, too.

5 So there's a long process of a lot of documents
6 changed but there's also the software that is changed.
7 There are changes to individual lines of code, which changes
8 the module structure which changes the documentation of the
9 software and creates the new version.

10 Q Now, in these series of meetings, was the cast of
11 characters always the same or did it change from one series
12 to the next?

13 A On the technical staff, the Whittaker technical
14 staff, there were no changes.

15 Q How about on the Air Force side of the picture?

16 A There was some continuity on the Mitre side but
17 there was a lot of changing in the people that attended
18 meetings. The example I gave before of Charlie Arouchon and
19 the Linda Rosa group -- those people changed. I mean,
20 sometimes they would both be there, sometimes only one
21 group. Different people from the groups would be there. So
22 there was a lot of change in the participants from the Air
23 Force side.

24 Also, the Air Force people would be transferred
25 somewhere else so the ones that had started up the review of

1 our documents, if they got transferred to another post, then
2 they weren't available and the replacement would come in and
3 then we had to go through some educational process at that
4 point to bring that person up to speed because they had
5 their own ideas of what they wanted in the system.

6 Q Did TechDyn as prime contractor to Whittaker
7 bring any order to this situation that persisted over the
8 course of the year?

9 A Not that I saw.

10 Q Now, let's talk about substantive issues that
11 arose during the course of this period of requirements
12 definition. Were there major substantive issues that stick
13 out in your mind that arose over time?

14 A As far as technical issues?

15 Q Right.

16 A Yes, there were. It appeared that the majority of
17 the people that were reviewing the document weren't aware
18 that we were just under contract to document it and put in
19 minor changes. And they ended up doing a complete review of
20 the whole mission of the RADIL and they made some very
21 substantial changes.

22 They brought in one group of changes and it was in
23 the summer of '86, the three big changes which were
24 reporting responsibility, digital handover and correlation,
25 and those weren't in the original RADIL program yet they

1 came along and said that contractually you must do this --
2 you absolutely have to do this in order to be compliant with
3 the standard.

4 None of those things had ever been talked about
5 before nor had they been talked about in the early reviews
6 of the B5-specifications.

7 Another group of change was what's known as block
8 20/25. The changes that are made to the AWACS aircraft are
9 given names. This particular change was called block 20/25
10 which was used between Boeing and the Air Force. And there
11 were some changes --

12 Q Boeing being the manufacturer of the AWACS
13 aircraft?

14 A Yes. There were a couple of significant changes
15 in their block 20/25 that would be fielded in their AWACS
16 aircraft by the time the RADIL was expected to be fielded.
17 And they said it was important that we incorporate those
18 changes.

19 Q We won't go over those in detail because I think
20 Mr. McCune has already explained them. Now, again, based on
21 your personal observations, if you had them, what as Mitre's
22 position during the course of this period of requirements
23 definition with respect to whether or not Whittaker was
24 bound to simply do what the contract stated or beyond the
25 contract?

1 A Mitre provided only technical guidance for the
2 people at ESD. And they had stated two or three times in
3 meetings that they didn't care what we were under contract
4 for, they didn't care what the contract said, this is what
5 you must do. So their role was clearly one of technical
6 advice to ESD without knowledge of what the contract stated.

7 Q At any time during this requirements definition
8 period did you discover that the Air Force through TechDyn
9 had not provided any pertinent information to you that bore
10 upon the work you were doing during that phase?

11 A There were three -- as I remember -- three pieces
12 of documentation that they never provided to us. Right on
13 initially, we were to upgrade to the current standard for
14 the aircraft. Well, that current standard wasn't provided
15 to us. It was months into the contract before we got that
16 standard. In fact, the first set of the interface design
17 specification -- I don't know if that's come up yet -- that
18 very first draft of that document was done to an old
19 standard simply because we didn't have the new standard in
20 hand.

21 Q This was the JCS PUB 10?

22 A Yes, it was. We asked for it several times and it
23 just took them quite a long time to get it to us.

24 The second piece of information that they took
25 quite a while to get to us was the block 20/25 changes. In

CROWELL & MORING

1001 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2505

(202) 624-2500

CABLE: CROMOR
FACSIMILE (RAPICOM): 802-626-5116
W. U. I. (INTERNATIONAL) 64344
W. U. (DOMESTIC) 88-2448

030:cjy
93906.027

PETER B. WORK
(202) 624-2575

July 23, 1991

VIA HAND DELIVERY

Mr. Warren E. Barry, Clerk
Fairfax County Circuit Court
4110 Chain Bridge Road
Fairfax, VA 22030

Re: TechDyn Systems Corp. v. Whittaker Corp., At Law No. 94114

Dear Mr. Barry:

Enclosed for filing in the subject matter are:

- (1) Memorandum In Support of Whittaker Corporation's Renewed Motion to Strike the Evidence Relating to Count One of TechDyn Systems Corporation's Amended Motion for Judgment;
- (2) Memorandum In Support of Whittaker Corporation's Renewed Motion to Strike the Evidence Relating to Count Three of TechDyn Systems Corporation's Amended Motion for Judgment; and
- (3) Memorandum In Support of Whittaker Corporation's Renewed Motion to Strike the Evidence Relating to Count Four of TechDyn Systems Corporation's Amended Motion for Judgment.

We are delivering courtesy copies of these filings directly to Judge Brown, who is permanently assigned to this case.

Respectfully submitted,

CROWELL & MORING

BY: Peter B. Work
Peter B. Work

Counsel for
Whittaker Corporation

2239

cc: Garry R. Boehlert, Esq. (w/enclosures)



VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION,

Plaintiff,

v.

WHITTAKER CORPORATION,

Defendant.

AT LAW NO. 94144

**MEMORANDUM IN SUPPORT OF WHITTAKER CORPORATION'S RENEWED
MOTION TO STRIKE THE EVIDENCE RELATING TO COUNT ONE OF
TECHDYN SYSTEMS CORPORATION'S AMENDED MOTION FOR JUDGMENT**

In Count One of its Amended Motion for Judgment, TechDyn alleges that Whittaker breached its ICCE subcontract with TechDyn by failing to perform its contractual obligations in a timely manner thereby delaying completion of the ICCE program. As a result of Whittaker's alleged breaches, TechDyn claims that it has incurred unreimbursed costs.^{1/}

The testimony at trial unmistakably establishes that multiple sources caused delay in the ICCE program's completion. One of the many examples of such testimony occurred during the cross-examination of Rufus Thornton during which Mr. Thornton testified

^{1/} TechDyn also claims that as a result of its breaches it lost new or other business and profits; however, the evidence with respect to that claim was stricken by the Court at the close of TechDyn's case-in-chief.

that the delay in the ICCE program's completion was not attributable to any one source:

BY MR. BOEHLERT:

Q. Have you been able to form a conclusion as to the principal cause for delay in this project?

A. That's very broad. There are -- I think I've made it clear to counsel for defense and yourself as well that there is no one thing that caused delay.

Trial Transcript at 2297 (emphasis added).

Yet, even though the evidence at trial was manifestly clear that multiple sources delayed the ICCE program's completion, TechDyn did not come forward with a shred of evidence to meet its burden of "present[ing] evidence which would show 'within a reasonable degree of certainty' the share of damages for which [Whittaker] [wa]s responsible." Hale v. Fawcett, 214 Va. 583, 202 S.E.2d 923. 925 (1974).^{2/} TechDyn has not done so because its

2/

Even assuming TechDyn had offered evidence that permitted a jury to apportion TechDyn's claimed damages between Whittaker and non-Whittaker sources, that evidence would have to be stricken because Whittaker was never afforded access to such information during discovery despite its repeated requests for it. See, e.g., Whittaker's First Set of Interrogatories, Interrogatory No. 12 (asking TechDyn to "identify with specificity, by amount and date incurred, each item of" TechDyn's alleged unreimbursed damages); Whittaker's Third Set of Interrogatories, Interrogatory No. 1 (asking TechDyn to "identify and explain each action by Whittaker which extended TechDyn's completion of the ICCE Project and specify the amount of delay attributable to each such action"); Whittaker's December 14, 1990 questions (asking (1) "What delays are attributed to what breaches?" (2) When did the delay periods associated with particular breaches occur?" (3) How was TechDyn damaged by the delay periods associated with particular breaches?"). To the contrary, in response to

Footnote continued on next page...

theory of time-related damages seeks compensation for all costs and overhead for which it has not been previously compensated by the Air Force.^{3/} Thus, there is simply no basis for the jury "to apportion part or all [of TechDyn's] proved damages to the acts for which [Whittaker] was responsible." 202 S.E.2d at 925. Accordingly, TechDyn's evidence with respect to its claim for unreimbursed costs under Count One must be stricken, and summary judgment should be entered for Whittaker on that claim.

Under similar circumstances, the Virginia Supreme Court has repeatedly found that the granting of a motion to strike is appropriate. For instance, in Hale v. Fawcett, the Virginia Supreme Court explained:

Here we have a case in which there is evidence of damages from separate causes, as to a portion of which defendant cannot be held responsible. No evidence was produced to enable the jury to form a reasonable estimate of what portion of the damage was caused by cattle entering through the narrow opening between the cattle guard and the gate post and what portion was caused by cattle entering through and over the division fence. Since the plaintiff did not prove with reasonable certainty that part of damages for which the

Footnote continued...

Whittaker's numerous requests for such information during discovery, TechDyn consistently asserted that Whittaker was responsible for all of the damages claimed in Count One.

3/ This became patently obvious during the cross-examination of TechDyn's expert Greg D. Crider, who was called by TechDyn to explain TechDyn's delay claim. When Mr. Crider was asked when Whittaker-caused delays occurred, he was unable to state with any degree of precision when they took place. Instead, he testified that Whittaker-caused delays "would occur throughout the entire period of the contract." Trial Transcript at 1465.

defendant could be held responsible, the proof was too uncertain to allow a jury to apportion part or all the proved damages to the acts for which the defendant was responsible. Hence the issue should not have been submitted to the jury. Summary judgment should have been entered for the defendant.

202 S.E.2d at 925 (emphasis added). Accord Medcom, Inc. v. C. Arthur Weaver Co., Inc., 232 Va. 80, 348 S.E.2d 243, 247 (1986) ("The trial court ruled that Medcom's evidence relating to these two elements of damage was insufficient to create a jury issue, and we agree. Although '[p]roof of absolute certainty as to the amount of loss or damage is not essential,' a claimant must prove 'with reasonable certainty the amount of damages and the cause from which they resulted'"); Carr v. Citizens Bank and Trust Co., 228 Va. 644, 325 S.E.2d 86, 90 (1985) ("[T]here was no evidence of the damages solely attributable to Carr's obtaining the injunction. Therefore, the court erred in overruling defendants' motion to strike the evidence and improperly allowed the jury to assess their liability without evidence to justify the award"); Cooper v. Whiting Oil Co., Inc., 226 Va. 491, 311 S.E.2d 757, 761 (1984) (holding that "trial court correctly granted the motion to strike the plaintiffs' evidence" where plaintiffs failed "to produce evidence to show within a reasonable degree of certainty the share of damages for which the defendant is responsible").

For the foregoing reasons, Whittaker's motion to strike TechDyn's evidence pertaining to Count One of its Amended Motion

for Judgment should be granted, and summary judgment should be entered in Whittaker's favor on Count One.

Respectfully submitted,

DEFENDANT, WHITTAKER CORPORATION

BY:

Peter B. Work
Peter B. Work
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 624-2500

and

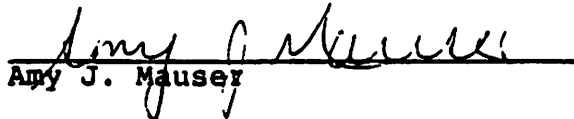
William L. Carey
William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, VA 22030
(703) 352-4300

July 23, 1991

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Memorandum
In Support Of Whittaker Corporation's Renewed Motion To Strike The
Evidence Relating To Count One Of TechDyn Systems Corporation's
Amended Motion For Judgment was served by hand this 23rd day of
July 1991 upon:

Garry Boehlert, Esq.
Watt, Tieder, Killian & Haffar
Suite 400
7929 Westpark Drive
McLean, Virginia 22101


Amy J. Mauser

1 the motions for the same reasons that I gave before.

2 TechDyn made a motion to strike which I find a
3 certain irony in TechDyn's motion to strike relying on the
4 Hale case for failure to apportion but I deny it for the
5 same reason that I'm going to deny and have denied and will
6 continue to deny Whittaker's motion on the same basis as to
7 TechDyn's evidence.

8 And what I'm ruling there is simply that it's a
9 jury question. The same thing with regard to the argument
10 that the damages by Whittaker are speculative. They're jury
11 questions.

12 I think that addresses all of the motions except
13 two: TechDyn's motion to strike the administrative costs
14 and TechDyn's motion to strike the progress payments. And
15 those two I'll hear argument on.

16 (Pause.)

17 MR. BOEHLERT: Your Honor, I'd like to address
18 those in order, if I might, please.

19 The law of Virginia is clear that absent a
20 contract provision which expressly allows the recovery of
21 attorneys' fees or litigation costs or claim preparation
22 fees --

23 JUDGE BROWN: Actually, excuse me. Let me
24 interrupt you just a minute. I've read your submission so
25 why don't you let them respond and you can respond to what

1 you wanted to. You won't do that, I hope. But you can meet
2 on Friday if you want to.

3 Since you will be in there deliberating, you
4 wouldn't be impacting on the Court. Okay?

5 All right. Sorry it's raining, but go home or go
6 to work. and do something different today. We will get it
7 ready for you tomorrow.

8 (Pause while jury leaves.)

9 JUDGE BROWN: Okay, anybody wants to renew their
10 motions, now is the time to do it.

11 MR. WORK: I would like to, Your Honor.

12 Your Honor, I am going to address counts three and
13 four relating to the Alaska PACAF matters. And you will
14 recall that count three is based on tortious interference
15 with an alleged existing option. And count four is based on
16 an alleged breach of an option in the subcontract.

17 There are a lot of issues pertaining to these two
18 counts. But, the threshold issue, is causality. The
19 question is, did Whittaker do anything to cause the
20 Government, the Air Force to decide not award the Alaska
21 PACAF work to Whittaker, excuse me, to TechDyn. And on that
22 subject, there has been on evidence, except negative
23 evidence. And the negative evidence is established solely
24 as matter of chronology. There simply can be no argument
25 about this.

1 improper act. That's as a matter of law. And that issue
2 should not go to the jury. Same on a breach of contract.
3 On that issue, too, there has been no improper action as a
4 matter of law.

5 And finally, Your Honor, the very basic, the very
6 factually premise for this whole thing, namely that
7 Whittaker submitted a lower price to the Air Force than it
8 submitted to TechDyn is simply false. You'll
9 remember the long period of time when they were trying to
10 add up these numbers, and realized in trial, in trial, that
11 Whittaker's bid to the Air Force was actually higher than
12 the bid to TechDyn.

13 This has been a false claim from the beginning.
14 TechDyn has avoided the issue, is trying to get this issue
15 to the jury so it can say what bad folks these people at
16 Whittaker are. But the claim is a false claim. They haven't
17 gotten beyond the basic threshold of causality. Which is
18 proven, as a matter of simply causality and nothing else.

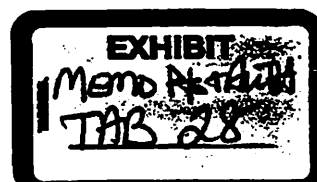
19 And on that ground, Your Honor, counts three and
20 four ought to be disposed of. I would solicit Your Honor's
21 views on whether it would be productive at this time to
22 argue our renewed motion with respect to count one.

23 JUDGE BROWN: It would not. Response to counts
24 three and four?

25 MR. BOEHLERT: Yes, Your Honor.

2248

Heritage Reporting Corporation
(202) 628-4888



1 JUDGE BROWN: In the sense that it would not, and
2 I'll just go on to say that I deny the motion for reasons
3 previously given.

4 MR. WORK: May I indicate for the record that I
5 take exception?

6 JUDGE BROWN: Yes. I think that is really set out
7 in writing as well as in the previous motion that was made.

8 MR. BOEHLERT: Your Honor, I have two filings here
9 that I have prepared in response to their earlier motions
10 for reconsideration, which I have handed counsel.

11 Let's address the issues that certainly aren't new
12 to this Court. I contend, Your Honor, that well before you
13 got involved with this case, Whittaker Corporation attempted
14 with three separate judges to eliminate the Alaska PACAF
15 option count from TechDyn's motion for judgement. Judge
16 Plummer denied it, Judge Middleton denied it, you denied
17 that motion on at least one, probably two, occasions. You
18 have twice denied motions to strike the evidence regarding
19 that issue. But it is coming back to you now.

20 And let's just address the issues one more time.
21 Because I am confident, Judge, that when we do, that motion
22 is going to be denied again. Let's look at the issue of
23 causation. And that now appears to be the issue that Mr.
24 Work contends is the reason that TechDyn cannot get this
25 case to the jury. And the sole basis for that contention is

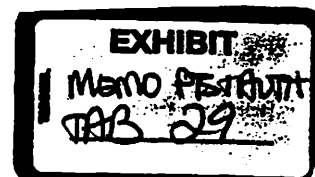
1 the rationale for the decision doesn't have anything to do
2 with lower prices.

3 It has to do with the fact that the Air Force
4 decided not to buy the communications equipment. That's the
5 only rationale stated in this thing and beyond that it's
6 simply a matter of policy -- why go through a middleman and
7 pay a middleman's markup, which you saw here was something
8 like \$600,000, just to have the pleasure of dealing with
9 TechDyn? That's against public policy, as this memorandum
10 states.

11 There is no causation. There's no proof of it.
12 Mr. Boehlert once again skirted your question. What did
13 Whittaker do to cause this decision? It didn't do anything.
14 There's no evidence. This is not an issue that should go to
15 the jury, Your Honor.

16 JUDGE BROWN: Okay. I am pretty sure Mr. Work is
17 right. I'm pretty sure the jury won't give damages for
18 this. I sure wouldn't if I was hearing it without a jury
19 but again we are constantly admonished to send things to the
20 jury unless we're absolutely sure and I can always take care
21 of this later if the jury doesn't come up with the right
22 answer, but I'm going to let it go to the jury. It's
23 perhaps the only part of this case that I have a grasp of
24 and that I think the jury will, too, so let's at least give
25 them something they can decide that they'll understand.

2250



1 I deny the motion.

2 Are we ready to do the jury instructions?

3 MR. BOEHLERT: Your Honor, I know our motions do
4 come at the close of the evidence. I don't know if I need
5 to renew them to preserve them or not.

6 JUDGE BROWN: You do need to renew them to
7 preserve them and I'll assume that you have and they're
8 denied unless you have something you think --

9 MR. BOEHLERT: No, it's the same motions, Your
10 Honor, and I will for the record object to the denial of
11 those motions.

12 JUDGE BROWN: Yes. All right. Now, let me see if
13 I can put this together in any way that I can deal with it
14 because I had begun to review these.

15 (Pause.)

16 JUDGE BROWN: Okay.

17 MR. WORK: Your Honor, before we get into that, we
18 are making several proffers. Do we have to indicate that in
19 some formal way?

20 JUDGE BROWN: I don't think so. I think what you
21 can do is either -- would these be proffers of what the
22 witnesses that would have been -- that you think should have
23 been allowed to testify would have testified to had you been
24 allowed either rebuttal or to reopen your case?

25 MR. WORK: Right.

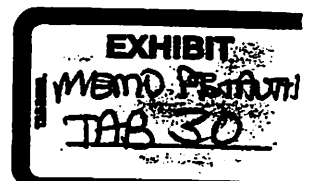
Instruction 12

Damages are not presumed nor may they be based upon speculation, but must be proven. The burden is upon the party claiming damages to prove by the greater weight of the evidence any damage claimed and that it is properly attributable to the other party's breach; and unless any such damage is thus proven by the greater weight of the evidence then the party claiming damage cannot recover for such damage.

If you believe from the greater weight of the evidence that any damage resulted from more than one cause, for one of which the other party is responsible, the burden is upon the party claiming damage to prove by the greater weight of the evidence the share of damage for which the other party is responsible. If a party fails so to prove damage then the party cannot recover for such damage.

75

2252



SUMMARY OF WHITTAKER-CAUSED PDFA DAMAGES

DESCRIPTION	CLAIM AMOUNT (BEFORE INTEREST)	INTEREST	CLAIM AMOUNT (INCLUDING INTEREST)
DELAY	\$2,570,524 (Exh. 952)	\$349,224 (Exh. 979)	\$2,919,748
EXCESS OVERHEAD	262,409 (Exh. 968)	0	262,409
RELOCATION OF TEST BEDS	48,742 (Exh. 973)	7,856 (Exh. 980)	56,598
REPLACEMENT OF KEYBOARD AND PRINTER	1,687 (Exh. 977)	169 (Exh. 981)	1,856
TOTAL	\$2,883,362	\$357,249	\$3,240,611

2253



V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

TECHDYN SYSTEMS CORPORATION)

Plaintiff,)

v.)

AT LAW NO. 94144)

WHITTAKER CORPORATION)

Defendant.)

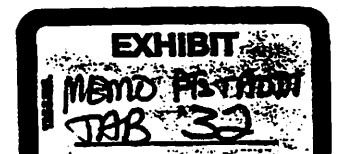
JUDGMENT ORDER

THIS MATTER came to be heard on the 31st day of October, 1991, upon the post-trial motions of both parties and for entry of a Judgment Order on the jury's August 1, 1991 verdict; and

IT APPEARING TO THE COURT that all post-trial motions should be denied with the exception of Whittaker's motion to set aside the jury's verdict on Count I of TechDyn's Amended Motion for Judgment; it is

ADJUDGED, ORDERED and DECREED that Whittaker's motion to set aside the jury's verdict on Count I of TechDyn's Amended Motion for Judgment is granted, the remainder of the parties' post-trial motions are denied, and the following Judgment is entered by the Court:

- 1) Defendant, Whittaker Corporation's motion to set aside the jury verdict on Count I of TechDyn's Amended Motion for Judgment is hereby granted and judgment entered thereon in favor of the Defendant.



- 2) TechDyn shall recover no damages from Whittaker on Count 2 of TechDyn's Motion for Judgment in accordance with the jury's verdict for Whittaker on Count 2;
- 3) TechDyn shall recover no damages from Whittaker on Count 3 of TechDyn's Motion for Judgment in accordance with the jury's verdict for Whittaker on Count 3;
- 4) TechDyn shall recover no damages from Whittaker on Count 4 of TechDyn's Motion for Judgment in accordance with the jury's verdict for Whittaker on Count 4;
- 5) Whittaker shall recover from TechDyn Four Hundred Twenty-Two Thousand Six Hundred Seventy-Six (\$422,676) Dollars on Count ~~I and II~~ of Whittaker's Amended Counterclaim against TechDyn in accordance with the jury's verdict for Whittaker on Count ~~I and II~~;
- 6) Whittaker shall recover One Hundred Forty-Two Thousand (\$142,000) Dollars from TechDyn on Count III of Whittaker's Amended Counterclaim against TechDyn in accordance with the jury's verdict for Whittaker on Count III; and
- 7) Whittaker shall recover no damages on Count IV of Whittaker's Amended Counterclaim against TechDyn in accordance with the jury's verdict for TechDyn on Count IV.

Based upon the foregoing, Whittaker shall recover from TechDyn a net payment of Five Hundred Sixty-Four Thousand Six Hundred Seventy-Six (\$564,676) Dollars plus lawful interest thereon, at the judgment rate, from the 1 day of August, 1991, and it is


EXECUTION

FURTHER ADJUDGED, ORDERED AND DECREED that ~~if TechDyn~~
~~wishes execution of the judgment against it to be suspended~~ ^{TECH DYN IS}
during an appeal thereof, ~~TechDyn shall be, and hereby is,~~
^{PROVIDED TECH DYN} ~~directed to file an appeal bond, within _____ days or an~~
irrevocable letter of credit, in the amount of \$ 614,000.00
conditioned upon the performance or satisfaction of the judgment

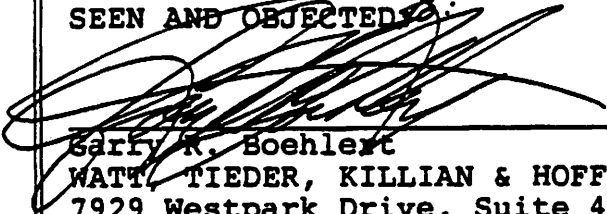
and payment of all damages incurred in consequence of such suspension.

AND THIS ORDER IS FINAL.

ENTERED, this 31 day of October, 1991.



J. Howe Brown, Judge
Circuit Court of Fairfax County

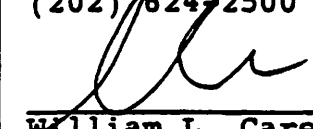
SEEN AND OBJECTED TO:


Barry R. Boehlert
WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

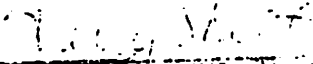
Counsel for Plaintiff
TechDyn Systems Corporation

SEEN AND OBJECTED TO AS TO ALL ADVERSE RULINGS:


Peter B. Work
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 624-2500


William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, Virginia 22030
(703) 273-2440

Counsel for Defendant
Whittaker Corporation

FILED
HARDEN L. LAMONT, CLERK
BY: 
10-31-91

RECEIVED

NOV 14 1991

WAT, HILLEN,
KILLIAN & HOFFAR

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION,

Plaintiff,

v.

WHITTAKER CORPORATION,

Defendant.

AT LAW NO. 94144

WHITTAKER CORPORATION'S OPPOSITION TO
TECHDYN SYSTEMS CORPORATION'S MOTION FOR RECONSIDERATION

On November 8, 1991, TechDyn filed a motion -- unaccompanied by any supporting memorandum or explanation -- in which it asked the Court to reconsider and vacate its October 31, 1991 Order entering judgment for Whittaker on TechDyn's Count One. TechDyn noticed its motion for hearing on November 15. Then, on the evening of November 13, after the close of business, TechDyn served on Whittaker a notebook containing a 47-page memorandum in support of its motion and several hundred pages of materials cited in the memorandum.

Obviously, TechDyn's belated filing of its memorandum precludes any detailed response by Whittaker. But, in fact, no detailed response is necessary because -- despite the volume of paper filed -- TechDyn's memorandum fails in the following particulars to address the factual bases for the Court's October 31 ruling and the supporting legal authorities:

1. The gist of the Court's ruling was that TechDyn had failed to sustain its burden of proof under the Hale v. Fawcett principle by not providing the jury with a basis to allocate TechDyn's claimed damages among Whittaker and non-Whittaker causes.^{1/} Yet, TechDyn's memorandum does not address this evidentiary shortcoming; nor has TechDyn ever addressed it. It remains the fact that TechDyn presented no evidence whatsoever to show what work the specific "time-related" costs it was claiming in Count One represented or what caused them to be incurred. TechDyn presumably had accounting records which would have shed light on these critical questions (e.g., cost codes associated with particular direct labor charges), but TechDyn chose not to disclose them to the jury -- or to Whittaker. Instead, TechDyn was

^{1/} On November 8, 1991, Whittaker submitted a proposed memorandum of decision setting forth what Whittaker understood to be the rationale for the ruling that the Court announced from the bench on October 31. A copy of Whittaker's proposed memorandum is attached hereto for the Court's convenience.

content to ask the jury to charge all of its unreimbursed time-related costs to Whittaker.

2. In explaining its October 31 ruling, the Court specifically and pointedly commented on the fact that TechDyn's own officials had testified at trial that there were multiple causes for the costs TechDyn was claiming in Count One and that some of these causes could not be attributed to Whittaker. This testimony was binding on TechDyn under the doctrine of Massie v. Firmstone. Yet, TechDyn's memorandum simply ignores it.
3. TechDyn's memorandum also ignores both the jury's finding that TechDyn's default termination of Whittaker on the remote control element (RCE) was invalid, and the associated legal principal that none of the substantial costs resulting from TechDyn's two-year effort to reprocur the RCE (including some of the costs claimed in Count One^{2/}) could be charged to Whittaker. While TechDyn's memorandum makes much of comments which the Court made in denying Whittaker's Hale v. Fawcett motions at trial, the Court obviously made those comments without knowing what finding the jury would

^{2/} TechDyn's memorandum suggests that no costs caused by the RCE reprocurement were claimed in Count One, but TechDyn's own official, Mr. Ellis, testified at trial that certain reprocurement-related costs -- such as the costs of redoing CFA manuals and drawings -- were included in the unreimbursed time-related costs claimed in TechDyn's Count One.

make on the RCE issue. Hence, TechDyn's argument about the Court's prior rulings is simply irrelevant.^{3/}

4. Finally, TechDyn's memorandum appears to proceed on the assumption that the Hale v. Fawcett principle has been so diluted by post-Hale decisions as now to be virtually meaningless. In its discussion of the cases, however, TechDyn fails even to acknowledge the most recent decision in the Hale line, Carr v. Citizens Bank,^{4/} where -- in circumstances analogous to this case -- the Supreme Court of Virginia set aside a jury verdict and fully reaffirmed the Hale v. Fawcett principle with this declaration:

Speculation and conjecture cannot form the basis of recovery where there are multiple causes of damage. If the proof is too uncertain to allow the jury to apportion the portion of damage for which the defendant is responsible, the issue should not be submitted to the jury.

* * * *

Because TechDyn is content in its memorandum to sidestep the bases for the Court's October 31 ruling and the supporting legal

^{3/} TechDyn's sweeping argument about the Court's prior rulings appears to suggest once a trial court submits a case to the jury, it is thereafter disabled from granting a motion to set aside the jury's verdict. That argument finds no support in the law of Virginia.

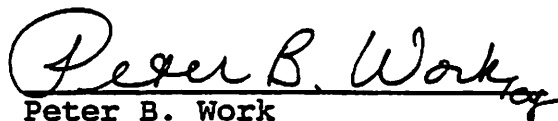
^{4/} 385 S.E.2d 86 (1985).

authorities, the memorandum warrants no detailed consideration, and TechDyn's motion to reconsider should be denied.

Respectfully submitted,

DEFENDANT, WHITTAKER CORPORATION

BY:



Peter B. Work
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 624-2500

and

BY:



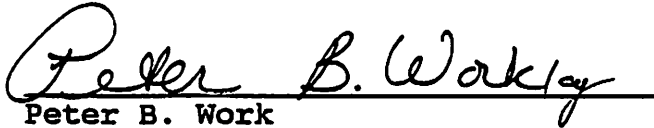
William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, VA 22030
(703) 352-4300

Dated: November 14, 1991

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Whittaker Corporation's Opposition to TechDyn Systems Corporation's Motion for Reconsideration was hand delivered this 14th day of November, 1991, to:

Garry Boehlert, Esq.
Watt, Tieder, Killian & Hoffar
7929 Westpark Drive
Suite 400
McLean, VA 22102


Peter B. Work

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION,

Plaintiff,

v.

WHITTAKER CORPORATION,

Defendant.

AT LAW NO. 94144

WHITTAKER CORPORATION'S SUPPLEMENTAL OPPOSITION
TO TECHDYN SYSTEMS CORPORATION'S MOTION FOR RECONSIDERATION

By its letter of November 25, 1991, the Court invited Whittaker to address an issue that the Court said it was considering in connection with TechDyn's motion to reconsider the Court's judgment of October 31.^{1/} The Court described the issue as follows:

The point I am considering is what is the proper standard for review of the jury verdict and whether that standard is

^{1/} TechDyn filed its motion to reconsider on November 8, 1991, and noticed it for a hearing on November 15. However, TechDyn served no supporting memorandum or explanation for its motion until the evening of November 13, thus preventing anything more than a very brief response from Whittaker. Whittaker filed such a response on November 14.

properly applied. Mr. Boehlert has fully addressed that in his authorities. Mr. Work may wish to supplement.

The position TechDyn takes on this issue in its motion for reconsideration is that Virginia law

compels the confirmation of a jury verdict unless it is unsupported by any evidence.

TechDyn Motion at 45 (emphasis in original). Relying on this purportedly "well established" legal principle (id.), TechDyn argues that the Court plainly misunderstood "a Judge's role vis-a-vis jury verdicts" when it declared at trial in denying Whittaker's motions to strike that:

We are constantly admonished to send things to the jury unless we're absolutely sure, and I can always take care of this later if the jury doesn't come up with the right answer, but I'm going to let it go to the jury.

Id. at 30 (citing Tr. at 2742-43). In criticizing this statement and maintaining that the Court's October 31 judgment was "flatly contrary" to its earlier denial of Whittaker's motion to strike (id. at 33), TechDyn makes the following argument: Once the Court denied Whittaker's motion to strike TechDyn's Count One on the ground that "the evidence is sufficient to allow the jury to consider it," it was then barred by TechDyn's purported legal principle from setting aside the jury's verdict for TechDyn on that Count.

TechDyn's argument misstates Virginia law. As we will discuss below, the Court was perfectly correct in its quoted statement which simply reiterated the controlling legal principles as recently expressed by the Supreme Court of Virginia in Brown v. Koulizakis^{2/} -- a case which TechDyn ignores. As we will also discuss below, the Court's application of the controlling legal principles in setting aside the jury's verdict on TechDyn's Count One was likewise perfectly correct.

A. Controlling Legal Principles

Relying solely upon a case almost a half-century-old -- Hoover v. J.P. Neff & Son, 183 Va. 56, 31 S.E.2d 265 (1944), TechDyn argues that it was improper for the Court to set aside the jury's verdict on TechDyn's Count One after denying Whittaker's two motions to strike that Count. TechDyn's reliance on this case is misplaced for it ignores a long line of post-Hoover decisions by the Supreme Court of Virginia, culminating with Brown v. Koulizakis, which holds that a trial court must deny a motion to strike and submit a case to the jury if there is any doubt whatsoever as to the sufficiency of a plaintiff's evidence. The Koulizakis line of cases, however, makes it crystal clear that the denial of a motion to strike and the submission of a case to a jury does not foreclose a trial court from later setting aside a jury verdict if it is contrary to the evidence or without credible

^{2/} 229 Va. 524, 331 S.E.2d 440 (1985).

evidence to support it. The Court explained these principles in Koulizakis as follows:

When the sufficiency of a plaintiff's evidence is challenged upon a motion to strike the evidence at the conclusion of the plaintiff's case-in-chief, the trial court should in every case overrule the motion where there is any doubt on the question.

* * *

If the court overrules the motion to strike, submits the case to the jury and a plaintiff's verdict is returned, the court may set the verdict aside as being contrary to the evidence or without evidence to support it.

Id. at 445 (emphasis added). Accord DHA, Inc. v. Leydig, 231 Va. 138, 340 S.E.2d 831, 832 (1986); Semones v. Johnson, 217 Va. 293, 227 S.E.2d 731, 733 (1976); Williams v. Vaughan, 214 Va. 307, 199 S.E.2d 515, 517 (1973).

The reason for the rule set forth in the Koulizakis line of cases is that "[g]ranteeing a motion to strike at the end of the plaintiff's case, if done erroneously, can lead to a substantial waste of judicial resources -- a consequence to be avoided." Leydig, 340 S.E.2d at 832 (citing Koulizakis, 331 S.E.2d at 445). "To guard against the waste that can be occasioned by granting a motion to strike at the end of plaintiff's evidence, [the Supreme] Court has developed [these] rules that govern the way in which a trial court must view plaintiff's evidence when considering such a motion." Leydig, 340 S.E.2d at 832 (emphasis added).

Moreover, after all of the evidence is in and the jury has returned its verdict, the trial court has time thoroughly to review and reflect upon the entire record in a way that is not possible during the course of a trial -- particularly one in which the evidence is complex and confusing. See, e.g., Mitchell v. Reardon Smith Line, Ltd., 236 Va. 212, 372 S.E.2d 395, 397-99 (1988) (affirming trial court's grant of motion to set aside verdict "after argument and a review of the transcript").

Thus, what TechDyn cynically characterizes as Judge Brown's "apparent understanding of a Judge's role vis-a-vis jury verdicts" (TechDyn Motion at 30) was in fact a perfectly correct statement of well-established Virginia law. When the Court stated at trial that "[w]e are consistently admonished to send things to the jury unless we're absolutely sure, and I can always take care of this later if the jury doesn't come up with the right answer," Tr. at 2742-43, it was simply reiterating the principles set forth by the Supreme Court of Virginia in the Koulizakis line of cases.

Not only does TechDyn ignore the controlling Koulizakis line of cases, but it is plainly wrong when it argues that Virginia law "compels the confirmation of a jury verdict unless it is unsupported by any evidence." TechDyn Motion at 46 (emphasis in original). TechDyn cites no direct authority for this purported standard and most of the cases on which it appears to rely do not even relate to the appropriate standard for setting aside a jury verdict. For instance, Zedd v. Jenkins, 194 Va. 704, 74 S.E.2d

791 (1953), the first case TechDyn cites, involved the propriety of a trial judge calling a jury foreperson up to the bench before the jury verdict was shown to counsel and suggesting that he draw a line through the phrase "for punitive damages only" which the jury included on its verdict form. In the absence of such a deletion, the jury's verdict was invalid since it would have awarded punitive damages without awarding any compensatory damages. Plainly, the conduct of the trial judge in Zedd had nothing to do with the standard for setting aside a jury verdict. Quite the contrary, the trial judge went to extraordinary lengths to obtain a verdict upon which judgment could be entered.

TechDyn also makes much of Hadeed v. Medic-24, Ltd., 237 Va. 277, 377 S.E.2d 589 (1989), but that case involved a challenge to this Court's grant of a motion to strike before there was any jury verdict -- not a motion to set aside a jury verdict. The appellate decision thus has no significance here (except to highlight TechDyn's failure to acknowledge Brown v. Koulizakis which was discussed at length in Hadeed).

In those cases where the Supreme Court of Virginia has actually considered the standard for setting aside a verdict, it has consistently ruled that a jury verdict should be set aside if it is "contrary to the evidence," T.M. Graves Constr. Inc. v. National Cellulose Corp., 226 Va. 164, 306 S.E.2d, 898, 901 (1983), or if it is "without credible evidence to support it," Fobbs v. Webb Bldg. Ltd. Partnership, 232 Va. 227, 349 S.E.2d 355,

357 (1986). As we will discuss below, the specific issue presented by Whittaker's motion to set aside was whether TechDyn had sustained its burden under the Hale v. Fawcett principle. Whittaker contended that TechDyn had presented insufficient evidence to sustain its burden and the verdict was therefore contrary to the evidence.

Among the cases in which the Supreme Court of Virginia has affirmed a trial court's decision to set aside a verdict as contrary to the evidence or without credible evidence to support it, Murray v. Hadid, 238 Va. 722, 385 S.E.2d 898 (1989), stands out as a case bearing strong factual resemblance to this case. Just as did Whittaker, the defendant in Murray moved for summary judgment prior to trial on the plaintiff's damages claim on the ground that it was speculative, and it again moved to strike the claim during trial at the conclusion of all the evidence. The trial court denied both motions. After the jury returned a verdict of almost \$2,000,000 for the plaintiff, however, the defendant filed a motion to set aside the jury verdict, and the trial court granted that motion. The Supreme Court of Virginia affirmed this action of the trial court, despite the trial court's earlier denial of motions for summary judgment and to strike, for many of the same reasons that this Court set aside the verdict for TechDyn -- the plaintiff's damages evidence was "speculative" and did not "show sufficient facts and circumstances to permit a jury

to make a reasonable estimate of those damages." 385 S.E.2d at 904-05.^{3/}

B. Application of the Controlling Legal Principles

Prior to and during the trial of this case, Whittaker filed several motions directed at TechDyn's Count One which were based on the Hale v. Fawcett^{4/} principle that, where there are multiple causes of damage, a plaintiff must present evidence showing within a reasonable degree of certainty the share of damage for which the defendant was responsible. TechDyn consistently responded to these motions by representing that all of the "time-related costs" it was claiming in its Count One were caused by Whittaker. Yet, TechDyn's own officials testified at trial -- and the jury ultimately found -- that there were multiple causes for these "time-related costs" and that some of the costs were not attributable to Whittaker.^{5/} The testimony of TechDyn's officials

^{3/} The Supreme Court of Virginia has affirmed the decision of trial courts to set aside a verdict as being contrary to the evidence or without credible evidence to support it in a myriad of other factual situations. See, e.g., Kelly v. Virginia Electric and Power Co., 238 Va. 32, 381 S.E.2d 219, 224 (1989) (affirming the setting aside of jury verdict for plaintiff in negligence action because "no direct or reasonable inferences may be properly drawn from the evidence as a whole sustaining the conclusion that the plaintiff was free of contributory negligence"); Sampson v. Sampson, 221 Va. 896, 275 S.E.2d 597, 601 (1981) (holding that it was proper to set aside damage award based upon inadmissible hearsay evidence).

^{4/} 214 Va. 583, 202 S.E.2d 923 (1974).

^{5/} By way of example, TechDyn's Chief Project Engineer,
(continued)

in this regard was, of course, binding on TechDyn under the doctrine of Massie v. Firmstone^{6/} (which TechDyn continues to ignore).

It was on the basis of these acknowledgments of non-Whittaker causes by TechDyn's officials, as well as the jury's finding concerning the RCE, that the Court granted Whittaker's motion to set aside on October 31. Specifically, the Court ruled -- after having had an opportunity to review and reflect on the singularly

(footnote continued)

Mr. Thorton, testified that there were three principal delay factors in the ICCE program. Tr. 2296-2298. One of these was TechDyn's reprocurement of the remote control element (RCE) which consumed fully two years. Because the jury found that TechDyn's default termination of Whittaker on the original remote control element was invalid, Whittaker could not, as a matter of established law, be held responsible for any delay costs associated with the RCE procurement -- including costs TechDyn claimed in its Count One, such as the costs of redoing the CFA drawings and manuals. All such costs were TechDyn's responsibility under the jury's ruling.

The second of Mr. Thorton's three principal delay factors was the data terminal set (DTS) which the Air Force was modifying in an unrelated program. Both Mr. Thorton, and TechDyn's President, Mr. Morrison, testified that the Air Force, not Whittaker, was responsible for the DTS delay.

The last of Mr. Thorton's three principal delay factors was software development. Both Mr. Thorton and Mr. Morrison testified that the Air Force delayed the completion of the ICCE software by converting an off-the-shelf procurement into what Mr. Thorton called a "true software development program."

These, and many other, acknowledged non-Whittaker causes of the "time-related costs" that TechDyn was claiming in its Count One are detailed in Whittaker's August 21, 1991 motion to set aside (at pp. 8-14) and the accompanying Appendix containing excerpts from the trial record.

6/

134 Va. 450, 114 S.E. 652 (1922).

confusing trial record and the jury's RCE finding -- that TechDyn had failed to sustain its burden of proof under the Hale v. Fawcett line of cases by not providing the jury with a basis to allocate TechDyn's claimed costs among Whittaker and established non-Whittaker causes. Thus, as in Murray v. Hadid, supra, the jury's verdict could not be sustained because it was necessarily based on speculation and conjecture.^{7/}

Despite the considerable length of its motion for reconsideration, TechDyn nowhere comes to grip with the basis for the Court's October 31 judgment -- namely, the fact that TechDyn's own officials acknowledged, and the jury found, non-Whittaker causes for the "time-related costs" TechDyn was claiming in its Count One. In fact, TechDyn does not even mention these non-Whittaker causes in its motion, much less demonstrate that it presented evidence at trial showing what portions of its claimed "time-related costs" were attributable to Whittaker causes and to established non-Whittaker causes.

Rather, TechDyn is content in its motion simply to argue that it offered evidence that (1) Whittaker delayed the project, (2) TechDyn was adversely impacted by these delays, and (3) TechDyn's delay damages could be broken down into a "daily

^{7/} See also Carr v. Citizens Bank, 228 Va. 644, 325 S.E.2d 86, 90 (1985) (holding that "[s]peculation and conjecture cannot form the basis of recovery where there are multiple causes of damage").

rate" to facilitate apportionment, "if necessary". TechDyn Motion at 39. Even if one were to assume, arguendo, that TechDyn actually presented credible evidence on these points, the conclusion would necessarily remain that TechDyn failed to sustain its burden of proof under the Hale v. Fawcett principle. TechDyn cannot (and does not) deny that it presented no evidence whatsoever to show what work the specific "time-related costs" it was claiming in Count One represented or what caused those specific costs to be incurred.^{8/} Thus, TechDyn did not establish causal links between the various delay factors, on the one hand, and TechDyn's claimed "time-related costs," on the other hand. It should be noted that this was not a situation where such proof would have been impossible or infeasible to present. TechDyn certainly had accounting records which would have answered the questions of what work specific "time-related costs" represented and what caused them to be incurred. But TechDyn chose not to disclose those records to the jury (or to Whittaker in response to Whittaker's timely discovery requests).

^{8/} TechDyn's "time-related costs" (otherwise denominated as "delay" damages in Count One) included direct labor, on-site overhead, travel, consultants, contract labor, other direct costs, and general and administrative expenses. The methodology employed by TechDyn's damages witness, Mr. Gray, in computing TechDyn's delay damages was simply to (1) collect TechDyn's ICCE program "time-related costs" from the start of the program until the time of trial, (2) deduct payments received from the Air Force as reimbursement for these costs, and (3) charge the unreimbursed portion to Whittaker. (See Tabs 1 and 2 of Whittaker's Appendix of Evidence Cited in Support of Its Post-Verdict Motions.)

For example, as relates to the "direct labor" element of its "time-related costs," TechDyn concededly had records associating particular direct labor charges with cost codes reflecting what work was performed. Instead of disclosing these records (or summaries of the records) to the jury and Whittaker, however, TechDyn was content simply to list all of the time charges of its ICCE program staff for the entire period of the ICCE program without giving any indication of what work the charges represented. The jury thus had no possible way of knowing whether these direct labor costs pertained to (1) TechDyn's original contract work, (2) TechDyn-caused delays (e.g., "time-related costs" claimed in Count One relating to the RCE), (3) Air Force-initiated added work (e.g., conversion of an "off-the-shelf" procurement into a "software development" program, and delays in making available the modified DTS), or (4) alleged Whittaker delays. In the circumstances, the jury could only speculate about which of TechDyn's direct labor costs, as well as other elements of TechDyn's "time-related costs," should be attributed to these various causes.

Despite the contrary suggestion in TechDyn's motion (at 39), the "daily rate" of "time-related costs" advanced by TechDyn's damages witness, Mr. Gray, in no way permitted the jury to allocate responsibility for TechDyn's "time-related costs".^{9/} As

^{9/} Like all of the exhibits in TechDyn's "Damages Book," the documents reflecting Mr. Gray's "daily rate" calculations (Exhs. 952-53) were hearsay or double hearsay. Whittaker
(continued)

Mr. Gray acknowledged, the "daily rate" was arrived at simply by dividing TechDyn's total "time-related costs" on the program (both compensated and uncompensated) by the total number of days in the program. This calculation yielded a "daily rate" of \$2,068 (\$5,153,759 divided by 2,492 days). The number of days TechDyn sought to assess against Whittaker at this "daily rate" was determined simply by dividing the entire uncompensated portion of TechDyn's "time-related costs" (\$2,315,153) by the "daily rate."

Calculated in this manner, TechDyn's "daily rate" plainly shed no light on what work the specific "time-related costs" TechDyn was claiming represented or what caused those costs to be incurred. Moreover, the "daily rate" bore no connection to reality because -- as TechDyn's Mr. Hise acknowledged with binding effect under Massie v. Firmstone (Tr. at 1354-56) -- it failed to reflect the enormous, year-to-year fluctuations in TechDyn's "time-related costs." For example, TechDyn's costs in the first fiscal year of performance were four times greater than in the last fiscal year of performance. Even had Mr. Gray's "daily rate" taken these cost fluctuations into account, however, the "daily rate" would have had no utility in allocating responsibility for "time-related costs" because Messrs. Gray and Hise both repeatedly

(footnote continued)

sought unsuccessfully to exclude the "Damages Book" both because of its hearsay nature, and because TechDyn had refused, in response to Whittaker's timely discovery requests, to produce most of the documents which Mr. Gray had purportedly used in developing the Damages Book exhibits.

declined to say when the "delay days" they had assigned to Whittaker took place. Tr. at 1328-31 (Hise), 1465 (Gray).

As a final argument, TechDyn appears to suggest again (as it did in its opposition to Whittaker's motion to set aside) that the Hale v. Fawcett principle on which the Court based its October 31 judgment has been so diluted by post-Hale decisions as now to be meaningless. The three cases TechDyn cites, however, in no way diminish the vitality of that principle.^{10/} Moreover, in the most recent case in the Hale line, Carr v. Citizens Bank, 228 Va. 644, 325 S.E.2d 86, 90 (1985) the Supreme Court of Virginia fully reaffirmed the Hale v. Fawcett principle by setting aside a jury verdict because the plaintiff's evidence required the jury to speculate in allocating damages among multiple causes.

^{10/} The first case cited by TechDyn, Pebble Building Co. v. G.J. Hopkins, Inc., 223 Va. 188, 288 S.E.2d (1982), involved a situation where the trial judge (in a non-jury trial) found only one cause for the plaintiff's damage and therefore had no reason to apply the Hale v. Fawcett principle. The Supreme Court of Virginia affirmed, holding that the case was "unlike Hale v. Fawcett." 288 S.W.2d at 438.

The second case cited is Sachs v. Hoffman, 224 Va. 545, 299 S.E.2d 694 (1983), an instructions case, where the Supreme Court affirmed the requirement for a "reasonable certainty" instruction in cases involving multiple causes of damage. 299 S.E.2d at 697.

The last case cited is National Energy Corp. v. O'Quinn, 223 Va. 83, 286 S.E.2d 181 (1981), where the Supreme Court simply restated the Hale v. Fawcett principle and observed that the plaintiff had satisfied that standard.

CONCLUSION

TechDyn's motion for reconsideration misstates the standard applicable to setting aside a jury verdict and disregards the bases for the Court's application of the Hale v. Fawcett principle. For these and the additional reasons stated above, TechDyn's motion should be denied.

Respectfully submitted,

DEFENDANT, WHITTAKER CORPORATION

BY: Peter B. Work /ajm
Peter B. Work
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 624-2500

and

BY: William L. Carey /ajm
William L. Carey
MILES & STOCKBRIDGE
11350 Random Hills Road
Suite 500
Fairfax, VA 22030
(703) 352-4300

Dated: December 9, 1991

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Whittaker Corporation's Supplemental Opposition to TechDyn Systems Corporation's Motion for Reconsideration was hand delivered this 9th day of December, 1991, to:

Garry Boehlert, Esq.
Watt, Tieder, Killian & Hoffar
7929 Westpark Drive
Suite 400
McLean, VA 22102



Amy J. Mauser

FILED

NOV 11 1991 52

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION

Plaintiff,

v.

WHITTAKER CORPORATION

Defendant.

AT LAW NO. 94144

PLAINTIFF TECHDYN SYSTEMS CORPORATION'S
RESPONSE TO WHITTAKER CORPORATION'S SUPPLEMENTAL
OPPOSITION TO TECHDYN'S MOTION FOR RECONSIDERATION

COMES NOW, Plaintiff, TechDyn Systems Corporation (hereinafter "TechDyn"), and sets forth herein its response to Whittaker Corporation's (hereinafter "Whittaker") Supplemental Opposition to TechDyn's Motion for Reconsideration.

I. Whittaker Has Mis-stated And Misapplied The Proper Standard Of Review That A Circuit Court Judge Must Apply To A Jury Verdict

On November 25, 1991, Judge Brown wrote to counsel for the parties stating that he had vacated his October 31, 1991 Order and advising them that: "The point I am considering is what is the proper standard for review of the jury verdict and whether that standard is properly applied." In Whittaker's Supplemental Response to TechDyn's Motion for Reconsideration, Whittaker relies on the case of Brown v. Koulizakis, 229 Va. 524, 331

S.E.2d 440 (1985) which Whittaker asserts contains "... the controlling legal principles..." regarding these issues. Whittaker's reliance on Brown v. Koulizakis is misplaced and unhelpful for this Court to reach the proper result in response to TechDyn's request that this Court enter judgment on the jury's \$2,101,000 verdict for TechDyn on Count 1 of TechDyn's Amended Motion for Judgment.

As a preliminary matter, the Koulizakis case (which Whittaker contends TechDyn ignored) has nothing to do with the standard of review which the Trial Court must apply to a jury verdict when the court is faced with a motion to set that verdict aside. Instead, Koulizakis was a medical malpractice case in which the Supreme Court reversed the Trial Court's decision to strike the plaintiff's evidence at the conclusion of the plaintiff's evidence--before that evidence ever went to the jury. In reaching its holding, the Supreme Court properly observed: "When the sufficiency of a plaintiff's evidence is challenged upon a motion to strike the evidence at the conclusion of the plaintiff's case-in-chief, the trial court should in every case overrule the motion where there is any doubt on the question" (emphasis added). 331 S.E.2d at 445.

The instant case is readily distinguishable from Koulizakis. In the present case, the Court denied--not granted--Whittaker's motion to strike TechDyn's evidence at the close of TechDyn's case-in-chief. Moreover, in the instant case, Judge Brown did not deny Whittaker's motion to strike TechDyn's

evidence because the sufficiency of TechDyn's evidence was "doubtful". To the contrary, Judge Brown has repeatedly denied Whittaker's motions to strike TechDyn's evidence on Count 1 with an express and proper affirmative finding that TechDyn did present sufficient evidence to overcome any argument that TechDyn's damages could not be apportioned or that they were speculative. In so holding, Judge Brown has affirmatively stated:

I also overrule the motion to strike with regard to the delay damages. In this case, I find that the evidence is sufficient to allow the jury to consider whether the apportionment has been proved by one side and the other side. This is what I said to you up here in a bench conference, Mr. Work, the other day. I think you are confusing your effort to show that this delay was due to other causes from their evidence which taken in the light most favorable to them, even though you made some points on cross-examination, viewed in the light most favorable to the Plaintiff, they have presented sufficient evidence for the jury to consider whether they have made that reasonable apportionment or not or whether they have shown what the cause of the damage is, being Whittaker, to recover.

* * *

(Tr. p. 1514; Tab 22 of TechDyn's Motion for Reconsideration).

TechDyn made a motion to strike which I find a certain irony in TechDyn's motion to strike relying on the Hale case for failure to apportion but I deny it for the same reason that I'm going to deny and have denied and will continue to deny Whittaker's motion on the same basis as to TechDyn's evidence (emphasis added).

And what I'm ruling there is simply that it's a jury question (emphasis added).

The same thing with regard to the argument that the damages by Whittaker are speculative. They're jury questions.

(Tr. p. 2695; Tab 26 of TechDyn's Motion for Reconsideration).

Having sent Count 1 of TechDyn's case to the jury, this Court could only properly set that verdict aside if the verdict was "... contrary to the evidence or without evidence to support it." Koulizakis, 331 S.E.2d at 445. It is TechDyn's strong contention (which is fully supported by Judge Brown's prior affirmative findings of the sufficiency of TechDyn's evidence) that the jury's verdict on Count 1 is neither contrary to the evidence nor without evidence to support it.

In TechDyn's Motion for Reconsideration (pages 3-26), TechDyn has cited dozens of documentary exhibits and ample testimony which constitutes evidence which supports the jury's verdict. Plainly, under no circumstance can it be said that the jury's verdict was contrary to, or unsupported by, the evidence in this case. Therefore, as a matter of law, this Court must confirm the jury's \$2,101,000 verdict or TechDyn on Count 1 of TechDyn's Amended Motion for Judgment. Any result to the contrary would constitute an improper substitution of the Judge's opinion of how the case might have been decided for the actual decision rendered by the jury. Hoover v. J.P. Neff & Son, 133 Va. 56, 31 S.E.2d 265 (1944).

II. Whittaker Has Failed To Identify Any Grounds That Would Allow This Court To Set Aside The Jury's Verdict

Having failed to identify the proper standard for a trial court to pass upon a jury verdict, Whittaker has feebly attempted to minimize the significance of Hadeed v. Medic-24, Ltd., 237 Va. 277, 377 S.E.2d 589 (1989) (and the other cases cited by TechDyn) to the question this Court is now examining regarding the application of the proper standard. Whittaker attempts to avoid the clear significance of Hadeed by arguing that the Hadeed case "... has no significance here..." because allegedly it deals only with "... a motion to strike before there was any jury verdict-not a motion to set aside a jury verdict." Again, Whittaker is wrong.

In Hadeed, the Supreme Court said: "On review of a case in which the trial court has sustained a motion to strike after the introduction of all the evidence, we apply the principles governing consideration of evidence upon a motion to set aside a verdict as contrary to the evidence." After making that ruling, the Supreme Court then discussed the following standard that the trial court must apply when considering to strike a plaintiff's evidence before it goes to the jury or when considering to set aside a jury verdict:

[W]e examine the evidence to determine whether or not a verdict in behalf of the losing party can be sustained. That is, upon a careful consideration of all the evidence, if we are of opinion that reasonable men may differ on the conclusion to be reached, then it is our duty to hold that the trial court committed error in

striking the evidence." In viewing the evidence we give the plaintiffs "the benefit of all substantial conflict in the evidence, and all fair inferences that may be drawn therefrom." Id. at 933-34, 224 S.E.2d at 163 (citations omitted) (quoting Walton v. Walton, 168 Va. 418, 422-23, 191 S.E. 768, 770 (1937)). The standard enunciated in Matney for appellate review also is the appropriate standard to be applied at the trial level.

377 S.E.2d at 590.

Plainly, under the foregoing standard, it would be reversible error for this Court to set aside the jury's August 1, 1991 verdict for TechDyn. That is especially true in this case where, unlike the situation in Murray v. Hadid, 238 Va. 722, 385 S.E.2d 989 (1989) where the trial court "implicitly denied a motion to strike plaintiff's evidence by taking it under advisement", Judge Brown has already affirmatively found that TechDyn's damages were not speculative and that TechDyn produced sufficient evidence to allow the jury to apportion those damages.

III. This Court Must Enter Judgment For TechDyn On Count 1
Because The Record Contains Credible Evidence To
Support The Jury's Verdict

Anxious to further obfuscate the issues raised by the Court, and to avoid application of the proper test that the Court must use while ruling on a motion to set aside a verdict, the balance of Whittaker's motion is nothing more than Whittaker's attempt to mischaracterize the evidence of the case in the hope of making the Court believe that Whittaker does have a valid apportionment argument under the Hale v. Fawcett case and/or that

TechDyn's damages were improperly speculative. Again, Whittaker's arguments are without merit.

In order to make its case, Whittaker mischaracterizes TechDyn's evidence as follows: "TechDyn is content in its motion simply to argue that it offered evidence that (1) Whittaker delayed the project, (2) TechDyn was adversely impacted by the delays, and (3) TechDyn's delay damages could be broken down into a daily rate to facilitate apportionment, if necessary." (Whittaker memorandum p. 10-11). Whittaker's self-serving characterization of TechDyn's evidence is incomplete, wrong, and serves as a false premise for Whittaker's Hale v. Fawcett apportionment argument.

As stated in TechDyn's November 13, 1991 memorandum of points and authorities, TechDyn provided the jury substantial evidence, in the form of testimony and exhibits (see Statement of Facts Nos. 9 and 10) concerning Whittaker's acts and omissions which delayed TechDyn's project completion. TechDyn also provided ample evidence which attributed TechDyn's project delays singularly to Whittaker (see Statement of Fact No. 11). TechDyn further produced voluminous documentary evidence and testimony which quantified only those TechDyn damages that were caused by Whittaker (Statement of Fact Nos. 12, 13, 14, 16, 17, 18, 19, 20, and 21). Contrary to Whittaker's contention, TechDyn has never asserted that all of its time related costs on the project were caused by Whittaker. Instead, TechDyn has properly asserted only that all of the costs which TechDyn has claimed in Count 1

against Whittaker were caused by Whittaker. Furthermore, it is clear that TechDyn did not present to the jury a "total cost" claim (see Statement of Fact No. 15). Moreover, TechDyn presented its delay damages in the form of a daily rate which made it extremely easy for the jury to apportion delay damages to various possible causes--if necessary. (Statement of Fact Nos. 12, 13, and 14). Plainly, with such evidence before the jury, it would be wrong for the Court to do anything but enter judgment for TechDyn on the jury's \$2,101,000 judgment on Count 1.

TechDyn's argument for confirmation of the jury's verdict is even more compelling in this case, where Count 1 went to the jury based on four types of damages--only one of which involved "delay" costs. An important point which this Court must recognize, but which Whittaker has chosen to ignore for obvious reasons, is that Count 1 of TechDyn's Amended Motion for Judgment is not singularly a "delay" claim as Whittaker attempts to characterize it. Instead, it is a claim for the damages TechDyn suffered as a result of Whittaker's breach of the PDFA portion of the project. Included in TechDyn's claim for damages in Count 1 are time related delay-type costs of \$2,919,748, excess overhead costs of \$262,409, costs of \$56,598 associated with relocation of test beds, and \$1,856 for replacement of a keyboard and printer (Trial Exhibit 951). Whittaker has never challenged the sufficiency of the evidence related to any portion of Count 1 other than TechDyn's "delay" costs. Plainly, therefore, the Court must find that the jury's verdict for TechDyn is indeed

founded upon uncontroverted and uncontested evidence. In light of that fact, this Court must enter judgment to effectuate the jury's verdict for TechDyn. Hadeed, supra; T.M. Graves Constr., Inc. v. National Cellulose Corp., 226 Va. 164, 306 S.E.2d 898 (1983); Hoover v. J.P. Neff & Son, 133 Va. 56, 31 S.E.2d 265 (1984).

Finally, Whittaker makes the argument that TechDyn's officials allegedly "... acknowledged ... non-Whittaker causes for the 'time related costs' TechDyn was claiming in its Count 1" (Whittaker response p. 10). TechDyn strongly contests Whittaker's assertion. To the contrary, for the reasons stated in Statement of Fact paragraphs 8-20 of TechDyn's November 13, 1991 memorandum of points and authorities, TechDyn established a prima facie case to recover all of its claimed delay damages from Whittaker. Simply put, TechDyn claimed payment of those damages it suffered because of Whittaker caused problems.

Despite TechDyn's prima facie evidence that Whittaker singularly caused the delay and the damages TechDyn claimed, should this Court find that through cross-examination, or by calling certain of TechDyn's employees as Whittaker witnesses during Whittaker's rebuttal case (i.e., TechDyn's engineer, Rufus Thornton), that Whittaker created factual disputes regarding the cause of TechDyn's damages, it was for the jury, not the Court, to resolve that factual dispute.

In National Energy Corp. v. O'Quinn, 223 Va. 83, 286 S.E.2d 181 (1982), the Virginia Supreme Court ruled on this very

issue and said: "When damages are occasioned by a contribution of causes originating from different sources, the jury must determine from the evidence the part attributable to the defendant and the part traceable to other causes". 286 S.E.2d at 184-85. Moreover, in Massie v. Firmstone, 134 Va. 450, 114 S.E. 652 (1922), the Court said when two or more witnesses for a party give inconsistent or different testimony, the party is entitled to have the jury accept as true the statements most favorable to that party. In so holding, the Court said:

As a general rule, when two or more witnesses introduced by a party litigant vary in their statements of fact, such party has the right to ask the court or jury to accept as true the statements most favorable to him. In such a situation he would be entitled to have the jury instructed upon his contention, or if there were a demurrer to the evidence, the facts would have to be regarded as established in accordance with the testimony most favorable to him. (Emphasis added).

114 S.E. at 656.

TechDyn's witnesses have established a prima facie case for recovery against Whittaker (see Statement of Facts 8-20 of TechDyn's November 13, 1991 Points and Authorities). The jury has capably performed the function of fact finder in this case and has returned a \$2,101,000 verdict for TechDyn. As a matter of law, this Court must enter judgment for TechDyn on that verdict. Hadeed, T.M. Graves, Hoover, National Energy, Massie, supra.

II. Conclusion

For all of the reasons stated in TechDyn's Motion for Reconsideration, and in this submission, the jury's verdict of \$2,101,000 for TechDyn was supported by credible evidence. That fact is readily apparent from the record and from this Court's July 11, and 29, 1991 affirmative findings that TechDyn had indeed propounded such evidence. As a matter of law, because evidence exists to support the jury's verdict, that verdict must be confirmed by this Court. Accordingly, TechDyn respectfully requests that this Court enter judgment for TechDyn in the amount of \$2,101,000 on Count 1 of TechDyn's Amended Motion for Judgment, as determined by the jury after a month of trial and two full days of deliberation.

DATED: December 11, 1991.

Respectfully submitted,

TECHDYN SYSTEMS CORPORATION

By: 

Garry B. Boehlert

By: 

Douglas C. Proxmire

WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

Counsel for Plaintiff

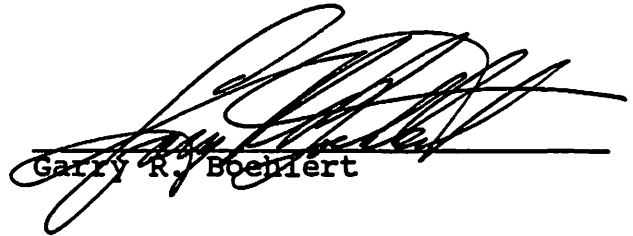
CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Plaintiff TechDyn Systems Corporation's Response to Whittaker Corporation's Supplemental Opposition to TechDyn's Motion for Reconsideration to be sent via hand-delivery this 11th day of December, 1991, to:

Peter B. Work, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

and

William L. Carey, Esquire
Miles & Stockbridge
11350 Random Hills Road
Suite 500
Fairfax, VA 22030



Garry R. Boehlert

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

TECHDYN SYSTEMS CORPORATION

Plaintiff,

v.

WHITTAKER CORPORATION

Defendant.

AT LAW NO. 94144

FILED
FEB -3 PM 3:21
CLERK OF CIRCUIT COURT
FAIRFAX, VA

NOTICE OF APPEAL


COMES NOW, the Plaintiff, TechDyn Systems Corporation ("TechDyn"), pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia, and hereby gives notice of appeal from Judge J. Howe Brown's Judgment Order entered on January 31, 1992. TechDyn further gives notice that the trial transcript and other incidents of the case will be filed, all in compliance with the Rules of the Supreme Court of Virginia.

TechDyn certifies that a copy of the trial transcript has been ordered from the court reporter who reported the case.

DATED: February 3, 1992.

Respectfully submitted,

TECHDYN SYSTEMS CORPORATION

By: 
Garry R. Boehlert

By:

Douglas C. Proxmire

WATT, TIEDER, KILLIAN & HOFFAR
7929 Westpark Drive, Suite 400
McLean, Virginia 22102
(703) 749-1000

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was sent via First-Class mail, postage pre-paid this 3rd day of February, 1992 to:

Peter B. Work, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

and

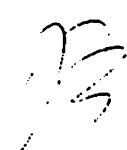
William L. Carey, Esquire
Miles & Stockbridge
11350 Random Hills Road
Suite 500
Fairfax, VA 22030


Garry R. Boehlert

Instruction 12

Damages are not presumed nor may they be based upon speculation, but must be proven. The burden is upon the party claiming damages to prove by the greater weight of the evidence any damage claimed and that it is properly attributable to the other party's breach; and unless any such damage is thus proven by the greater weight of the evidence then the party claiming damage cannot recover for such damage.

If you believe from the greater weight of the evidence that any damage resulted from more than one cause, for one of which the other party is responsible, the burden is upon the party claiming damage to prove by the greater weight of the evidence the share of damage for which the other party is responsible. If a party fails so to prove damage then the party cannot recover for such damage.



Instruction 68

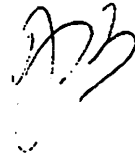
The issues in Count One of Whittaker's Counterclaim are:

First, did TechDyn cause Whittaker to perform added work beyond what was required or contemplated under the original terms of the ICCE subcontract;

Second, did the added work -- whether originating with the Air Force or with TechDyn itself -- cause Whittaker to incur added costs; and

Third, has Whittaker been compensated for the added work?

On these issues Whittaker has the burden of proof.

A handwritten signature or set of initials, possibly "MB", in dark ink, located to the right of the main text block.

Instruction 68(a)

You shall find your verdict for Whittaker under Count I of Whittaker's Counterclaim if Whittaker proves by the greater weight of the evidence the following:

First, that TechDyn caused Whittaker to perform added work beyond what was required or contemplated under the original terms of the ICCE subcontract;

Second, that the added work -- whether originating with the Air Force or TechDyn -- caused Whittaker to incur added cost ; and

Third, that Whittaker has not been compensated for the added work.

If Whittaker fails to prove any of the above, you shall find for TechDyn.

73

Instruction 76

In Count Three of its Counterclaim, Whittaker alleges that TechDyn improperly default terminated Whittaker on the RCE portion of the subcontract. If you find that TechDyn's default termination was improper, then you must convert the default termination into what is known as a termination for convenience.

If you find that the default termination was not improper, then you must find for TechDyn under Count Three.



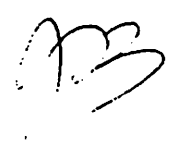
Instruction 76(a)

If you find your verdict for Whittaker on Count III of the Counter-claim, Whittaker is entitled to recover the following:

- (a) Its unreimbursed costs of performance, including the cost of any added work that it performed on the RCE;
- (b) Its costs incurred in shutting down and closing out its work on the RCE;
- (c) Any profit it would have made on its RCE work under the original contract; and
- (d) A reasonable profit on any added work performed.

If you find that Whittaker would have incurred a loss on its RCE work under the original contract had that work been completed, you should reduce Whittaker's recovery by any amount saved by not having to complete the original contract work.

The burden is on Whittaker to prove its RCE performance costs, shutting down costs, and profits, by the greater weight of the evidence.



Instruction 76.5

In Count Three of Whittaker's Counterclaim, the issues are:

First, did TechDyn terminate Whittaker for default on the RCE portion of the subcontract;

Second, was TechDyn's default termination of Whittaker improper under the subcontract.

On these issues Whittaker has the burden of proof.


273

Instruction LL

If you find that Whittaker performed changed work within the general scope of the Subcontract and that such work was performed as the result of direction from the Air Force through TechDyn, then you shall find Whittaker's recovery, if any, is governed by FAR 52.243-1 incorporated by reference into the Subcontract. To recover under 52-243-1, Whittaker must prove the following by the greater weight of the evidence:

- 1) The Air Force, through TechDyn, ordered a change within the general scope of the Subcontract;
- 2) The change caused an increase in the cost of Whittaker's performance;
- 3) Whittaker satisfactorily and fully performed the work ordered by the Air Force through TechDyn;
- 4) Whittaker timely (within thirty days) and properly submitted a proposal for adjustment pursuant to Clause 52.243-1; and
- 5) TechDyn failed to forward Whittaker's adjustment to the Air Force for consideration or otherwise prevented the Air Force from considering Whittaker's contract adjustment proposal.

If Whittaker fails to prove each of the elements above, Whittaker is not entitled to recover under FAR 52.243-1.



Instruction NN

You shall find your verdict for Whittaker under Count I if Whittaker has proved by the greater weight of the evidence that:

- 1) TechDyn caused Whittaker to incur additional costs because TechDyn directed Whittaker to perform work not required by the contract;
- 2) Whittaker timely (within thirty thirty days) and properly submitted a claim for equitable adjustment under the Subcontract identifying the basis of Whittaker's claim and its additional costs;
- 3) The Subcontract required TechDyn to analyze and pay Whittaker the amounts sought in the claim; and
- 4) TechDyn unjustifiably failed to analyze and pay Whittaker the amounts sought in the claim.

You shall find your verdict for TechDyn under this issue of Count I if:

- 1) Whittaker fails to prove any of the four elements above.

A handwritten signature in cursive script, appearing to read "Jenny", is located in the lower right quadrant of the page.

INSTRUCTION NO. 31

Delay in Whittaker's completion of its obligations under the ICCE subcontract standing alone, does not constitute a breach of the ICCE subcontract by Whittaker. Whittaker cannot be held responsible for delays which were not its fault and were beyond its control. These delays are considered "excusable delays."

Excusable delays could include, for example, any periods of delay resulting from TechDyn's causing Whittaker to perform added work not specifically required by the ICCE subcontract; or from TechDyn's wrongfully withholding payment on Whittaker's progress payment invoices when payment was due; or from TechDyn's failing to provide prompt or adequate guidance in response to questions Whittaker had about the work it was to perform.

A handwritten signature in cursive script, appearing to read "Jerry", is located in the lower right quadrant of the page.

INSTRUCTION NO. 32

If you find that it is more likely than not that the delay in the completion of the ICCE program was caused by more than one source, then the burden is on TechDyn to prove with a reasonable degree of certainty the amount of delay for which Whittaker was responsible.

Reasonable degree of certainty does not mean to a mathematical certainty. However, reasonable certainty does mean that TechDyn must offer sufficient facts and circumstances to permit you to make an intelligent and probable estimate of the amount of delay for which Whittaker was responsible. An estimate of the delay for which Whittaker was responsible based solely on statistics and assumptions is too speculative to meet the test of reasonable certainty.

Unless TechDyn has proved with a reasonable degree of certainty the amount of delay for which Whittaker was responsible, Whittaker cannot be held responsible for any delay, and you shall return your verdict in favor of Whittaker on TechDyn's Count One.

Derry

INSTRUCTION NO. 33

You are further instructed that Whittaker cannot be held responsible for any period of delay for which Whittaker was not the sole cause. If any period of delay would have occurred regardless of Whittaker's actions or inactions, Whittaker cannot be held responsible for any portion of that period of delay. In other words, Whittaker is only responsible for periods of delay for which it was the sole and exclusive cause.

A handwritten signature in cursive script, appearing to read "Jewry", is located to the right of the main text block.

We, the Jury, joined in the case of TECHDYN SYSTEMS CORPORATION, Plaintiff, versus WHITTAKER CORPORATION, Defendant, find our verdict in favor of TECHDYN SYSTEMS CORPORATION on COUNT 1 of TECHDYN SYSTEMS claim and assess damages in the amount of \$ 2,101,000.⁰⁰.

Two million, one hundred and one thousand dollars.

David D. Brown
FOREMAN

We, the Jury, joined in the case of WHITTAKER CORPORATION, Defendant, versus TECHDYN SYSTEMS CORPORATION, Plaintiff, find our verdict in favor of the Defendant WHITTAKER CORPORATION on COUNT 1 of WHITTAKER CORPORATION'S claim and assess damages in the amount of \$ 422,676.⁰⁰.

Four hundred and twenty two thousand, six hundred and seventy-six dollars.

David D. Brown
FOREMAN

We, the Jury, joined in the case of WHITTAKER CORPORATION, Defendant, versus TECHDYN SYSTEMS CORPORATION, Plaintiff, find our verdict in favor of the Defendant WHITTAKER CORPORATION on COUNT 3 of WHITTAKER CORPORATION'S claim and assess damages in the amount of \$142,000.

One hundred and forty two thousand dollars.

David D. Brown
FOREMAN