

1993

William V. Penney v. E-Systems Inc., a Delaware corporation doing business in Utah, David A. Williams and Alfred B. Buchanan : Brief of Appellant

Utah Court of Appeals

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William V. Penny; Plaintiff/Appellant Appearing Pro Se.

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO. 930368

IN THE COURT OF APPEALS

WILLIAM V. PENNEY,

Plaintiff/Appellant,

vs.

E-SYSTEMS, INC., a Delaware  
corporation doing business in  
Utah, DAVID A. WILLIAMS and  
ALFRED B. BUCHANAN,

Defendants/Appellees.

Case No. 930368-CA

Priority No. 15

ADDENDUM TO

BRIEF OF PLAINTIFF/APPELLANT

APPEAL FROM SEVEN (7) ORDERS, RULINGS, OR REFUSALS TO RULE OF THE  
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH,  
GRANTING DEFENDANTS'/APPELLEES' MOTIONS FOR SUMMARY JUDGMENT

District Court Civil No. 900903522CV

HONORABLE ~~FRANK G. NOEL~~, DISTRICT COURT JUDGE

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FILED  
Utah Court of Appeals

JUN 28 1993

*May Noonan*  
May T. Noonan  
Clerk of the Court

IN THE COURT OF APPEALS

WILLIAM V. PENNEY,  Plaintiff/Appellant,  vs.  E-SYSTEMS, INC., a Delaware corporation doing business in Utah, DAVID A. WILLIAMS and ALFRED B. BUCHANAN,  Defendants/Appellees.	Case No. 930368-CA    Priority No. 15
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DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST  
SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF  
DOCUMENTS

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

\* \* \* \* \*

WILLIAM V. PENNEY,	)	
	)	DEFENDANTS' OBJECTIONS AND
Plaintiff,	)	RESPONSES TO PLAINTIFF'S
	)	FIRST SET OF INTERROGATORIES
vs.	)	AND REQUESTS FOR PRODUCTION
	)	OF DOCUMENTS
E-SYSTEMS, INC., a Delaware	)	
corporation doing business in	)	
Utah, DAVID A. WILLIAMS and	)	Civil No. 900903522CV
ALFRED B. BUCHANAN,	)	
	)	Judge Frank G. Noel
Defendants.	)	

\* \* \* \* \*

Defendants E-Systems, Inc., David A. Williams and Alfred B. Buchanan (collectively "defendants"), pursuant to the Utah Rules of Civil Procedure, hereby object and respond to Plaintiff's First Set of Interrogatories and Requests for Production of Documents as follows:

GENERAL OBJECTIONS

1. Defendants generally object to the Definitions section of Plaintiff's First Set of Interrogatories and Requests

for Production of Documents to the extent that it is inconsistent with common usage of the English language and/or inconsistent with, or purports to impose obligations in excess of, those set forth in the Utah Rules of Civil Procedure concerning discovery matters.

2. Defendants generally object to the scope of the requested information. The vast majority of plaintiff's interrogatories and requests for production of documents are not specifically directed to the subject matter of this action, but instead request information that is immaterial and irrelevant to any of the purported causes of action set forth in plaintiff's Complaint. Requiring defendants to conduct extensive and costly searches in order to respond to such discovery requests is unduly burdensome, beyond the scope of permissible discovery and not in the interests of judicial economy. Defendants have directed and will continue to direct these discovery requests to employees of E-Systems, Inc. whose present employment duties would indicate a reasonable likelihood that they may possess information, or have custody of records which may contain information, in response to a discovery request that has not been asserted to be otherwise objectionable. Inasmuch as discovery and defendants' investigation of this matter have just commenced, defendants also expressly reserve the right to supplement and/or amend these responses as discovery proceeds.

3. Defendants generally object to the production for inspection and copying of any documents at plaintiff's counsel's office. Defendants will produce documents for inspection and copying at a time and place mutually convenient to all parties.

4. Defendants generally object to answering any interrogatories or producing any documents that are within the attorney-client privilege, the attorney work-product privilege or other privileges. Defendants will produce only non-privileged information and documents, and these responses should be so interpreted.

5. These General Objections shall apply and shall be deemed to have been made with respect to each of plaintiff's interrogatories and requests for production of documents.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Please state the date Plaintiff was hired and the official date of termination appearing on all E-Systems/Montek employment records.

RESPONSE: Plaintiff was employed by defendant E-Systems, Inc. ("E-Systems") from December 16, 1980 until June 18, 1986, the day plaintiff submitted his letter of resignation.

INTERROGATORY NO. 2: Please identify the last date for which Plaintiff received payment at E-Systems/Montek.

RESPONSE: June 18, 1986.

INTERROGATORY NO. 3: Please identify the chain of command above Plaintiff during his tenure with E-Systems/Montek, as well as the date of each change in the chain of command during his tenure.

RESPONSE: Defendants object to Interrogatory No. 3 on the grounds that it is vague and ambiguous. Without waiving those objections, defendants have attached hereto a document reflecting the management positions above plaintiff during his tenure with E-Systems/Montek and the date of each change in those positions during his tenure from which the answer to Interrogatory No. 3 may be ascertained pursuant to Utah R. Civ. P. 33(c).

INTERROGATORY NO. 4: Please state Plaintiff's job description at the time of the termination of his employment.

RESPONSE: As Director of Materials, plaintiff had general responsibility to spend money for all indirect functions, as well as all direct products, of E-Systems' Montek Division. In addition to the purchasing function, plaintiff did material estimating, which is estimating what parts will be needed for a particular project that year. As Director of Materials, plaintiff also had responsibility for shipping and receiving functions.

INTERROGATORY NO. 5: Please identify Plaintiff's job duties at the time of the termination of his employment.

RESPONSE: See Response to Interrogatory No. 4 above.

INTERROGATORY NO. 6: Please identify the date of each performance evaluation of Plaintiff while at E-Systems/Montek and by whom it was performed.

RESPONSE: Defendants object to Interrogatory No. 6 on the grounds that it is vague and ambiguous. Without waiving those objections, it is defendants' understanding that plaintiff's performance was reviewed at least annually, normally in April or May of each year. Plaintiff's Exempt Performance Review dated May 12, 1986 is contained in plaintiff's personnel file, which defendants will produce at a time and place mutually convenient to counsel. In addition, merit increases in plaintiff's salary resulting from his performance appraisals are documented in the Personnel Action Request and Employee Profile forms in plaintiff's personnel file.

INTERROGATORY NO. 7: Please state the distribution of Plaintiff's job duties after the termination of Plaintiff's employment.

RESPONSE: After plaintiff's resignation, Frank Campbell became the Director of Procurement at E-Systems' Montek Division. Plaintiff's job duties, except for the shipping and receiving functions, were assumed by Mr. Campbell. The shipping and receiving functions are now under the control of E.D. Head, Director of Manufacturing.

INTERROGATORY NO. 8: Please identify the names, job titles, addresses and phone numbers of all individuals who assumed at least 20% of Plaintiff's job duties after his termination.

RESPONSE: Frank Campbell, Director of Procurement, E-Systems, Inc., Montek Division, 2268 South 3270 West, Salt Lake City, Utah, 84119, (801) 973-4300.

INTERROGATORY NO. 9: Please identify all positions under Plaintiff's supervisory capacity which were eliminated during the 6 months preceding the termination of his employment and the reason for elimination.

RESPONSE: Defendants object to Interrogatory No. 9 on the grounds that it is vague and ambiguous. Without waiving those objections, no position over which plaintiff had supervisory authority was eliminated during the 6 months preceding June 18, 1986. During that time, a Management Information Systems ("MIS") representative position was transferred to another department because management reasonably believed that such a transfer would result in operational benefits.

INTERROGATORY NO. 10: please identify whether the positions identified in the preceding interrogatory were relocated under different management. If so, please state;

a. where the positions were relocated,

b. the name of the position subsequent to the relocation,

c. to whom the position reported subsequent to the relocation.

RESPONSE: The position identified in the preceding interrogatory was relocated from the Procurement department to the Computer Based Operations department (currently referred to as the "MIS" department). Subsequent to the transfer, the position reported to Marshall Brough, Director of the Computer Based Operations department.

INTERROGATORY NO. 11: If the answer to Interrogatory No. 10 is negative, please state by whom the eliminated positions were assumed and what those duties were.

RESPONSE: Not applicable.

INTERROGATORY NO. 12: After Plaintiff terminated, please identify whether an individual was hired to replace him.

RESPONSE: See Response to Interrogatory No. 8 above.

INTERROGATORY NO. 13: If the answer to the foregoing interrogatory is affirmative, please state what methods of publishing the available position were used and where the publication was made, including name and address of the publishing entity.

RESPONSE: Defendants object to Interrogatory No. 13 on the grounds that the information sought is immaterial and

irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Without waiving those objections, after plaintiff resigned, Frank Campbell, who was then Director of Pricing & Program Analysis at E-Systems' Montek Division, was selected to replace plaintiff. There was no publication of plaintiff's former position.

INTERROGATORY NO. 14: Please state how Plaintiff's job duties were distributed after Plaintiff terminated if no one was hired to replace him. If Plaintiff's job duties were given to others, state the name and the job title of those given Plaintiff's job duties, and which of Plaintiff's former duties they assumed.

RESPONSE: See Response to Interrogatory Nos. 7 and 8 above.

INTERROGATORY NO. 15: Please identify all new projects in the purchasing area which were begun by E-Systems/Montek during the three months prior to Plaintiff's termination and the one year period after Plaintiff's termination. For each new project state the following:

- a. The nature of the project;
- b. The director of the project;
- c. The expected length of time to complete the project;

- d. The skills and expertise required of management to perform the functions required by the project;
- e. The identification of the documents related to the project;
- f. The individuals overseeing the progress and completion of the project.

RESPONSE: Defendants object to Interrogatory No. 15 on the grounds that the information sought is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Defendants also object to Interrogatory No. 15 on the grounds that it is vague, ambiguous, overly broad and unduly burdensome. Defendants are unable to determine what is meant by the word "project"; it is not a word commonly used nor a term of art at E-Systems. If not reasonably defined, the word "project" could conceivably refer to countless activities and undertakings of numerous employees in the purchasing area. Thus, as currently drafted, Interrogatory No. 15 is unanswerable.

INTERROGATORY NO. 16: Please identify and describe all "projects" Plaintiff was in charge of or assisted in directing during the one year period prior to his termination.

RESPONSE: See Response to Interrogatory No. 15 above.

INTERROGATORY NO. 17: Please identify the dates each project, identified in the preceding interrogatory, was targeted to be completed and the actual date each project was completed.

RESPONSE: See Response to Interrogatory No. 15 above.

INTERROGATORY NO. 18: Please identify the job title, job description and job duties of Alfred B. Buchanan, at the time Plaintiff terminated and at the present time.

RESPONSE: At the time plaintiff resigned, Alfred B. Buchanan was the Director of Employee Relations at E-Systems' Montek Division. As Director of Employee Relations, Mr. Buchanan had three general categories of job responsibilities: (1) personnel staffing, management training and development, safety and health management and benefits administration; (2) telecommunications; and (3) industrial security. At the present time, Mr. Buchanan is the Director of Human Resources at E-Systems' Montek Division. Mr. Buchanan's job duties have remained the same in his position as Director of Human Resources.

INTERROGATORY NO. 19: Please identify to whom Alfred B. Buchanan has reported at corporate headquarters for all times since termination of Plaintiff's employment, their title and function within E-Systems, Inc.

RESPONSE: Defendants object to Interrogatory No. 19 on the grounds that it is vague and ambiguous. Without waiving

those objections, Alfred B. Buchanan interfaces with Joe W. Russell, Vice President of Corporate Relations.

INTERROGATORY NO. 20: Please identify the job title, job description and job duties of David Williams, at the time Plaintiff terminated and at all times since.

RESPONSE: David Williams is, and was at the time of plaintiff's resignation, the Vice President and General Manager of E-Systems' Montek Division. As Vice President and General Manager, Mr. Williams is the highest ranking officer of the corporation at the Montek Division and, in general, has responsibility for all operations of the Division. The Montek Division is an operating entity of E-Systems, Inc. with profit responsibilities and contains all of the operating elements and business functions required to be self-sustaining.

INTERROGATORY NO. 21: For the time period since Plaintiff's termination, identify to whom David Williams has reported at corporate headquarters, their title and function at E-Systems, Inc.

RESPONSE: Since plaintiff's resignation, David Williams has reported to E. Gene Keiffer, Chairman of the Board and Chief Executive Officer of E-Systems, Inc., and Lowell Lawson, President and Chief Operating Officer of E-Systems, Inc.

INTERROGATORY NO. 22: Please state how E-Systems/Montek kept track of the overtime of exempt employees during the discovery period.

RESPONSE: Defendants object to Interrogatory No. 22 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Without waiving those objections, it is not the general policy of E-Systems' Montek Division to keep track of any overtime of indirect exempt employees, such as plaintiff. Overtime of indirect exempt employees is typically considered "unscheduled" or "casual" overtime, which is that time required to complete normal assignments and is considered part of the job. No additional overtime is paid for this type of overtime. Direct exempt employees, like engineers, may be required to work scheduled overtime in certain critical situations when failure to accomplish specific tasks without extra hours would result in the failure of the Division to meet requirements or objectives. The general policy of E-Systems' Montek Division regarding overtime pay is set forth in E-Systems/Montek Directive No. 200.8. Defendants will produce copies of the E-Systems/Montek Directives Manuals which are in defendants' possession at a time and place mutually convenient to counsel.

INTERROGATORY NO. 23: Please state, or provide a copy of, the policy of E-Systems/Montek regarding annual physicals for exempt employees, such as the Plaintiff.

RESPONSE: Defendants object to Interrogatory No. 23 on the grounds that the information sought is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Without waiving those objections, the policy of E-Systems, Inc. regarding annual physicals of its executives is set forth in Corporate Policy Directive No. 230.1A. All eligible executives may select a local doctor from a list of physicians designated by Corporate Relations and Administration. Executives forty years of age and older are examined annually; those under age forty are examined every other year. Defendants will produce a copy of the E-Systems Corporate Policy Manual at a time and place mutually convenient to counsel.

INTERROGATORY NO. 24: Please identify to whom the results of each annual physical of Plaintiff were provided within E-Systems/Montek and in what form each report was given.

RESPONSE: Defendants object to Interrogatory No. 24 on the grounds that the information sought is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Without waiving those objections, letters from the treating physician

summarizing plaintiff's annual physicals were provided to Marsha Collins, E-Systems' Occupational Health Nurse, and to Alfred B. Buchanan. Copies of those letters are contained in plaintiff's personnel file, which defendants will produce at a time and place mutually convenient to counsel.

INTERROGATORY NO. 25: Please identify the name, employer, job title, home and work address and phone number of each and every person who may have knowledge of the facts alleged in Plaintiff's complaint, and provide a brief description of their knowledge.

RESPONSE: Defendants object to Interrogatory No. 25 on the grounds that it is overly broad, unduly burdensome, oppressive, inappropriate and not reasonably susceptible to written response. As discovery and defendants' investigation of this matter have just commenced, defendants are not presently able to identify "each and every person who may have knowledge of the facts alleged in plaintiff's complaint", much less to provide a description of the knowledge held by each such person. Furthermore, discovery of specific knowledge held by the persons identified below should more appropriately be pursued through depositions. Without waiving those objections, defendants assume at this point that, in addition to plaintiff, David A. Williams and Alfred B. Buchanan, various other employees or representatives of E-Systems may also have knowledge of the facts and circumstances

related to this case. At the present time, defendants are able to identify the following persons who may have knowledge of the indicated matters:

David A. Williams -- regarding plaintiff's work or performance during his employment with E-Systems, plaintiff's treatment as an employee at E-Systems, plaintiff's allegations of fraudulent business practices, the events of June 18, 1986 including, but not limited to, plaintiff's resignation and other matters alleged in plaintiff's Complaint.

Alfred B. Buchanan -- regarding plaintiff's work or performance during his employment with E-Systems, plaintiff's treatment as an employee at E-Systems, the events of June 18, 1986 including, but not limited to, plaintiff's resignation and other matters alleged in plaintiff's Complaint.

Jim Cocke -- regarding plaintiff's work or performance during his employment with E-Systems, plaintiff's treatment as an employee at E-Systems, the events of June 18, 1986 including, but not limited to, plaintiff's resignation and other matters alleged in plaintiff's Complaint.

Frank Campbell -- regarding plaintiff's job duties during his employment with E-Systems and any differences in the position after plaintiff's resignation.

Teresa McLaughlin -- regarding the alleged fraudulent business practices referred to in paragraph 59(b) of plaintiff's Complaint, specifically sourcing changes under the terms of the Northrop Actuator contract.

E. D. Head -- regarding the events leading up to and the meeting of June 18, 1986, referred to in paragraphs 32 and 33 of plaintiff's Complaint.

Dan Lambourne -- regarding plaintiff's work or performance during his employment with E-Systems, plaintiff's treatment of his staff while Director of Materials and the events of June 18, 1986 including, but not limited to, the allegations in paragraph 42 of plaintiff's Complaint.

Harley Ostmark -- regarding plaintiff's work or performance during his employment with E-Systems and plaintiff's treatment of his staff while Director of Materials.

Kathy Reeder -- regarding the events of the meeting of June 18, 1986, referred to in paragraphs 32 and 33 of plaintiff's Complaint.

Susan Murray -- regarding plaintiff's work or performance during his employment at E-Systems, plaintiff's treatment of his staff while Director of Materials and the events of June 18, 1986 including, but not limited to, the typing of plaintiff's letter of resignation.

Ken Johnson -- regarding the alleged fraudulent business practices referred to in paragraphs 59(a) and 59(c) of plaintiff's Complaint.

Bryan Richards -- regarding the procedures followed upon resignation of employment, and the procedural requirements for conversion of health insurance.

Lori Nielsen -- regarding the procedures followed upon resignation of employment.

All the individuals identified above, with the exception of Mr. Cocke and Ms. Reeder, are current employees of E-Systems, Inc., Montek Division, 2268 South 3270 West, Salt Lake City, Utah 84119, (801) 973-4300. Ms. Reeder is currently employed as Director of Information at the Melpar Division of E-Systems, Inc., 7700 Arlington Blvd. Falls Church, VA, 22046, (703) 560-5000. Mr. Cocke is currently employed by Smiths Industries in Florida. Defendants are presently unaware of the current address and phone number of Smiths Industries. Defendants anticipate that through discovery they will learn of other or additional persons who may have knowledge of the facts alleged

in plaintiff's Complaint, and therefore defendants expressly reserve the right to supplement this response as discovery proceeds.

INTERROGATORY NO. 26: Did Defendants, their agents, or attorneys, obtained [sic] a written statement or affidavit from any person regarding this matter anytime during the discovery period? If affirmative, please identify the names of the individuals from whom written statements or affidavits have been obtained and a brief description of the contents of the statements. In whose custody are the statements?

RESPONSE: Defendants object to Interrogatory No. 26 on the grounds that the information sought is protected from discovery by the attorney-client privilege and/or the attorney work-product privilege. Without waiving those objections, defendants did not obtain any written statements or affidavits from any person regarding this matter anytime prior to being served with plaintiff's Complaint.

INTERROGATORY NO. 27: Please identify any complaints ever received by management from any source regarding Plaintiff's ability to do his assigned work. For each complaint, please state the following:

- a. The identity of the complaining party;
- b. The identity of the party receiving the complaint;

- c. The date, or approximate date, the complaint was received;
- d. Whether the complaint was in writing or verbally communicated;
- e. If the complaint was made in writing, whether a written record of the complaint was made, and by whom;
- f. What action was taken regarding the complaint;
- g. Whether Plaintiff was notified of the complaint;
- h. Whether the complaint was investigated; and
- i. If the complaint was investigated, what were the results of the investigation.

RESPONSE: Defendants object to Interrogatory No. 27 on the grounds that it is vague, ambiguous and overly broad. Without waiving those objections, see Response to Interrogatory No. 29, infra, regarding plaintiff's violation of E-Systems' Rules of Conduct on June 18, 1986. Defendants are presently unaware of any additional complaints received by management regarding plaintiff's ability to do his assigned work. Inasmuch as discovery and defendants' investigation of this matter have just commenced, defendants expressly reserve the right to supplement this response as discovery proceeds.

INTERROGATORY NO. 28: Have any of the Defendants ever been a defendant to a suit, formal or informal complaint

concerning an infraction of Section 504 of the Rehabilitation Act of 1973? If affirmative, please state the nature of the suit, formal or informal complaint, the parties to the suit, the court, agency or office in which the suit, formal or informal complaint was brought, the case number and the judge, if applicable.

RESPONSE: Other than in this lawsuit, none of the defendants has ever been a defendant to a suit or the subject of a formal or informal complaint concerning an infraction of Section 504 of the Rehabilitation Act of 1973. In the event that defendants learn through discovery that defendant E-Systems, Inc. has been a defendant to a suit or the subject of a formal or informal complaint concerning Section 504 of the Rehabilitation Act of 1973 in a location other than the Montek Division, defendants will supplement this response if or when that information becomes available.

INTERROGATORY NO. 29: During Plaintiff's employment with E-Systems/Montek, did he obey all rules and regulations in effect? If not please state the following:

- a. Rules and regulations not obeyed;
  - b. Facts supporting the contention that Plaintiff disobeyed each rule or regulation;
  - c. Each document supporting the disobedience thereof;
- and

d. Identity of each person who purports to have knowledge of the disobedience.

RESPONSE: Defendants object to Interrogatory No. 29 on the grounds that it is overly broad, unduly burdensome, vague and ambiguous. Without waiving those objections, on June 18, 1986, plaintiff committed a serious violation of E-Systems' Rules of Conduct, which prohibit, among other things, insubordination, unwillingness or inability to work in harmony with others, discourtesy, and conduct creating disharmony, irritation or friction. The facts supporting plaintiff's disobedience on June 18, 1986 have not yet been fully developed as discovery and defendants' investigation of this matter have just commenced but are, in part, based upon the following: On June 18, 1986, a meeting was called to review, discuss and make a decision on a proposal that the shipping and receiving functions be transferred from the Materials department to the Manufacturing department. Those persons present at the meeting were: David Williams, Vice President and General Manager of the Montek Division; Jim Cocke, Vice President of Finance; Kathy Reeder, Director of Finance; E.D. Head, Director of Manufacturing; and plaintiff, Director of Materials. During the course of the meeting plaintiff became belligerent, abusive and insubordinate. Rather than directing his attention to the issue at hand, the transfer of the shipping and receiving functions, plaintiff insisted on focusing on

personalities and began to personally attack Mr. Head and Mr. Williams. Mr. Cocke, who was plaintiff's immediate supervisor, repeatedly warned plaintiff that he was out of line and should be quiet so that the discussions could continue. Plaintiff continued with his unacceptable conduct, even after further warnings from Mr. Cocke to stop. Plaintiff suggested that management of the Division was incompetent and unqualified, claiming that he alone was the only person in the Division with any management capabilities. Plaintiff even openly suggested that he, rather than David Williams, should be the General Manager of the Division. Both Mr. Cocke and Mr. Williams continued to advise plaintiff that his conduct was unacceptable and that he should be quiet. Plaintiff failed to heed the warnings; instead becoming even more irrational, vocal and insubordinate. Finally, as a result of plaintiff's failure to stop his insubordinate conduct, he was told to leave the meeting. Defendants will produce copies of documents, not protected from discovery by the attorney-client privilege and/or the attorney work-product privilege, relating to the facts set forth above which are in defendants' possession at a time and place mutually convenient to counsel. Those persons who would have knowledge of the facts set forth above include: David Williams, Jim Cocke, E.D. Head, Kathy Reeder and plaintiff.

INTERROGATORY NO. 30: At the time Plaintiff commenced his employment with you, did you intend to reserve the right to

terminate the employment without good cause? If so, how and when was this intention communicated to the Plaintiff?

RESPONSE: Defendants object to Interrogatory No. 30 on the grounds that it is vague, ambiguous and calls for a legal conclusion. Without waiving those objections, plaintiff was hired pursuant to an oral contract for an indefinite period of time at E-Systems' Montek Division. At the time plaintiff commenced his employment at E-Systems' Montek Division, no written or oral representations were made to plaintiff regarding his continued employment, nor were any written or oral representations made to plaintiff that were contrary to the presumption that he was terminable at any time for any reason. Inasmuch as discovery and defendants' investigation of this matter have just commenced, defendants expressly reserve the right to supplement this response as discovery proceeds.

INTERROGATORY NO. 31: If at any time during Plaintiff's employment his work was criticized or praised by his supervisor either orally or in writing, please state the following:

- a. The date, time and place of each incident of criticism;
- b. The date, time and place of each episode of praise;

- c. Each person who witnessed the criticism or praise and whether it was a public or private setting;
- d. Each document you presently are aware of supporting such criticism or praise.

RESPONSE: Defendants object to Interrogatory No. 31 on the grounds that it is vague, ambiguous, overly broad and unduly burdensome. Without waiving those objections, on or about November 10, 1981, Nelson Boroughs, who was then Vice President & General Manager of the Montek Division, wrote plaintiff a letter commending him for work on the Boeing 757 Autopilot Actuator Program. A copy of that letter is contained in plaintiff's personnel file, which defendants will produce at a time and place mutually convenient to counsel. Additional episodes of criticism or praise of plaintiff's work may have occurred during plaintiff's performance appraisals, including the Exempt Performance Review dated May 12, 1986, which is also contained in plaintiff's personnel file.

INTERROGATORY NO. 32: State each time any supervisory or management personnel over Plaintiff received a statement or complaint from Plaintiff, anyone working for E-Systems/Montek, anyone visiting E-Systems/Montek, or associated with E-Systems/Montek in any way, regarding how Plaintiff was being treated by management in regards to his injuries sustained in his automobile accident, and state the following about each:

- a. The approximate date of each statement or complaint;
- b. Who made the statement or complaint;
- c. Who received the statement or complaint;
- d. Nature of the statement or complaint;
- e. State what investigation was made into the statement or complaint;
- f. Identify who conducted the investigation, if applicable;
- g. State the outcome of the investigation;
- h. State what management people were involved in making a decision of action to take after the complaint was made and/or the investigation was completed;
- h. Identify the management people who had knowledge of the statement or complaint;
- i. What steps were taken to correct the situation, if any;
- j. Identify all E-Systems/Montek employees, their job title and current status with E-Systems/Montek, who have knowledge of any complaints or statements concerning this question;
- k. Identify any documents which support or relate to this matter.

RESPONSE: Defendants object to Interrogatory No. 32 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Defendants also object to Interrogatory No. 32 on the grounds that it is vague, ambiguous, overly broad and unduly burdensome. Without waiving those objections, defendants are presently unaware of any supervisory or management personnel over plaintiff receiving a statement or complaint from plaintiff, anyone working for E-Systems/Montek, any one visiting E-Systems/Montek, or associated with E-Systems/Montek in any way, regarding how plaintiff was being treated by management concerning injuries allegedly sustained by plaintiff in an automobile accident.

INTERROGATORY NO. 33: Please state the following regarding any E-Systems/Montek employee who has filed a complaint with E-Systems/Montek management personnel regarding discriminatory practices against an employee of E-Systems/Montek who might have been disabled or in ill health:

- a. The date each complaint was made;
- b. To whom the complaint was made;
- c. The name, job title and address of the individual about whom the complaint was made;
- d. The nature of the complaint;

- e. Any investigative efforts and results made regarding the complaint;
- f. The outcome or resolution of the complaint;
- g. Any individuals who may have knowledge of the complaint, investigation or outcome;
- h. Any documents relevant to the complaint, investigation or outcome.

RESPONSE: Defendants object to Interrogatory No. 33 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to discovery of admissible evidence. Defendants also object to Interrogatory No. 33 on the grounds that it is overly broad and unduly burdensome. Without waiving those objections, no such complaint has been filed with the Human Resources or Employee Relations Department at E-Systems' Montek Division.

INTERROGATORY NO. 34: Please identify the method of determining bonuses for management employees during the tenure of Plaintiff's employment with E-Systems/Montek.

RESPONSE: The Vice President and General Manager had sole discretion to decide whether a particular management employee would receive a bonus and the amount thereof.

INTERROGATORY NO. 35: Please state whether Plaintiff's bonuses were determined differently than the other management employees during the duration of his tenure at E-Systems/Montek.

RESPONSE: No.

INTERROGATORY NO. 36: Please indicate who was responsible for setting each policy governing middle management employees at E-Systems/Montek on Plaintiff's level. Please name each individual and provide details as to what type of policy, their policy making role, as well as who had final say in policy decisions.

RESPONSE: Defendants object to Interrogatory No. 36 on the grounds that it is vague and ambiguous. Without waiving those objections, there are no policies in place at E-Systems' Montek Division specifically directed to and governing middle management employees.

INTERROGATORY NO. 37: Please identify whether E-Systems/Montek maintained a policy manual, procedures manual, and/or personnel manual regarding management employees such as those on the level of Plaintiff separate from those policies established or maintained by E-Systems, Inc.

RESPONSE: No.

INTERROGATORY NO. 38: Please state the level and location at which all policies and procedures are prepared and approved concerning employees of E-Systems/Montek, and identify the names and job titles of the individuals responsible for preparation of the policies and procedures.

RESPONSE: Defendants object to Interrogatory No. 38 on the grounds it is vague, ambiguous and overly broad. Without waiving those objections, the E-Systems Corporate Policy Manual is prepared and issued at corporate headquarters in Dallas, Texas. Corporate Policy is approved by E. Gene Keiffer, Chairman of the Board and Chief Executive Officer of E-Systems, Inc. The E-Systems/Montek Division Directives Manual, which contains the policies and guidelines for certain activities within the Montek Division, is prepared and issued at the Montek Division in Salt Lake City, Utah. Division Directives are approved by the Vice President & General Manager of the Montek Division, David Williams.

INTERROGATORY NO. 39: Please identify the title of each document or volume in which either policies, procedures, or personnel procedures are maintained at E-Systems/Montek.

RESPONSE: Defendants will produce copies of the E-Systems Corporate Policy and Montek Division Directives Manuals which are in defendants' possession at a time and place mutually convenient to counsel from which the answer to Interrogatory No. 39 may be ascertained pursuant to Utah R. Civ. P. 33(c).

INTERROGATORY NO. 40: Please identify and state the policy of E-Systems/Montek concerning overtime worked by exempt employees during the discovery period, including any policy changes that have occurred during that time period.

RESPONSE: See Response to Interrogatory No. 22 above.

INTERROGATORY NO. 41: Please identify and state the policy of E-Systems/Montek regarding the award of bonuses and letters of accommodation to management or exempt employees for good performance.

RESPONSE: Defendants object to Interrogatory No. 41 on the grounds that it is vague and ambiguous. Defendants are unable to interpret plaintiff's reference to "letters of accommodation." Without waiving these objections, all decisions regarding the award of bonuses to management or exempt employees for good performance are made at the sole discretion of the Vice President and General Manager of the Montek Division, David Williams. See Response to Interrogatory No. 34.

INTERROGATORY NO. 42: Please identify and state the policy of E-Systems/Montek regarding conversion of benefits and identify which benefits could be converted during the time period of Plaintiff's termination.

RESPONSE: Defendants object to Interrogatory No. 42 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Defendants object to Interrogatory No. 42 on the grounds that it is vague, ambiguous, and overly broad. Without waiving those objections, defendants will produce copies of the Summary Plan Descriptions of E-Systems' Health Care and

Weekly Income Disability Plan and Optional Life Insurance Programs ("PRU-OPT") in effect during the time period of plaintiff's resignation at a time and place mutually convenient to counsel from which the answer to Interrogatory No. 45 may be ascertained pursuant to Utah R. Civ. P. 33(c). The policy of E-Systems' Montek Division during the time period of plaintiff's resignation regarding conversion to an individual hospital and surgical expense policy is set forth in E-Systems' Health Care and Weekly Income Disability Plan, which provides that application for the individual policy must be made and the first premium paid within 31 days from the termination of the Plan coverage. The policy of E-Systems' Montek Division during the time period of plaintiff's resignation regarding conversion of Group Term Life Insurance to an individual policy is set forth in E-Systems' Optional Life Insurance Programs ("PRU-OPT"), which provides that the conversion privilege is available during the 31 days following termination of employment or transfer out of the eligible class and, further, that the employee is responsible for contacting Prudential and completing the conversion forms before the end of the 31-day period. During the time period of plaintiff's resignation, any terminating employee having an individually-owned cancer insurance policy could continue that policy by directly paying the premiums to Transport Life Insurance Company ("Transport Life"). It is defendants' understanding that, according to

Transport Life's procedures, notice would be sent to the terminating employee by Transport Life after two consecutive months of delinquent payments, giving the employee an opportunity to continue the policy by paying the premiums directly to Transport Life within ten days. If payment was not made within the 10-day period, it is defendants' understanding that Transport Life would then send the terminating employee a notice of termination, after which the employee would still have an opportunity to seek a reinstatement.

INTERROGATORY NO. 43: Please identify and state the policy of E-Systems/Montek regarding COBRA coverage at the time Plaintiff was terminated from the payroll of E-Systems/Montek.

RESPONSE: Defendants object to Interrogatory No. 43 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Without waiving those objections, at the time of plaintiff's resignation in June 1986, the federal COBRA health care continuation coverage requirements were not applicable to E-Systems' health plan.

INTERROGATORY NO. 44: Please identify and state the policy of E-Systems/Montek regarding exit interviews for exempt employees upon terminating and indicate by whom the interview should be conducted.

RESPONSE: Defendants object to Interrogatory No. 44 on the grounds that it is vague and ambiguous. Without waiving those objections, E-Systems' Montek Division does not have a specific policy regarding "exit interviews for exempt employees upon terminating." However, as part of the procedure commonly used at E-Systems' Montek Division for processing voluntary and involuntary terminations, the terminating employee signs a document entitled "Termination Checklist", affirming that he or she has discussed certain topics with a member of the employee relations department and has received a final paycheck for all wages. The general policy of E-Systems' Montek Division regarding "terminations" is set forth in E-Systems/Montek Directive No. 200.4. Defendants will produce copies of the E-Systems/Montek Directives Manuals which are in defendants' possession at a time and place mutually convenient to counsel.

INTERROGATORY NO. 45: Please identify and state the policy of E-Systems/Montek regarding employees who have been disabled, i.e., injured in an automobile accident and are unable to work as regards the following:

- a. Leave of absence;
- b. Extended leave;
- c. Medical leave;
- d. Disability leave;
- e. Long term disability;

- f. Short term disability;
- g. Preservation of the employee's position if the employee is unable to work, but will be able to at a later date;
- h. Upkeep of employee's benefits while the employee is unable to work;
- i. Requirement that employee work or lose their job;
- j. Job security should employee be unable to work for an extended period of time;
- k. Vacation and sick leave as it should be applied;
- l. When termination would be considered for an employee who is unable to work for an extended period of time;
- m. Whether length of service is a determining factor in granting a leave and how it applies to any of the preceding benefits.

RESPONSE: Defendants object to Interrogatory No. 45 on the grounds that it is vague, ambiguous, overly broad and unduly burdensome. Without waiving those objections, defendants will produce copies of the E-Systems/Montek Division Directives Manuals which are in defendants' possession at a time and place mutually convenient to counsel from which the answer to Interrogatory No. 45 may be ascertained pursuant to Utah R. Civ. P. 33(c). See also Response to Interrogatory No. 61, infra.

INTERROGATORY NO. 46: Please identify the E-Systems/Montek policy for employee performance evaluations of management personnel, on the level of Plaintiff, in effect during Plaintiff's tenure with E-Systems/Montek and please state the following regarding the procedure:

- a. A brief description of the procedure;
- b. The location and names of the documents containing a description of the procedure;
- c. The name, address and title of the custodian of the files or documents identified in subparagraph (b).
- d. A list of the forms by name and number in use for performance evaluations;
- e. What copies of forms identified in subparagraph (d) are placed in each employee's individual personnel file;
- f. Whether performance evaluations were conducted when Plaintiff was employed;
- g. How often performance evaluations are to be conducted for employees on the level of Plaintiff.

RESPONSE: The general policy of E-Systems' Montek Division regarding performance appraisals and merit increases is set forth in E-Systems/Montek Division Directive No. 200.6. Defendants will produce copies of the E-Systems/Montek Division

Directives Manuals which are in defendants' possession at a time and place mutually convenient to counsel from which the answer to Interrogatory No. 46 may be ascertained pursuant to Utah R. Civ. P. 33(c). See also Response to Interrogatory No. 6 above.

INTERROGATORY NO. 47: Please state E-Systems/Montek's policy regarding severance for an employee on the management level of Director at the time of Plaintiff's termination.

RESPONSE: Defendants object to Interrogatory No. 47 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Defendants also object to Interrogatory No. 47 on the grounds that it is vague and ambiguous. Without waiving those objections, severance pay is only available to employees who are terminated as a result of a layoff. E-Systems does not have a policy of paying severance to employees, such as plaintiff, who resigned or were involuntarily terminated for reasons other than layoff. The policy of E-Systems' Montek Division regarding severance pay for employees who are laid off is set forth in Directive No. 200.3. Defendants will produce copies of the E-Systems' Montek Division Directives Manuals which are in defendants' possession at a time and place mutually convenient to counsel.

INTERROGATORY NO. 48: Please state whether there is a policy at E-Systems/Montek regarding the treatment of the disabled.

RESPONSE: Yes.

INTERROGATORY NO. 49: If the answer to the preceding interrogatory is affirmative, please identify and state the contents of the policy.

RESPONSE: The policy of E-Systems' Montek Division regarding treatment of the disabled is set forth in E-Systems' Montek Division Directive No. 200.42. Defendants will produce copies of the E-Systems/Montek Division Directives Manuals which are in defendants' possession at a time and place mutually convenient to counsel from which the answer to Interrogatory No. 49 may be ascertained pursuant to Utah R. Civ. P. 33(c).

INTERROGATORY NO. 50: If there was a customary termination procedure or policy in effect prior to June 30, 1986 please identify and state the policy or procedure.

RESPONSE: Defendants object to Interrogatory No. 50 on the grounds it is vague and ambiguous. Without waiving those objections, the general policy of E-Systems' Montek Division regarding terminations in effect prior June 30, 1986 is set forth in E-Systems/Montek Division Directive No. 200.4. Defendants will produce copies of the E-Systems/Montek Division Directives Manuals which are in defendants' possession at a time and place

mutually convenient to counsel from which the answer to Interrogatory No. 50 may be ascertained pursuant to Utah R. Civ. P. 33(c).

INTERROGATORY NO. 51: Please state to what degree, if any, Defendants Williams and Buchanan could alter policy on the division level of Montek as it applied to management level employees such as Plaintiff.

RESPONSE: Defendants object to Interrogatory No. 51 on the grounds that it is vague and ambiguous. Without waiving those objections, all Montek Division Directives are set by David Williams, within Corporate policy guidelines, in his capacity as Vice President & General Manager of the Montek Division. Mr. Buchanan does not have authority to set or alter policy at the Montek Division. However, as a matter of practice, Mr. Buchanan submits proposed Directives regarding personnel policy and procedure to Mr. Williams for his approval.

INTERROGATORY NO. 52: Please identify and state the policy at E-Systems/Montek regarding a standard of ethics or conduct, or similar philosophy, which E-Systems/Montek expects its employees and management to be bound by.

RESPONSE: Defendants object to Interrogatory No. 52 on the grounds that it is vague and ambiguous. Without waiving those objections, the policy of E-Systems' Montek Division regarding business conduct and ethics is set forth in

E-Systems/Montek Division Directive No. 200.46. Defendants will produce copies of the E-Systems/Montek Division Directives Manuals which are in defendants' possession at a time and place mutually convenient to counsel from which the answer to Interrogatory No. 52 may be ascertained pursuant to Utah R. Civ. P. 33(c).

INTERROGATORY NO. 53: Please identify and state the policy and procedure used by E-Systems/Montek for spotting a potentially terminable employee and the procedure followed preceding termination.

RESPONSE: E-Systems does not have a policy or procedure for spotting a potentially terminable employee.

INTERROGATORY NO. 54: Please state all discussions and the date or approximate date of each discussion in which the termination of Plaintiff was discussed by any management personnel of E-Systems/Montek prior to his termination.

RESPONSE: Defendants object to Interrogatory No. 54 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Without waiving those objections, plaintiff was not terminated; he voluntarily resigned. However, the termination of plaintiff's employment was discussed by management prior to his resignation. Shortly after the meeting on June 18, 1986, referred to in Response to Interrogatory No.

29, Mr. Williams and Mr. Cocke had discussions about what disciplinary action to take as a result of plaintiff's unacceptable and insubordinate conduct. After deliberation, Mr. Cocke recommended to Mr. Williams that plaintiff be terminated. Mr. Williams concurred with his recommendation. Mr. Cocke also consulted with Mr. Buchanan, who likewise thought that termination would be the appropriate disciplinary action. There were no discussions concerning the termination of plaintiff prior to June 18, 1986.

INTERROGATORY NO. 55: Please identify and state any and all reasons why management of E-Systems/Montek would have discussed terminating Plaintiff.

RESPONSE: See Response to Interrogatory Nos. 29 and 54 above.

INTERROGATORY NO. 56: Please identify each person and their job title, who was consulted by Defendants concerning termination of Defendant and provide a brief description of the consultation.

RESPONSE: See Response to Interrogatory Nos. 54 above.

INTERROGATORY NO. 57: Please identify each person who participated in discussions, or was present during discussions, concerning the termination of Plaintiff, provide a brief description of the discussions and the approximate date on which they occurred.

RESPONSE: See Response to Interrogatory No. 54 above.

INTERROGATORY NO. 58: Please identify and explain all reasons communicated to Plaintiff for no longer wanting to retain him as an employee.

RESPONSE: Defendants object to Interrogatory No. 58 on the grounds that it is vague and ambiguous. Without waiving those objections, on June 18, 1986, plaintiff sent a letter to Mr. Cocke and Mr. Williams in which he issued various ultimatums to the company and stated, "I am willing to bet my job at Montek on the outcome." The letter also contained a blank resignation date to be filled in by management if plaintiff's demands were not met. After plaintiff's resignation letter was received, plaintiff was called to Mr. Cocke's office and, in the presence of Mr. Buchanan, was informed that management had elected not to comply with his ultimatums and that that day's date, June 18, 1986, was being placed in his letter of resignation.

INTERROGATORY NO. 59: Please identify and explain all reasons not communicated to Plaintiff for no longer wanting to retain him as an employee.

RESPONSE: Defendants object to Interrogatory No. 59 on the grounds that it is vague and ambiguous. Without waiving those objections, see Response to Interrogatory Nos. 29 and 54 above.

INTERROGATORY NO. 60: Please identify the names and job titles of all individuals who sought out Alfred B. Buchanan, and/or David Williams subsequent to Plaintiff's termination to discuss the termination, and state the date and nature of the conversation.

RESPONSE: See Response to Interrogatory No. 54 above.

INTERROGATORY NO. 61: Please identify all benefits, insurance coverages, providers, coverage limits and terms offered by E-Systems/Montek to its management employees.

RESPONSE: Defendants object to Interrogatory No. 61 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Defendants also object to Interrogatory No. 61 on the grounds that it is vague, ambiguous, overly broad and not reasonably susceptible to written response. Without waiving those objections, defendants will produce copies of E-Systems' current benefit handbooks, including Retirement Plan, Accidental Death and Dismemberment Insurance (Salaried), Employee Stock Ownership Plan ("ESOP"), Health Care and Weekly Income Disability Plan (Salaried Flexcomp Plan A), Long Term Disability Plan, Long Term Disability Plan Plus, Term Life Insurance, Dental Expense Coverage, Tax-Advantage Accumulation Plan ("T-CAP"), Health Care and Weekly Income Disability Plan (Salaried Flexcomp B+, B and New Plan C), Optional Life Insurance Programs

("Pru-Opt"), E-Systems' Cancer Insurance Coverage, Your Employee Assistance Program (A Supervisory Guide), FHP Health Care Medical Benefits, Physicians Health Plan of Utah and Subsidiaries, 1990 Flexcomp (A Package of Plusses from E-Systems) and Universal Life Plan Benefits and Guidelines, from which the answer to Interrogatory No. 61 may be ascertained pursuant to Utah R. Civ. P. 33(c).

INTERROGATORY NO. 62: Please identify the procedure through which an employee could apply for conversion benefits of health and long term disability insurance with E-Systems/Montek, as well as the procedure available for appeal of a denial for such coverage.

RESPONSE: The conversion privilege offered to E-Systems' employees at the time of plaintiff's resignation is clearly defined on page 14 of E-Systems' Health Care and Weekly Income Disability Plan (the "Plan"), which provides that application for the individual policy must be made and the first premium paid within 31 days from the termination of the Plan coverage. The 31 day limit cannot be waived and no exceptions can be made in administering this provision. Defendants will produce a copy of E-Systems' Health Care and Weekly Income Disability Plan (the "Plan") at a time and place mutually convenient to counsel. See also Response to Interrogatory No. 42.

INTERROGATORY NO. 63: Please state the amount of vacation and sick leave Plaintiff had accumulated at the time of termination.

RESPONSE: At the time of his resignation plaintiff had accrued approximately 40.04 hours of vacation leave and approximately 240 hours of sick leave.

INTERROGATORY NO. 64: Please identify all benefits and perquisites available to management employees on the Director level during the discovery period.

RESPONSE: Defendants object to Interrogatory No. 64 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Defendants also object to Interrogatory No. 64 on the grounds that it is vague, ambiguous and overly broad. Without waiving those objections, benefits and prerequisites available to E-Systems' employees include vacation pay, leave of absence, holiday pay, sick pay, retirement plan, medical plan, dental plan, weekly accident and sickness insurance, long-term disability plan, accidental death and dismemberment insurance, employee basic group life insurance, employee optional group life insurance, ESOP, bereavement pay, paid jury duty, military leave pay, employee's assistance program, universal life insurance, cancer insurance, 401K plan, credit union, workers' compensation insurance, unemployment benefits, social security,

guaranteed investment contract, annual physicals, parking and tuition reimbursement.

INTERROGATORY NO. 65: Please state each location where employee personnel files for the E-Systems/Montek employees are maintained, including all correspondence files, benefits files, retirement files, management files, corporate files, etc.

RESPONSE: All employee personnel files for E-Systems/Montek employees are maintained by the Director of Human Resources, Alfred B. Buchanan.

INTERROGATORY NO. 66: Please identify all employment or personal files kept by E-Systems/Montek or management personnel of E-Systems/Montek on Plaintiff.

RESPONSE: Defendants will produce copies of documents in plaintiff's personnel file which are in defendants' possession at a time and place mutually convenient to counsel from which the answer to Interrogatory No. 66 may be ascertained pursuant to Utah R. Civ. P. 33(c).

INTERROGATORY NO. 67: Identify each file that contains documents relating to Plaintiff's terms of employment, performance, evaluations, and termination.

RESPONSE: Defendants object to Interrogatory No. 67 on the grounds that it is vague, ambiguous and calls for a legal conclusion. Without waiving those objections, defendants will produce copies of the E-Systems/Montek Division Directives

Manuals and plaintiff's personnel file which are in defendants' possession at a time and place mutually convenient to counsel from which the answer to Interrogatory No. 67 may be ascertained pursuant to Utah R. Civ. P. 33(c).

INTERROGATORY NO. 68: Please identify the date, or approximate date, any one in the chain of command above Plaintiff first became aware that Plaintiff was involved in an automobile accident on May 9, 1986, and had suffered injuries in the accident.

RESPONSE: Defendants object to Interrogatory No. 68 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Defendants also object to Interrogatory No. 68 on the grounds that it is vague and ambiguous. Without waiving those objections, defendants are not presently aware that anyone in the line of supervisory authority above plaintiff was informed of plaintiff's alleged accident before July 13, 1990, the day plaintiff served his Complaint on defendants in this action.

INTERROGATORY NO. 69: Please state the details which Plaintiff provided to any individuals identified in answer to the preceding interrogatory regarding his automobile accident on May 9, 1986 on the date identified in the preceding interrogatory.

RESPONSE: The only details provided by plaintiff are those alleged in his Complaint and in his deposition.

INTERROGATORY NO. 70: Please state whether after Plaintiff's injury in the automobile accident, an employee or agent of E-Systems/Montek requested that Plaintiff see the company nurse or a company doctor for his injuries sustained in the accident. If so, please state to whom Plaintiff was sent, by whom, the date and the results.

RESPONSE: Defendants are not presently aware of any employees or agents of E-Systems/Montek who requested that plaintiff see the company nurse or a company doctor for injuries allegedly sustained in an automobile accident.

INTERROGATORY NO. 71: Did Defendants at any time attempt to alter or reduce Plaintiff's workload while Plaintiff was recovering from the injuries sustained in the automobile accident, in consideration of his injuries? If so, please state:

- a. The time, place and date of such attempts or considerations;
- b. Identify each person who had any involvement in these attempts or considerations;
- c. Identify any documents you are aware of proving such attempts or such considerations;
- d. Identify each person whose observations or opinions can support these attempts or considerations.

RESPONSE: Defendants aver that plaintiff never brought any injuries he may have sustained to the attention of any appropriate persons at E-Systems. Defendants accordingly are unaware of any attempts to alter or reduce plaintiff's workload in consideration of injuries allegedly sustained in an automobile accident.

INTERROGATORY NO. 72: Please identify by department, name and job title, any organizational changes made in the management organization of E-Systems/Montek since the termination of Plaintiff which affected the composition of Plaintiff's department as of the date of Plaintiff's termination.

RESPONSE: Defendants object to Interrogatory No. 72 on the grounds that it is vague and ambiguous. Without waiving those objections, organizational changes in the management organization of E-Systems/Montek since plaintiff's resignation, if any, necessarily would not have affected the composition of plaintiff's department as of the date of plaintiff's resignation.

INTERROGATORY NO. 73: Please identify all written or verbal contracts which Defendants claim they entered into with Plaintiff at the time of his employment with E-Systems/Montek.

RESPONSE: See Response to Interrogatory No. 30 above. Other than the verbal contract referred to in Response to Interrogatory No. 30, at no time did any of the defendants enter into

a contract, written or verbal, with plaintiff during his employment with E-Systems.

INTERROGATORY NO. 74: Please identify and state the basis of your knowledge of each and every instance in which Plaintiff was over budget or in position of having committed a terminable offense.

RESPONSE: Defendants object to Interrogatory No. 74 on the grounds that it is vague and ambiguous. Without waiving those objections, defendants are not presently aware of "each and every instance in which plaintiff was over budget." Regarding instances in which plaintiff was, according to this Interrogatory, "in position of having committed a terminable offense," see Response to Interrogatory Nos. 29 above.

INTERROGATORY NO. 75: Please identify all documents such as, interoffice memoranda, intercompany memoranda, correspondence, notes, meeting minutes, telephone records, etc., regarding Plaintiff, his health problems, his automobile accident, his job performance and his management of Purchasing.

RESPONSE: Defendants object to Interrogatory No. 75 on the grounds that it is vague, ambiguous, overly broad, unduly burdensome and not susceptible to a written response. Without waiving those objections, defendants will produce copies of documents in plaintiff's personnel file which are in defendants' possession at a time and place mutually convenient to counsel

from which the answer to Interrogatory No. 75 may be ascertained pursuant to Utah R. Civ. P. 33(c).

INTERROGATORY NO. 76: Please identify and state the circumstances of each recognition letter, award or bonus received by Plaintiff during his tenure with E-Systems/Montek and the date each was issued.

RESPONSE: Defendants object to Interrogatory No. 76 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Without waiving those objections, plaintiff received incentive compensation in January 1986, stock options in 1983 and 1984 and, along with certain other employees, received a commendation in November 1981.

INTERROGATORY NO. 77: Please identify the name, address, phone number and employment status of the Quality Control director working for E-Systems/Montek at the time Plaintiff was employed there, who injured his back and was unable to work for a period of time.

RESPONSE: Defendants object to Interrogatory No. 77 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Without waiving those objections, defendants are not presently aware of a Quality Control director working for E-Systems/Montek at the time plaintiff was employed

there, who injured his back and was unable to work for a period of time.

INTERROGATORY NO. 78: Please identify all individuals who may have knowledge of the allegations or surrounding circumstances of the allegations contained in Plaintiff's complaint.

RESPONSE: See Response to Interrogatory No. 25 above.

INTERROGATORY NO. 79: Please identify all documents relating to, and individuals involved in, the decision to use General Electric's nuclear certified raw materials stored at E-Systems/Montek as alleged in paragraph 59(a), page 11, of Plaintiff's complaint.

RESPONSE: Defendants object to Interrogatory No. 79 on the grounds that it is vague, ambiguous and lacks the specificity required by the Utah Rules of Civil Procedure. Without waiving those objections, defendants are unaware of any documents relating to a decision to use General Electric's nuclear certified raw materials stored at E-Systems/Montek. Further, defendants specifically deny that any employee of E-Systems' Montek Division used nuclear certified raw material owned by General Electric and stored at E-Systems' Montek Division, as alleged in paragraph 59(a) of plaintiff's Complaint.

INTERROGATORY NO. 80: Please identify the location of General Electric's division by name, address and phone number with whom Defendants dealt with concerning the storing of nuclear

certified raw materials stored at E-Systems/Montek, as referred to in the foregoing interrogatory.

RESPONSE: General Electric Corporation, 175 Curtner Ave., San Jose, CA, (408) 925-6046, (408) 925-1000.

INTERROGATORY NO. 81: Please state the names, job titles, addresses and phone numbers of all individuals at the General Electric location identified in response to the preceding interrogatory with whom Defendants dealt.

RESPONSE: Joe Mendez (Buyer), General Electric Corporation, 175 Curtner Ave., San Jose, CA, (408) 925-6046, (408) 925-1000.

INTERROGATORY NO. 82: Please identify all documents relating to, and individuals involved in, the decision to invoice Northrup Actuator for tooling and fixtures never built by E-Systems/Montek, as alleged in paragraph 59(b), pages 11 and 12, of Plaintiff's complaint.

RESPONSE: Defendants object to Interrogatory No. 82 on the grounds that it is vague, ambiguous and lacks the specificity required by the Utah Rules of Civil Procedure. Without waiving those objections, defendants are unaware of any documents relating to a decision to invoice Northrop Corporation for tooling and fixtures never built by E-Systems/Montek. Further, defendants specifically deny that any employee of E-Systems' Montek Division invoiced Northrop Corporation for tooling and fixtures never

built by E-Systems/Montek, as alleged in paragraph 59(b) of plaintiff's Complaint.

INTERROGATORY NO. 83: Please identify the location of Northrup Actuator's company or division by name, address and phone number, with whom Defendants dealt with concerning the project in which the invoicing for tooling and fixtures never built by E-Systems/Montek was done, as referred to in the foregoing interrogatory.

RESPONSE: Northrop Corporation, B-2 Division, 8900 E. Washington Blvd., Pico Rivera, California 90660, (213) 942-3000. However, as stated in Response to Interrogatory No. 82 above, defendants are unaware of any documents relating to, or any Montek employees involved in, a decision to invoice Northrop Corporation for tooling and fixtures never built by E-Systems.

INTERROGATORY NO. 84: Please identify the names, job titles, addresses and phone numbers of all individuals at the Northrup Actuator location identified in the preceding interrogatory with whom Defendants dealt most often.

RESPONSE: Valerie Collar (Buyer), Northrop Corporation, B-2 Division, 8900 E. Washington Blvd., Pico Rivera, California 90660, (213) 942-3000; George Danforth (Manager of Hydraulic Procurement), Northrop Corporation, B-2 Division, 8900 E. Washington Blvd., Pico Rivera, California 90660, (213) 942-3000.

INTERROGATORY NO. 85: Please identify all documents relating to, and individuals who may have been involved in, the decision to negotiate with Hazeltine and the F.A.A. for higher prices than those actually budgeted to report to the corporation, pursuant to the allegations in paragraph 59(c), pages 12 and 13, of Plaintiff's complaint.

RESPONSE: Defendants object to Interrogatory No. 85 on the grounds that it is vague, ambiguous and lacks the specificity required by the Utah Rules of Civil Procedure. Without waiving those objections, defendants are unaware of any documents relating to a decision to negotiate with Hazeltine and the F.A.A. for higher prices than those actually budgeted to report to the corporation. Further, defendants specifically deny that any employee of E-Systems' Montek Division negotiated with Hazeltine and the F.A.A. for higher prices than those actually budgeted to report to the corporation, as alleged in paragraph 59(c) of plaintiff's Complaint.

INTERROGATORY NO. 86: Please identify the locations of both Hazeltine and the F.A.A. by title, address and phone number with whom Defendants dealt concerning the project in which they negotiated at higher prices than those actually budgeted to report to the corporation, as referred to in the foregoing interrogatory.

RESPONSE: Hazeltine Corporation, 500 Comack Road, Comack, NY, (516) 266-5636. Because E-Systems was the subcontractor of Hazeltine, E-Systems did not deal directly with the F.A.A. on the subject contract. Furthermore, as stated in Response to Interrogatory No. 85 above, defendants are unaware of any documents relating to, or any Montek employees who were involved in, a decision to negotiate with Hazeltine and the F.A.A. for higher prices than those actually budgeted to report to the corporation.

INTERROGATORY NO. 87: Please identify the names, job titles, addresses and phone numbers of all individuals at the Northrup Actuator location identified in the preceding interrogatory with whom Defendants dealt most often.

RESPONSE: Defendants object to Interrogatory No. 87 on the grounds that it is vague and ambiguous. Without waiving these objections, see Response to Interrogatory No. 84 above.

OBJECTIONS AND RESPONSES TO  
REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please provide a copy of Plaintiff's blank date resignation letter presented to David Williams on or about the date of his termination.

RESPONSE: Subject to execution of the Stipulation Regarding Protection of Confidential Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September

24, 1990, defendants will produce a copy of the document requested at a time and place mutually convenient to counsel.

REQUEST NO. 2: Please provide a copy of the checklist regarding Plaintiff's benefits Jim Cocke prepared from the meeting with David Williams, Alfred B. Buchanan, Jim Cocke and Plaintiff on or about the date of Plaintiff's termination.

RESPONSE: Defendants are not aware of a checklist regarding plaintiff's benefits Jim Cocke prepared from the meeting with David Williams, Alfred B. Buchanan, Jim Cocke and plaintiff on or about the date of plaintiff's resignation. However, subject to the execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, defendants will produce a copy of the Termination Checklist form signed by plaintiff on June 18, 1986 at a time and place mutually convenient to counsel.

REQUEST NO. 3: Please provide a copy of the personnel manual, policies and procedures manual, management manual and any other documents dealing with employee and/or employment policies and procedures in effect at E-Systems/Montek during the discovery period. Please include any changes to the foregoing during that time period.

RESPONSE: Subject to execution of the Stipulation Regarding Confidential and Proprietary Information that

defendants' counsel mailed to plaintiff's counsel on September 24, 1990, defendants will produce copies of the E-Systems Corporate Policy and Montek Division Directives Manuals which are in defendants' possession at a time and place mutually convenient to counsel.

REQUEST NO. 4: Please provide a copy of each document relating to all of the benefits and perquisites for management level employees at E-Systems/Montek during the discovery period.

RESPONSE: Subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, the documents requested which are in defendants' possession will be produced at a time and place mutually convenient to counsel.

REQUEST NO. 5: Please provide a complete record of all benefits and perquisites carried by E-Systems/Montek on Plaintiff or elected by Plaintiff, along with the cost of each to Plaintiff and/or to E-Systems/Montek during the discovery period.

RESPONSE: Defendants object to document Request No. 5 on the grounds that it is oppressive and unduly burdensome. Without waiving those objections, and subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, defendants will produce copies of documents

relating to the benefits carried by E-Systems on plaintiff at a time and place mutually convenient to counsel. Regarding the cost to plaintiff, defendants will produce copies of plaintiff's weekly withholding forms, to the extent that such documents currently exist, which are in defendants' possession at a time and place mutually convenient to counsel. To the extent E-Systems' benefit plans are self-funded, the cost to E-Systems would be reflected principally in documents relating to insurance claims paid on behalf of plaintiff. Defendants have been informed by Prudential Insurance Company that they will not produce documents relating to insurance claims paid on behalf of plaintiff without a court ordered subpoena.

REQUEST NO. 6: Please provide a copy of all documents relating to retirement contributions, made by E-Systems/Montek on behalf of Plaintiff and/or by Plaintiff, as well as all annual statements of the plan status made by E-Systems/Montek to Plaintiff.

RESPONSE: Subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, defendants will produce copies of the documents requested, to the extent that such documents currently exist, which are in defendants' possession at a time and place mutually convenient to counsel.

REQUEST NO. 7: Please provide a copy of all investigative materials relating in any way to any facet of Plaintiff's employment with E-Systems/Montek during the discovery period.

RESPONSE: Defendants object to Document Request No. 7 on the grounds that it is vague and ambiguous. Without waiving those objections, and subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, defendants will produce a copy of plaintiff's personnel file at a time and place mutually convenient to counsel.

REQUEST NO. 8: Please provide a copy of all written or recorded statements, interviews, meetings or conversations regarding Plaintiff's employment and subsequent termination with E-Systems/Montek.

RESPONSE: Defendants object to Document Request No. 8 on the grounds that it seeks information protected from discovery by the attorney-client privilege and/or the attorney work-product privilege. Without waiving those objections, and aside from any documents that may have been prepared by or at the direction of defendants' counsel to respond to the allegations in this litigation, there are no documents in defendants' possession responsive to this request.

REQUEST NO. 9: Please provide a copy of all employment or personnel files relating to the employment and termination of Plaintiff at E-Systems/Montek.

RESPONSE: Subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, defendants will produce a copy of plaintiff's personnel file at a time and place mutually convenient to counsel.

REQUEST NO. 10: Please provide copies of all records E-Systems/Montek has acquired relating to Plaintiff's automobile accident, including records of telephone conversations, tape recordings and any written documents.

RESPONSE: Defendants object to Document Request No. 10 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Without waiving those objections, there are no documents in defendants' possession responsive to this request.

REQUEST NO. 11: Please provide a complete record of Plaintiff's salary history while employed with E-Systems/Montek.

RESPONSE: Subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24,

1990, defendants will produce copies of the documents requested at a time and place mutually convenient to counsel.

REQUEST NO. 12: Please provide copies of all medical insurance claims submitted by Plaintiff and/or his medical providers to the company insurance plan for consideration for payment during his eligibility for medical coverage with E-Systems/Montek.

RESPONSE: Defendants object to Document Request No. 12 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Without waiving those objections, there are no documents in defendants' possession responsive to this request. Prudential Insurance Company has informed defendants that they will not produce any documents relating to insurance claims paid on behalf of plaintiff without a court ordered subpoena.

REQUEST NO. 13: Please provide copies of all records kept by E-Systems/Montek's company nurse regarding any visits or conversations during Plaintiff's tenure with E-Systems/Montek.

RESPONSE: Defendants object to Document Request No. 13 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Without waiving those

objections, there are no documents in defendants' possession responsive to this request.

REQUEST NO. 14: Please provide copies of documents discussing COBRA coverage or information regarding COBRA for employees terminating from E-Systems/Montek as of the last date Plaintiff was paid by E-Systems/Montek.

RESPONSE: Because the federal COBRA health care continuation coverage requirements were not applicable to E-Systems' health plan at the time of plaintiff's resignation in June 1986, there are no documents in defendants' possession responsive to this request.

REQUEST NO. 15: Please provide copies of all documents discussing conversion of insurance coverage or information regarding conversion for employees terminating from E-Systems/Montek as of the last date Plaintiff was paid by E-Systems/Montek.

RESPONSE: Subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, defendants will produce copies of the Summary Plan Descriptions of E-Systems' Health Care and Weekly Income Disability Plan and Option Life Insurance Programs ("PRU-OPT") at a time and place mutually convenient to counsel. See Response to Interrogatory No. 42.

REQUEST NO. 16: Please provide a copy of Plaintiff's registration for a company outing and his subsequent request to cancel after his automobile accident.

RESPONSE: Defendants object to Document Request No. 16 on the grounds that it is immaterial and irrelevant to the subject matter of this action and not calculated to lead to the discovery of admissible evidence. Defendants also object to Document Request No. 16 on the grounds that it is vague and ambiguous. Without waiving those objections, there are no documents in defendants' possession responsive to this request.

REQUEST NO. 17: Please provide a copy of any type of disability information, correspondence and/or memoranda provided to company employees during Plaintiff's tenure with E-Systems/Montek.

RESPONSE: Subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, the documents requested which are in defendants' possession will be produced at a time and place mutually convenient to counsel.

REQUEST NO. 18: Please provide all documents which give an overview of the projects Plaintiff was working on for one year prior to termination of his employment.

RESPONSE: Defendants object to Document Request No. 18 on the grounds that it is vague and ambiguous. Defendants are unable to determine what is meant by the word "project"; it is not a word commonly used nor a term of art at E-Systems. Without waiving those objections, there are no documents in defendants' possession responsive to this request.

REQUEST NO. 19: Please provide a copy of David Williams' notes or messages regarding each time Plaintiff discussed or wrote to him about his injuries after his automobile accident.

RESPONSE: Aside from any documents that may have been prepared by Mr. Williams at counsel's request to respond to the allegations in this litigation, there are no documents in defendants' possession responsive to this request.

REQUEST NO. 20: Please provide copies of any type of recordkeeping documents, i.e., daytimers, notebooks, calendars, daily reminders, organizers, daily memo keepers, desk calendars, which Defendant Williams kept during Plaintiff's tenure with E-Systems/Montek.

RESPONSE: Defendants object to Document Request No. 20 on the ground that it is overly broad. Without waiving that objection, and subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, the

requested documents which are in defendants' possession will be produced at a time and place mutually convenient to counsel.

REQUEST NO. 21: Please provide copies of any type of recordkeeping documents, i.e., daytimers, notebooks, calendars, daily reminders, organizers, daily memo keepers, desk calendars, which Defendant Buchanan kept during Plaintiff's tenure with E-Systems/Montek.

RESPONSE: Defendants object to Document Request No. 21 on the ground that it is overly broad. Without waiving that objections, there are no documents in defendants' possession responsive to this request.

REQUEST NO. 22: Please provide copies of any type of recordkeeping documents, i.e., daytimers, notebooks, calendars, daily reminders, organizers, daily memo keepers, desk calendars, which James Cocke kept during Plaintiff's tenure with E-Systems/Montek.

RESPONSE: Defendants object to Document Request No. 22 on the ground that it is overly broad. Without waiving that objection, and subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, the documents requested, to the extent that such documents currently exist, which are in defendants' possession will be produced at at time and place mutually convenient to counsel.

REQUEST NO. 23: Please provide copies of all documents which you have been asked to identify in Plaintiff's First Set of Interrogatories, if not already produced.

RESPONSE: Subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, such documents as are specifically referred to in defendants' responses to plaintiff's interrogatories set forth above and which are in defendants' possession and are not privileged, will be produced at a time and place mutually convenient to counsel.

REQUEST NO. 24: Please provide copies of all documents relevant to each of the interrogatories in Plaintiff's First Set of Interrogatories, whether or not you referred to them in preparing your response.

RESPONSE: Defendants object to Document Request No. 24 on the grounds that it is vague and ambiguous. Without waiving those objections, see Response to Document Request No. 23 above.

REQUEST NO. 25: Please provide copies of all documents, i.e., correspondence, interoffice memoranda, intercompany memoranda, which interpret, explain, change or refer to policies maintained by E-Systems/Montek in its capacity as an employer during the discovery period.

RESPONSE: Defendants object to document Request No. 25 on the grounds that it is vague, ambiguous, overly broad and unduly burdensome. Without waiving those objections, there are no documents in defendants' possession responsive to this request. However, subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, defendants will produce copies of the E-Systems Corporate Policy and Montek Division Directives Manuals which are in defendants' possession at a time and place mutually convenient to counsel.

REQUEST NO. 26: Please provide a copy of all organizational charts for E-Systems/Montek prepared any time during the discovery period.

RESPONSE: Defendants object to Document Request No. 26 on the grounds that it is vague and ambiguous. Without waiving those objections, and subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' mailed to plaintiff's counsel on September 24, 1990, the documents requested which are in defendants' possession will be produced at a time and place mutually convenient to counsel.

REQUEST NO. 27: Please provide copies of all documents normally used or referred to in the termination of an employee with E-Systems/Montek.

RESPONSE: Defendants object to Document Request No. 27 on the grounds that it is vague and ambiguous. Without waiving those objections, and subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, defendants will produce copies of the "Security Termination Visit," the "Termination Checklist" and the "Termination Debriefing for Company Proprietary Data" forms, commonly used at E-Systems' Montek Division, at a time and place mutually convenient to counsel.

REQUEST NO. 28: Please provide copies of all documents reviewed in preparation for answering any of Plaintiffs pleadings which are outside of the scope of attorney-client privilege, which have not already been provided to Plaintiff.

RESPONSE: Defendants object to Document Request No. 28 on the grounds that it is vague, ambiguous, unduly burdensome and overly broad. Furthermore, any documents not already being produced pursuant to other document requests are protected from discovery by the attorney-client privilege and/or the attorney work-product privilege.

REQUEST NO. 29: Please provide copies of all documents prepared during the termination of Plaintiff, including payroll, notes, minutes, correspondence, letters, memos, benefit termination forms, etc.

RESPONSE: Defendants object to Document Request No. 29 on the grounds that it is vague and ambiguous. Without waiving those objections, and subject to execution of the Stipulation Regarding Confidential and Proprietary Information that defendants' counsel mailed to plaintiff's counsel on September 24, 1990, defendants will produce the requested documents which are in defendants' possession at a time and place mutually convenient to counsel.

REQUEST NO. 30: Each and every document prepared by any employee of E-Systems/Montek which could be considered as a letter of recommendation or personal reference given out on behalf of Plaintiff.

RESPONSE: The requested documents, if any, would be contained in plaintiff's personnel file, which defendants will produce at a time and place mutually convenient to counsel.

REQUEST NO. 31: Each and every document which refers to, relates to, or constitutes a personnel training manual for management personnel at E-Systems/Montek which was in effect during the discovery period.

RESPONSE: Defendants object to document Request No. 31 on the grounds that it is vague and ambiguous. Without waiving those objections, there are no documents in defendants' possession responsive to this request.

DATED this 26 day of September, 1990.

PARSONS, BEHLE & LATIMER

By: Douglas R. Davis  
DAVID A. ANDERSON  
DOUGLAS R. DAVIS  
Attorneys for Defendants

VERIFICATION

I, ALFRED B. BUCHANAN, hereby declare:

1. I am Director of Human Resources of E-Systems, Inc., named as a defendant in the above-entitled action. I am authorized to make this verification for and on its behalf; and I make this verification for that reason;

2. The information set forth in these Objections and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents was gathered and collected by persons with knowledge of defendants' various records and files which are kept by defendants in the regular and ordinary course of business. The persons who have gathered and collected this material have reported to me that said Answers as aforesaid truly and correctly reflect the information thus gathered and the contents of said records with respect to the subject matter of said Interrogatories and Requests for Production of Documents;

WHEREFORE, I state that said Answers are true and correct according to said records and files and the information transmitted to me as aforesaid.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on 26<sup>th</sup> Feb 1990 at Salt Lake City, Utah.

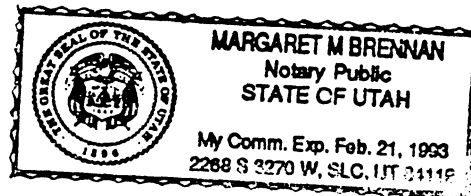
Alfred B. Buchanan  
ALFRED B. BUCHANAN

Subscribed and sworn to before me this 26<sup>th</sup> day of September, 1990.

My Commission Expires:

February 21, 1993

Margaret M. Brennan  
NOTARY PUBLIC  
Residing at: Salt Lake City, Utah



MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS to the following on this 26 day of September, 1990:

L. Zane Gill  
Law Offices of L. Zane Gill, P.C.  
Attorney for Plaintiff  
50 West Broadway, Suite 900  
Salt Lake City, Utah 84101

Douglas R. Davis

279:072590A

12/15/80	3/26/81	4/18/82	7/26/82	8/2/82	1/17/83	11/83	7/16/84	3/13/86	6/18/86
JOHN DIXON PRESIDENT, CHAIRMAN & CEO									
DAVID R. TACKE SR. VICE PRES. ELECTRONIC SYSTEMS GROUP						DAVID R. TACKE PRESIDENT AND CEO			
NELSON BURGHS VICE PRESIDENT ACTING GENERAL MANAGER	NELSON BURGHS VICE PRESIDENT AND GENERAL MANGER					E.G. KEIFFER SENIOR VICE PRESIDENT ELECTRONICS SYSTEMS GROUP			
DAVID A. WILLIAMS VICE PRESIDENT OPERATIONS		JOE STILL VICE PRESIDENT FINANCE & OPERATIONAL SERVICES				NELSON BURGHS VICE PRESIDENT AND GENERAL MANAGER	DAVID A. WILLIAMS VICE PRESIDENT AND GENERAL MANAGER		
TOM McCALLAM DIRECTOR OF PROCUREMENT & MATERIAL SERVICES			TOM McCALLAM DIRECTOR CONTRACTS AND MATERIALS		WILLIAM V. PENNY MANAGER OF MATERIALS	JOE STILL VICE PRESIDENT FINANCE & OPERATIONAL SERVICES		JAMES COCKE VICE PRESIDENT FINANCE & ADMINISTRATIVE SERVICES	
WILLIAM V. PENNY PROCUREMENT MANAGER				WILLIAM V. PENNY MANAGER OF MATERIALS		WILLIAM V. PENNY DIRECTOR MATERIALS			

Exhibit "B"

Penney's "JUSTIFICATION PACKAGE"



MEMORANDUM

6/18/86

TO: J. G. Cocke

BP/313-86-65

FROM: Bill Penney *BP*

cc: D. A. Williams

SUBJECT: Letter of Resignation

While doing research for an article I was asked to write for a publication of the Federal Acquisition and Subcontracts Management Group of NAPM, I ran across a recent article in a Bulletin that I subscribe to that you might find of interest in light of our recent budget reductions. I respectfully submit that by having to cut our buying staff we are literally biting the hand that feeds us. I have attached overtime charts from 1983 to present showing the overload trend we suffer trying to just keep current. New programs such as the Value Analysis program we implemented in 1982 and the more recent spin-off Value Engineering projects, PDME, and WIN require many hours to support. Without adequate staff this can only be done with overtime. Many of my problems are created by lack of, or inaccurate planning and lack of stockroom count accuracy. To manage a materials function properly I must have as a minimum the following:

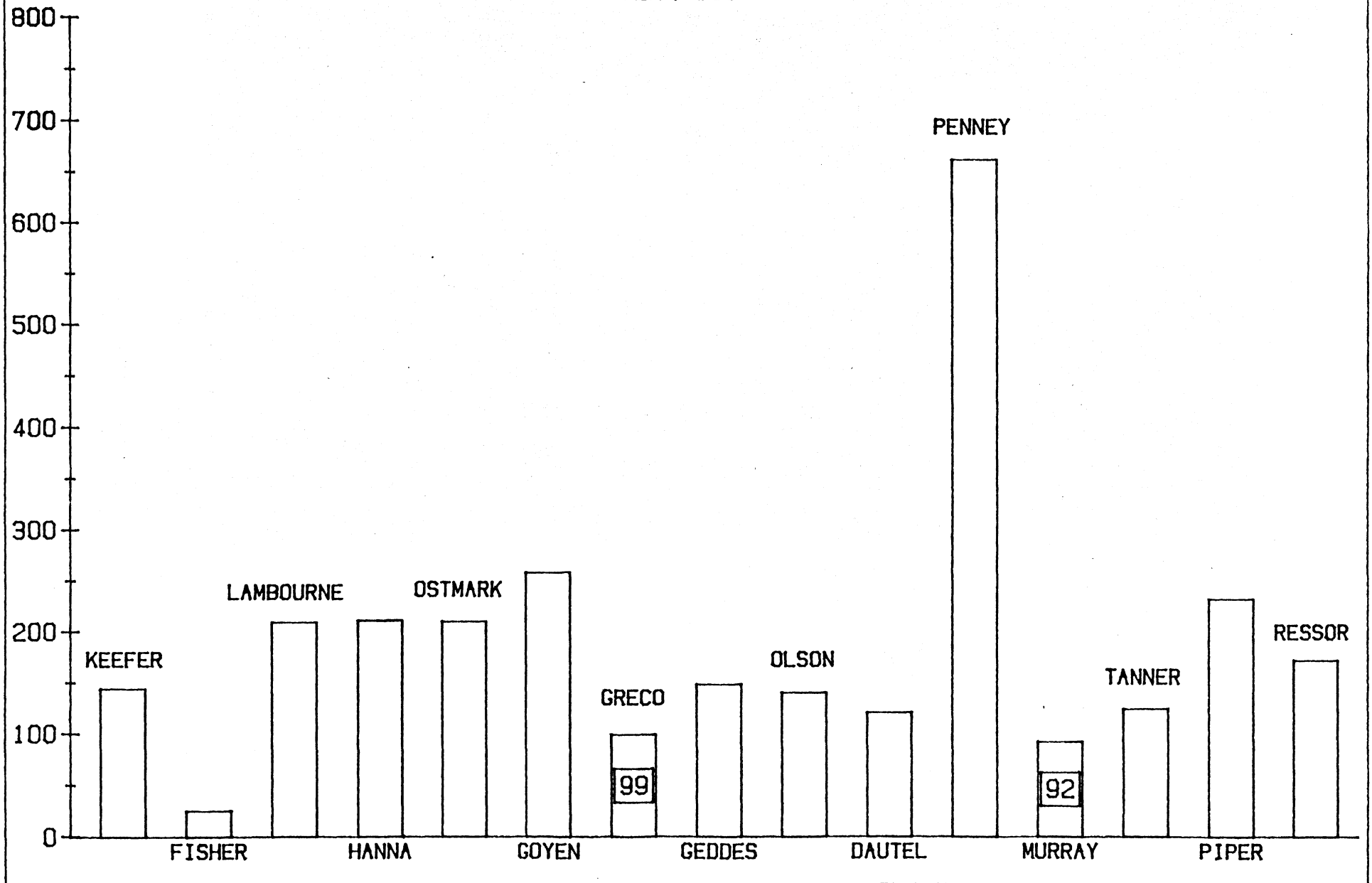
1. Recall or replace the buyer just laid off to handle PMFG items.
2. Another subcontracts professional--two were justified in 1982 and 1983 but one was forfeited for an engineering buyer, with me taking the additional work load.
3. Material Planning function--to perform procurement analysis, purchase options, standard lot size versus EOQ and perhaps most important, forward "what if" planning to get new business. This function could be performed between my material pricing and buying group by one knowledgeable planner.
4. Stockrooms--implement cycle counting again, safety stock, etc. to preclude the one and two part purchases to cover stock outs. Also, I would lay off all but one high paid supervisor and staff the balance of the needs at market rate.

The proposed changes will yield continued improvement in efficiency and cost savings/avoidances. With the many responsibilities, projects, programs, and committees that I am working, I have reached a burn-out point and do not feel I can continue the back-breaking overtime load. I am willing to bet my job at Montek on the outcome. I hereby submit my resignation in advance if I cannot layout and implement a scheduled plan to reduce division cost to a level that we pre-establish. The effective date of my resignation is \_\_\_\_\_.

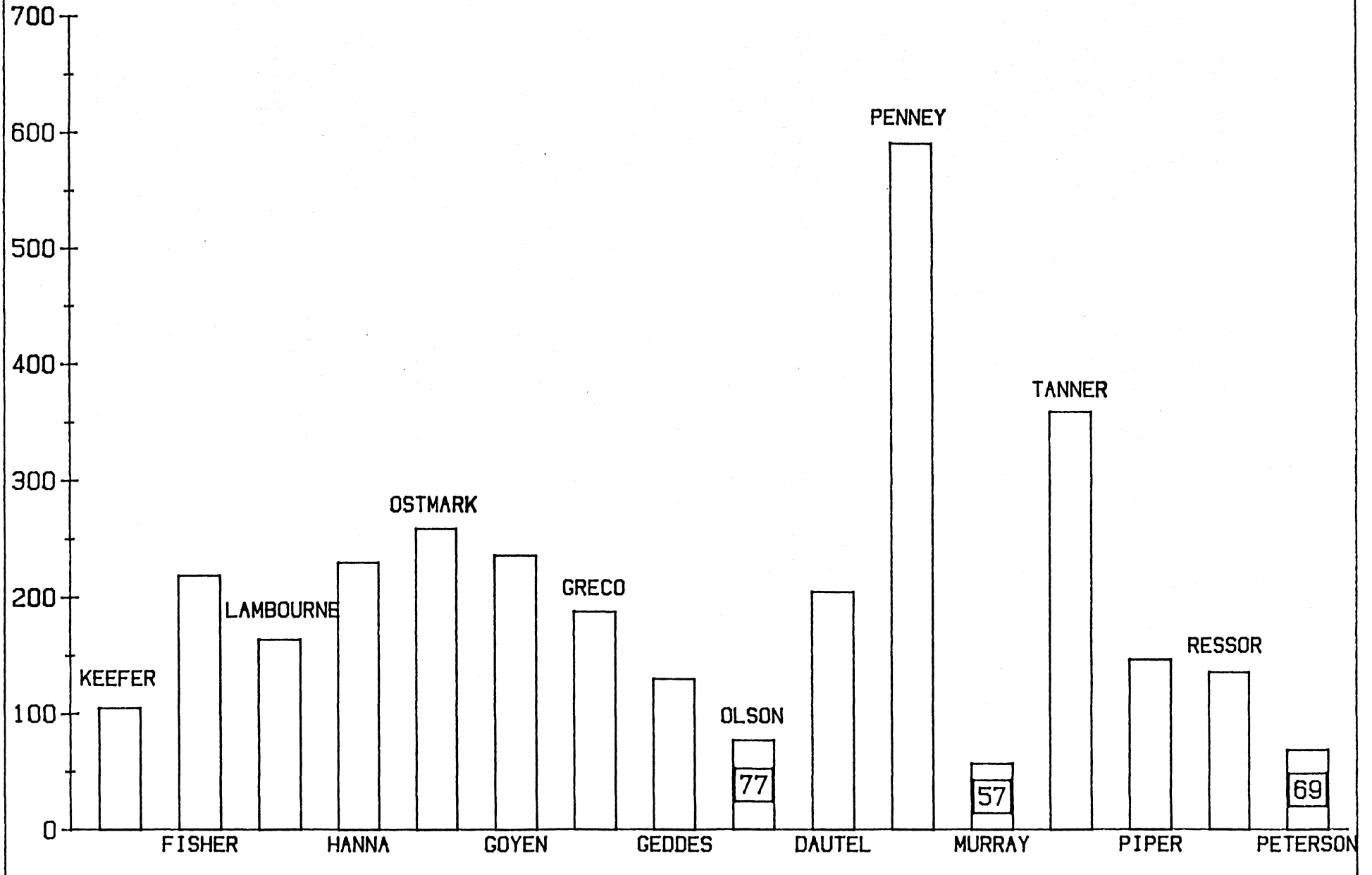
If you elect not to fill in today's date, I will be glad to discuss the plan, with supporting facts and documents at your convenience.

sm

E-SYSTEMS, MONTEK DIVISION  
MATERIAL OVERHEAD  
YEAR 1983



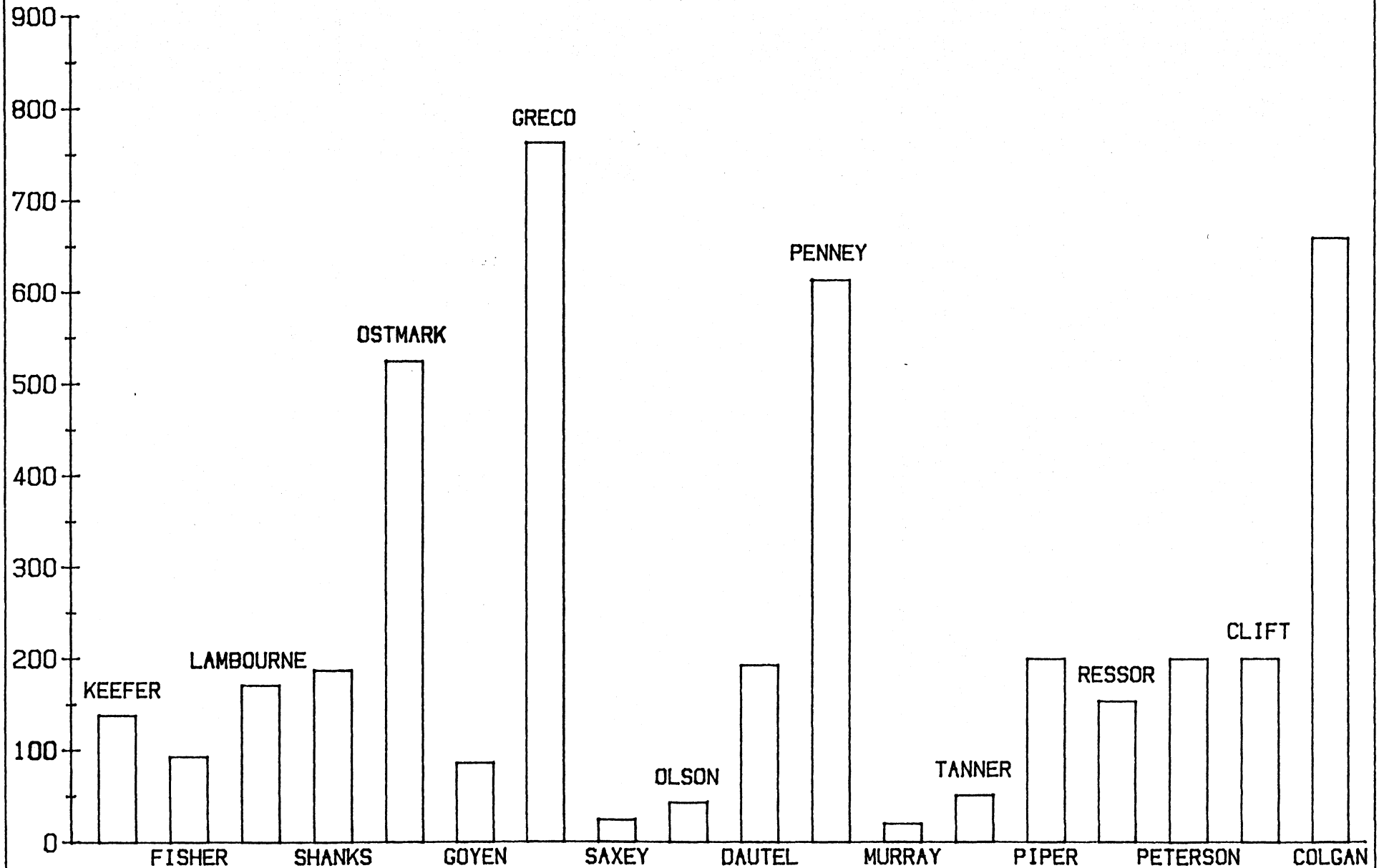
E-SYSTEMS, MONTEK DIVISION  
MATERIAL OVERHEAD  
YEAR 1984



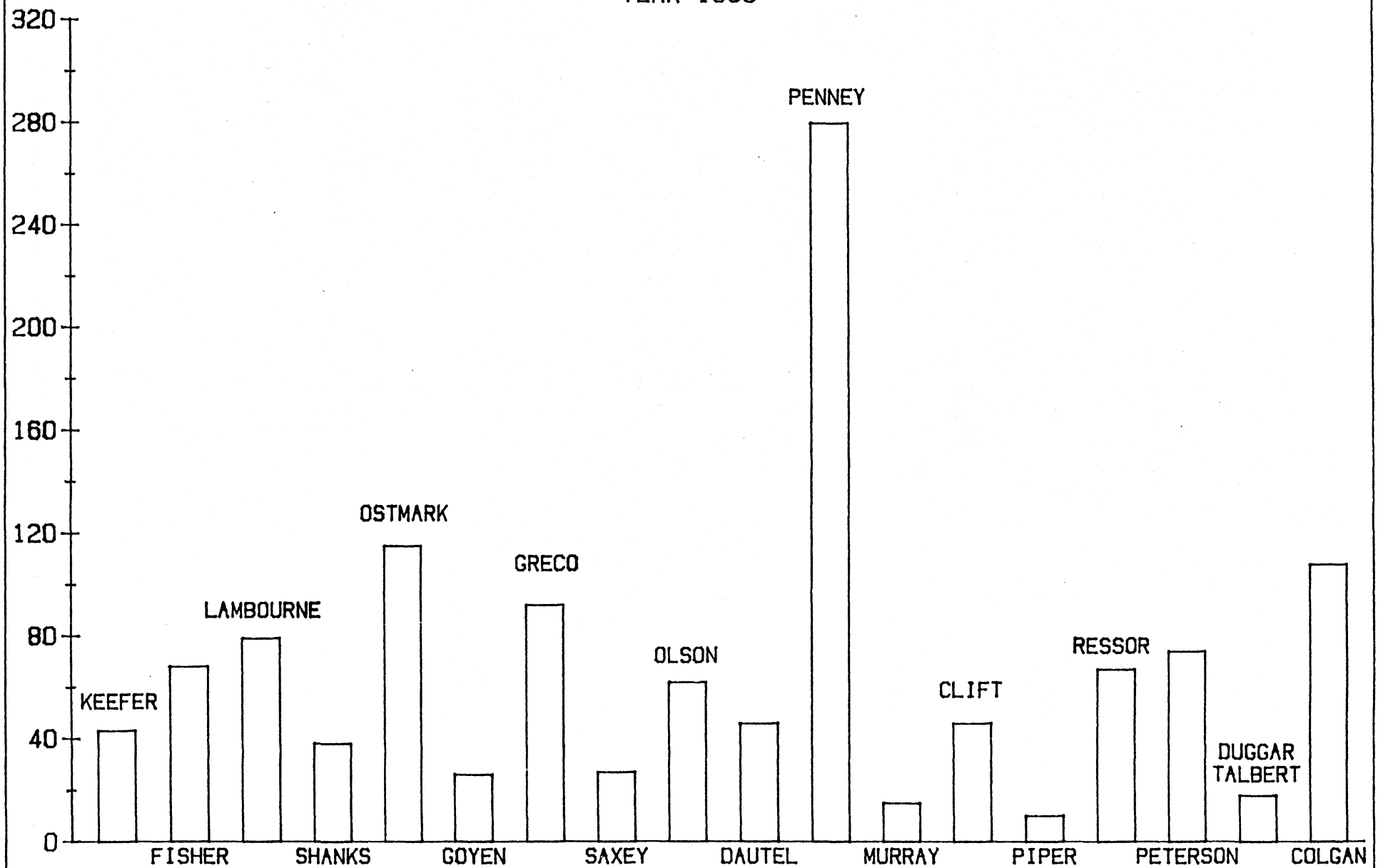
# E-SYSTEMS, MONTEK DIVISION

## MATERIAL OVERHEAD

YEAR 1985



E-SYSTEMS, MONTEK DIVISION  
MATERIAL OVERHEAD  
YEAR 1986



# E-SYSTEMS, MONTEK DIVISION MATERIAL OVERHEAD BY FUNCTION

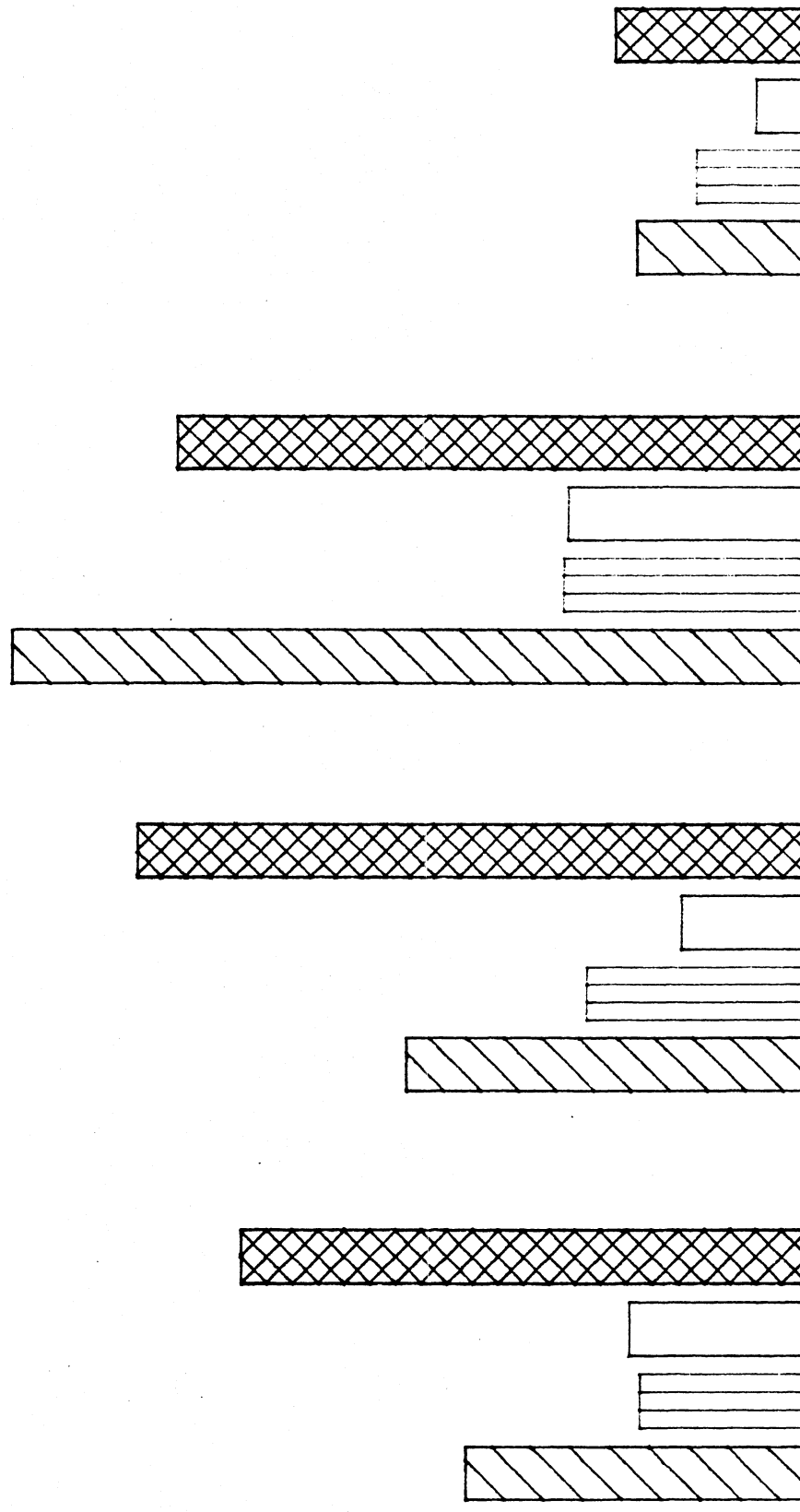
DIRECTOR

TRAFFIC

ELECTRONIC

FABRICATION

2100  
1800  
1500  
1200  
900  
600  
300  
0



1983

1984

1985

1986

TOTAL: 2845 HRS

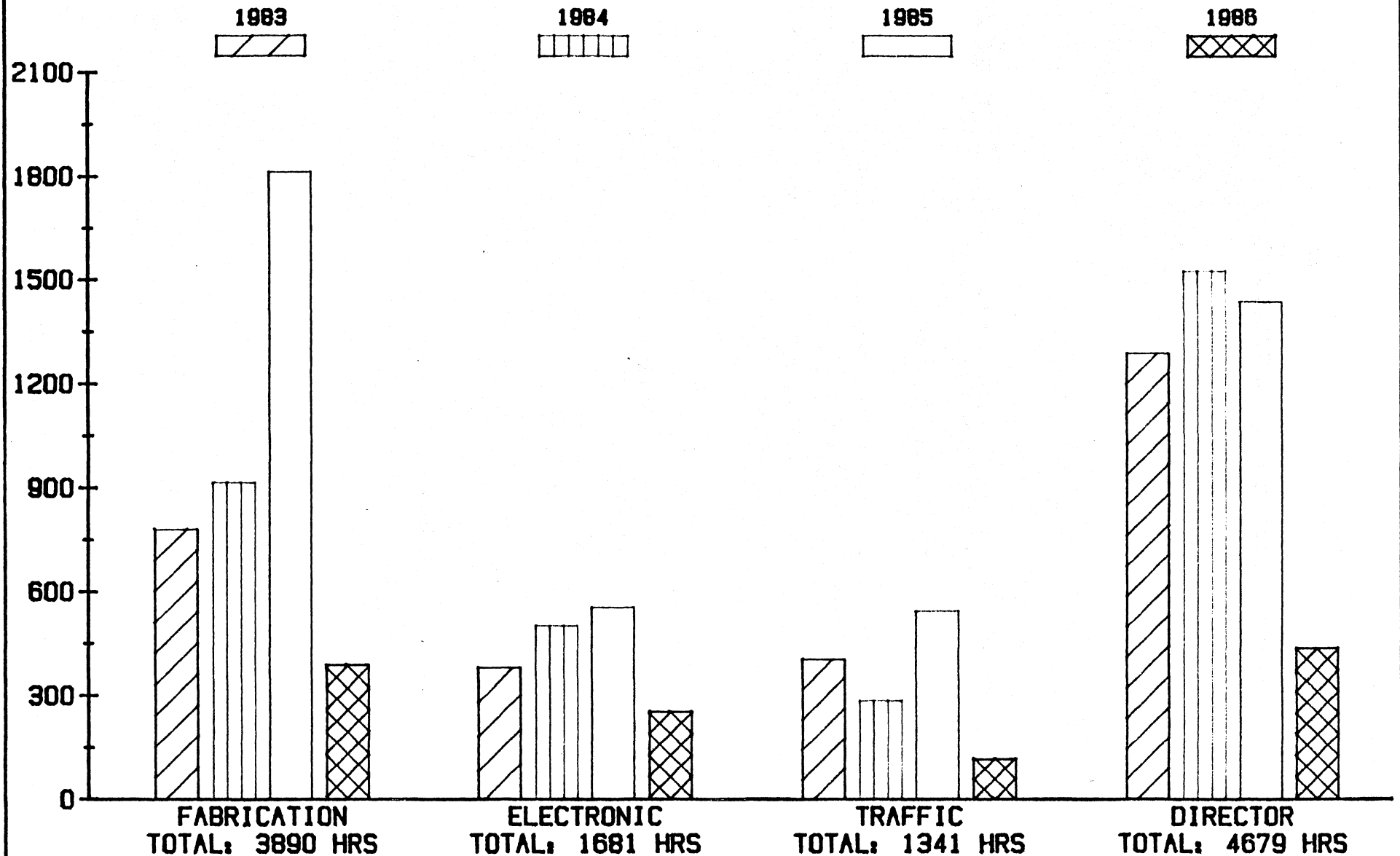
TOTAL: 3219 HRS

TOTAL: 4338 HRS

TOTAL: 1188 HRS

# E-SYSTEMS, MONTEK DIVISION

## MATERIAL OVERHEAD BY FUNCTION



# Purchasing Executive's **BULLETIN**

BUREAU  
OF  
BUSINESS  
PRACTICE

MAY 25, 1986  
NUMBER 1810

In this Issue: How a Massachusetts purchasing director has promoted inter-departmental cooperation to drive costs down year by year ■ A North Carolina purchasing veteran tells of techniques he's developed over the years for listening and learning ■

## THE PURCHASING-ENGINEERING CONNECTION

Company newspaper stories describing procurement accomplishments achieved through cooperation between Purchasing, Engineering and other departments. Plaques awarded to engineers commemorating contributions to purchasing performance. These are some of the devices this purchasing executive uses to nurture an environment of cooperation and to win management recognition of the key role Purchasing can and should play.

While some purchasing managers consider a close working relationship with Engineering to be a blessing, at least one considers it a necessity. "If Procurement doesn't get involved with Engineering early," states Lance Dixon, director of Purchasing and Logistics for Bose Corporation (Framingham, MA), "then it's hardly a procurement department. Purchasing must be involved with Engineering, or they aren't doing their job for the company, because a lot of decisions take place that will affect cost in the short and long run and affect strategies as far as assuring that parts can be delivered." In fact, he suggests, when some companies get large enough to specialize, Procurement often breaks down into groups, one of which will be the engineering procurement group that will work closely with Engineering.

### Three Elements

What does it take to build a strong and cooperative relationship with Engineering? Dixon sees three elements.

1. **Gaining top management support for cost-cutting activities involving Engineering.**
2. **Hiring the necessary people.**
3. **Helping and showing appreciation for Engineering.**

**Top Management Support.** "Top management usually comes through Marketing, Finance, or Manufacturing, not Purchasing," he explains. "As a result, they're usually not as sensitive to what they can achieve in the procurement area in terms of cost savings. They don't see Purchasing as being as important or as 'mainstream' as Marketing, Finance, or Manufacturing. I don't either, for that matter, but management *can* learn that Purchasing can save them money by driving costs down, considering the percentage of money they spend on purchased materials from the outside. This cost is much more flexible than most managements realize." Show management how you can save them money, in other words, and they will give you what you need to keep costs low—including a budget for the best employees.



## YOU BE THE JUDGE

**The Story:** Jay Reynolds, a purchasing manager for Eastern Construction, slammed his office door behind him as he went to his desk phone. "Yeah, get me Mark Turner," he screamed into the receiver.

"This is Mark Turner, how may I help you?"

"I'll tell you how. I've had it. Those roofing plates you sent us have fallen off again. I'm tired of this. We want our money back!"

"Oh, really?" replied Turner sarcastically, a sales rep for Davis Manufacturing. "That's surprising to hear, considering this is the first time we've heard any complaints."

"First time, last time, who cares! The plates are the wrong color, they don't fasten to the building, and they can't stand up to a breeze."

"Like I said, this is the first time I've heard of this. Why did you wait five weeks to say anything?"

"Don't pull that on me. I wrote you right after we got those plates, saying I was concerned about the plates blowing off the roof."

"I remember that letter. Yeah, you were concerned, but you had no specific complaint."

"Well, I do now."

"Sorry, Mac, too late. You signed a contract that you would notify us of any defects in writing in a reasonable time. Now you're phoning me five weeks after delivery. Besides, you owe us a small fortune."

"So what! You don't expect us to pay for plates that blow off the roof like flying saucers, do you?"

"No, but we expect you to follow through on all the contract provisions. Sorry, you should've written us weeks ago."

Eastern sued Davis, claiming they were entitled to a setoff for damages resulting from Davis's failure to deliver conforming goods. Will the court agree?

**Make your decision; then turn to page four for the court's decision.**

**Hiring the Best People.** At Bose, Procurement is run as a profit center. "Since top management realizes we can lower costs, they provide us with more staff than we need just to buy parts. We prove our worth by driving our materials costs down year after year." That's been no easy task, considering inflation has been running 3 to 5 percent annually. "If you spend \$40 million a year with inflation at 5 percent, your costs can go up \$1 million to \$2 million a year," explains Dixon. "However, if you invest some of that money ahead of time in staff positions to work with Engineering on cost engineering, value engineering, etc., you might find costs going up only 2.5 percent a year, half of what it would be. And if you're really good, you can actually *lower* your costs each year by working with Engineering."

**Working With Engineering.** It's important to develop a proper attitude toward Engineering and realize the importance of having a partnership with them. "When you have both of these, Engineering will look on you as a resource, not as an adversary," continues Dixon. "If you do your job well, engineers will realize they are better off if they come to buyers when they need something instead of going around them to get it. For instance, when engineers want parts, buyers should get them for them quickly. When they want information, buyers should get this for them quickly, too." Engineers will take the course of least resistance, which will be through, not around, Purchasing, if the buyers are competent and responsive. "Buyers can make engineers' jobs easier," he adds. "The relationship can't be accomplished with charters, policies, or drawing lines. It has to be done through cooperation and being responsive."

To further build the relationship between Purchasing and Engineering, Purchasing presents wooden plaques to engineers (and members of other departments as warranted) for excellence in performance. "We take photos of the events and publish the photos and stories in our purchasing newspaper, which goes to all department heads and management in the company worldwide, not just to purchasing managers," states Dixon. "We also run stories of how Engineering, Quality Control, and other departments work together with Purchasing. In fact, we often give them more space than we do to purchasing activities." The effort pays off. "When an engineer receives a plaque and write-up for excellence in performance from the *purchasing* department, that really breeds a lot of goodwill," he states. "Teamwork is what it's all about. You have to work hard and smart to build the proper climate."

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## LISTEN AND LEARN

James L. Allen, CPM, has always believed in the old philosophy, "listen and learn," because it has worked

so well for him. He adopted it first in military intelligence, and later found that it's equally applicable to business, especially purchasing.

He practiced the art of listening for years in purchasing for Integon Corporation (Winston-Salem, NC), which has been known as "the listener company."

"It's not hard to be a good listener," says Allen. "Just try *not* to think about what you're going to ask a person while he's still talking. Instead, listen and learn from what's being said."

Allen, now home office property supervisor, is not directly involved in purchasing anymore, but he remains close to the profession, keeping up his membership in PMA and going to as many meetings as he can. Sometimes user offices still contact him instead of the purchasing department. He redirects them, because he never liked anyone coming in the back door. However, he still has responsibility for purchasing of some major items.

When he was buying for Integon's two major buildings in Winston-Salem and also for a hospital the company built some years ago, Allen made it a policy to see every salesperson who called on him, whether he expected to buy or not. Again, his goal was to listen and learn. He wanted to keep up with the marketplace and also to keep existing suppliers "honest" because they knew he was checking with others.

## Moral Responsibilities

As a purchasing executive, Allen believes, you must accept certain moral responsibilities. For one thing, you must deal fairly with suppliers and never accept gratuities. Suppliers should be told this: "Just sell me your product, and if you can do that, we'll be buying from you. But if you offer gratuities, and they are accepted, our employee will be fired and we will cease buying from you."

Another responsibility is—once you're convinced that the salesperson is offering a good proposition—helping him or her make the sale to your company.

Very often the final decision is made by a buying committee, and if the salesperson has convinced you that the product is good for your company, you should help him.

"I would never coach the salesperson before the meeting, because he would expect it the next time. But if the salesperson begins to foul up, then I may help him," Allen says.

You have the advantage of knowing the people on the committee, Allen points out. You know what they want to hear, and if you've listened and learned, you can tailor the salesperson's presentation for the committee. So you can step in and help, just as the salesperson helps you in the way of market information.

"If you're not willing to help sell a product you know is good for the company, then the company loses some-

# PURCHASING POINTERS



Obtaining accurate forecasts on raw material needs is no easy task. Obtaining such forecasts on MRO (maintenance, repair, and operating supply) items is even more difficult. MRO inventory differs substantially from raw material inventory and inventory that is dependent on the forecast for finished goods volume, says an East Coast purchasing agent.

While vendor-stocking agreements for production-related and other types of inventory have been around a while, the concept is now being used successfully with MRO items. "Many vendors with multiple product lines who operate on a large scale have the exact same MRO items that their customers are trying to carry in their own maintenance stockrooms," he notes. "Rather than try to run your own stockroom and have to decide how much to order and keep on hand, when to order, etc., it makes more sense to rely on one of these larger distributors."

Developing such an agreement involves more than just calling in a distributor and signing a contract. There are some key issues to be resolved.

1. **Have a clear idea of the MRO items you think are appropriate for vendor stocking. Not all are.**
2. **Make sure the vendor has sufficient quantities of all the individual items you need. Vendors who have minimal inventory investment policies will rarely have the items you need when you need them.**
3. **Define all terms of the agreement in advance. Determine what you want; then outline this to the vendor.**
4. **Follow through on your commitment when you sign an agreement. "If you shop competitively while under a vendor-stocking agreement, you're not living up to your end of the agreement."**
5. **Check safety stocks regularly to determine what your true minimums really are.**

Vendor-stocking agreements draw buyer and seller closer. You will also receive price breaks even on small quantities, because the vendor knows you're committed to buying more.

thing. If you lose that good product just because the salesperson didn't know how to sell it, then you hurt the company and yourself."

The other side of listening and learning, Allen feels, is that salespeople must be well informed. If someone calls on him and starts out by asking what Integon does, then he isn't likely to enjoy the interview.

Because Integon is an innovative company, Allen does look out for new solutions to old problems. When electric calculators came out years ago, several companies came to Integon and asked it to test their products and make recommendations. The same thing happened with small copying machines.

"We started out using about 10 copies a month," says Allen. "That was almost 30 years ago. It was a wet-copying process and you could lose your original. Now we make millions of copies a month with a laser printer that prints 10 to 15 times faster than the current average, and on both sides of the paper, which is also a cost factor.

"And we have gone from doing basic microfilming to doing it off the computer, so we have what's called a

microfiche. These are some of the ways Purchasing has helped the company innovate. But remember," he advises, "that what's good for one company may not be good for another. Don't jump at new processes and equipment just because they're new. Instead, listen and learn what's best for you."

Allen advises that you also remember that you must educate salespeople as much as they educate you. Tell them your needs, and ask them to keep calling. They may have a product you really need, but you'll have no way of getting it if they don't come to your door. So he advises continuing to see salespeople and to look for new products.

## An Example

As a current example, Integon now has a major project under way to reduce energy costs on its buildings. The company found that the all-electric 21-story building, with three times the square feet of its gas-heated 7-story building, is less costly to heat than with gas. So they looked for ways to switch the smaller building to electricity.

"It's not easy to change over an older building, but we're in the process and have already completed a system to heat and cool both buildings," says Allen. "That's the kind of process that takes lots of listening."



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### Have You Found Better Ways of . . .

- handling small orders
- screening salespeople
- training new buyers

or coping with any of the many other problems confronting purchasing executives? If so, write them up, describing your experiences, and send them to the Editor, *Purchasing Executive's Bulletin*. We'll pay top rates for all material accepted.

---

## YOU BE THE JUDGE

### THE DECISION

No. The court concluded that a contractual provision requiring that notice of defects be in writing within a reasonable time was both appropriate and enforceable. The court felt that the letter that Reynolds had sent immediately after receipt of the first shipment was entirely too vague to trigger an obligation on the part of Davis to cure defects. Secondly, the court stated that Reynold's phone call five weeks after receipt did not meet the timeliness of notice requirement. A period of ten days was more than reasonable under the circumstances, especially when Eastern made some early post-shipment payments.

This case has been fictionalized for dramatic effect and to protect the privacy of those involved.

Exhibit "C"

Penney's Pro Se "Affidavit"

January 11, 1993

Judge Frank G. Noel  
Third Judicial District Court  
240 East 400 South  
Salt Lake City, UT 84111

Reference: (1). Civil Case No. 900903522CV  
(2). William V. Penney vs. E-Systems, Inc.

Subject: Response To Petition For Summary Judgment Filed  
December 31, 1992 By Parsons Behle & Latimer  
On Behalf Of E-Systems.

Dear Judge Noel:

When I appeared before you in your chambers on August 3, 1992, you were kind enough to allow me to explain briefly the central theme of my unjust termination claim against E-Systems and you granted me the right to present my case before a jury of my peers, later scheduled by your clerk for March 1, 2, and 3, 1993. At the time of the hearing, I also informed you that I was and am on Social Security Disability as the result of an automobile accident that occurred while I was employed and insured by E-Systems.

Although unbelievable to me at the time, E-Systems attorneys somehow managed to get a summary judgement in their favor negating my claim for medical and disability benefits. Therefore, you and other taxpayers are "picking up the tab" for my continuing medical care, including my fifth major surgery that I had to reschedule for three weeks after my trip to Salt Lake City in August. On December 31, 1992, E-Systems attorneys again are trying another "end run" to get a summary judgment on the last remaining claim issue open in my suit against E-Systems. Although my current medical condition makes it difficult to even plan one day in advance, I am hereby respectfully requesting that you allow me to respond to their summary judgment petition. I have borrowed enough money from my mother to rent an electric hospital bed and pay a young man to arrange/organize my records in such a manner so that I can try to defend my position. I will target to FAX my response to you on January 19, 1993. This is the day after Martin Luther King's birthday observance, which is coincidentally a symbolic day for all of us who are and have been discriminated against for various moral and religious beliefs as well as physical handicaps. Subsequent to sending the FAX, I will send via certified mail the confirming documentation. In the event my request is not acceptable, I would appreciate either you or your clerk notifying me of other options available. I can be reached by telephone at 214-771-8383 and by FAX at 214-722-4220. The address that your clerk has on file is at this time current.

Respectfully,

William V. Penney



January 19, 1993

Judge Frank G. Noel  
Third Judicial District Court  
240 East 400 South  
Salt Lake City, UT 84111

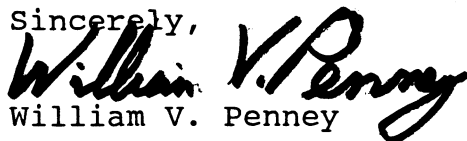
Reference: (1). Civil Case No. 900903522CV  
(2). William V. Penney vs. E-Systems  
(3). William V. Penney FAX/Letter of 1/11/93

Subject: Request to revise response date to Petition  
for Summary Judgment.

Dear Judge Noel:

Due to the complexity of the subject Petition and the limited time that I am able to sit up while mentally alert in my current physical condition, I hereby request that the target date set forth in Reference (3). be revised to January 22, 1993 in order to allow me to FAX my response and follow up with confirming documents. Please have your clerk advise if this is not acceptable.

Sincerely,

  
William V. Penney

Date:

Time:

Page:

1/23/93  
5:20 PM  
1 of 17

Recipient:

FRANK G. NOEL, DISTRICT JUDGE  
% PAT JONES, COURT CLERK

Location:

SALT LAKE CITY, UTAH

Telephone #:

801-535-5459

Facsimile #:

801-535-5957

Sender:

WILLIAM PENNEY

Company:

CIVIL NO. 900903522CV

Telephone #:

214-771-8383

Facsimile #:

214-722-4220

Comment:

ENCLOSURE

January 23, 1993

Judge Frank G. Noel  
Third Judicial District Court  
240 East 400 South  
Salt Lake City, UT 84111

Reference: (1). Civil Case No. 900903522CV  
(2). William V. Penney vs. E-Systems

Subject: Response to Request For Summary Judgment

Dear Judge Noel:

A FAX of the subject response should be attached. A "hard copy" with all Exhibits should be in your office by Tuesday January 26, 1993. I could not get it out today but will send overnight from Washington D. C. where I will be next week trying to rally support for my cause. I would sincerely appreciate your taking the time to read the entire response. I will call your clerk for feedback next Tuesday. Thank you for your patience.

Sincerely,

  
William V. Penney

WILLIAM V. PENNEY  
REPRESENTING PRO SE  
709 W. RUSK, SUITE A101  
ROCKWALL, TX 75087  
TELEPHONE: 214-771-8383  
FAX: 214-722-4220

\* \* \* \* \*

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

\* \* \* \* \*

WILLIAM V. PENNEY

Plaintiff,

vs.

E-SYSTEMS, INC., a Delaware  
corporation doing business  
in Utah, DAVID A. WILLIAMS  
and ALFRED B. BUCHANAN,

Defendants.

: RESPONSE TO DEFENDANTS  
: MOTION FOR SUMMARY  
: JUDGMENT AND NOTICE TO  
: SUBMIT FOR DECISION  
: FILED JANUARY 15, 1993

: Civil No. 900903522CV  
: Judge Frank G. Noel

\* \* \* \* \*

WILLIAM V. PENNEY  
REPRESENTING PRO SE  
709 W. RUSK, SUITE A101  
ROCKWALL, TX 75087  
TELEPHONE: 214-771-8383  
FAX: 214-722-4220

\* \* \* \* \*

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

\* \* \* \* \*

WILLIAM V. PENNEY

Plaintiff,

vs.

E-SYSTEMS, INC., a Delaware  
corporation doing business  
in Utah, DAVID A. WILLIAMS  
and ALFRED B. BUCHANAN,

Defendants.

: RESPONSE TO DEFENDANTS  
: MOTION FOR SUMMARY  
: JUDGMENT AND NOTICE TO  
: SUBMIT FOR DECISION  
: FILED JANUARY 15, 1993

: Civil No. 900903522CV  
: Judge Frank G. Noel

\* \* \* \* \*

Plaintiff William V. Penney hereby submits this Response to Defendants Motion for Summary Judgment and Notice to Submit for Decision.

#### INTRODUCTION

Plaintiff acknowledges that four of the five actions brought against Defendants have been dismissed as a result of Defendants' Motion for Summary Judgment regarding the first, third, fourth, and fifth causes of action. At that time Defendant was physically and mentally disabled and could not respond properly. In responding to this Motion for Summary Judgment to dismiss the second cause of action, Plaintiff finds it necessary to refer to these cause of actions as Defendants have done. Plaintiff's case has been built as the result of a sequence of events over a period of time leading to Plaintiff's unjust termination because he refused to participate in fraudulent activities. Each segment of the case is like a piece of a puzzle. Until the pieces are put together and viewed as a whole, the picture is not clear. In Defendants' previous Motion for Summary Judgment, regarding the previously referenced cause of actions, Defendants' attorneys took the liberty to embellish and speculate, often in narrative form. Plaintiff finds it necessary for clarity to apply the same latitude in this response.

In Defendants' current attempt to have the referenced cause of action dismissed, the primary focus and documentation are centered around Plaintiff's deposition. It should be noted that Plaintiff's deposition was taken under extreme duress. At that time Plaintiff was represented by the law office of Zane Gill. Mr. Gill made Defendant's attorneys aware that Plaintiff was disabled and arranged a schedule whereby Plaintiff would fly from Dallas to Salt Lake City and after a rest period, the deposition would be taken on two consecutive mornings. After the Plaintiff appeared for the deposition, Defendant's attorneys changed the scheduling. Plaintiff was advised by his attorney to comply, with both parties fully aware that frequent rest periods were necessary and that large amounts of pain medication was necessary for Plaintiff to sit up after a short time. Plaintiff was advised to be cooperative and open in his answers. Defendants' attorney proceeded to aggressively attack the Plaintiff for more than two full days, more than twice the time Plaintiff had previously advised that he was capable of in his physical and mental condition prior to surgery. Defendants David A. Williams, "Williams", Buck Buchanan, "Buchanan", and Ken Johnson, "Johnson", were in attendance for periods of times attempting to intimidate Plaintiff during the deposition and with Williams making taunting remarks off the record during breaks. Plaintiff at one point, in the unscheduled afternoon sessions, emotionally broke down and the deposition had to be halted so Plaintiff could take medications for pain and his psychological condition. All throughout the marathon deposition, Plaintiff consistently and frequently advised Defendants' attorney that he was not and never has been good at remembering dates, but organized events in his memory by sequence. The motion focuses on dates.

It should also be pointed out that after finally receiving a copy of the deposition for review, Plaintiff found many errors, omissions, and paraphrasing. Plaintiff requested that his attorneys advise him if there was a deadline for corrections to be submitted by and if so when. Plaintiff's attorneys responded after the deadline. How the deposition was handled began an uneasy relationship between Plaintiff and his attorney's, which will be referred to again later in this response.

Also, please be informed that none of the Defendants have made themselves available for deposition, where Plaintiff could be present to caucus and manipulate the flow of events, as was done by Defendants to Plaintiff. It is therefore Plaintiff's position the Defendants' Motion has emphasized and built on jargon, slang, and misinterpretations, to mention just a few. In order to properly respond to the Motion, it is necessary for Plaintiff "to put together the pieces of the puzzle" in a sequence, after which specific detail on pertinent issues will be addressed. In the interest of saving time, excessive redundancy will not be used to emphasize particular issues and points.

SEQUENCE OF EVENTS LEADING TO THE UNJUST TERMINATION  
OF  
PLAINTIFF WILLIAM V. PENNEY

In late 1980, Plaintiff was hired to fill the position of Subcontracts Manager which answered directly to Tom McCallum, Director of Materials. Mr. McCallum had personally recruited Plaintiff from the Dallas Texas area to relocate in Salt Lake City primarily because of Plaintiff's experience and contract knowledge in commercial and government contracting and the areas of procurement and materials. While evaluating the divisions procurement and subcontracting legal terms and conditions and reviewing the organizational structure and paper work flow of the Materials Department, Plaintiff was assigned to complete a contract started by a subcontracts administrator, Chet Thomas. Due to travel requirements and health problems leading to Mr. Thomas' disability and subsequent retirement, Plaintiff completed the order with Ducommon Metals for a mill run of plate steel for use on G.E. products. Plaintiff arranged for the material to be stored at the local Ducommon facility so it could be pulled and processed as needed, generally sent to Flameco for flame cutting and/of Blanchard Grinding for finishing to various required thicknesses. Plaintiff was also introduced to the divisions Government/Customer Furnished Property and Equipment Procedure, which had repeatedly failed audits by outside Property Managers/Auditors. Plaintiff therefore had extensive knowledge of what was to be called the "GE" material up to the time of his termination. More specific information is covered later in the topic titled --General Electric.

In the period from 1981 through 1983, Plaintiff assumed additional responsibilities. The purchasing department was organized into groups purchasing for specific product lines. Plaintiff was still responsible for all flight controls procurement. In addition, he was given the task of rewriting the previously mentioned Government/Customer Furnished Property and Equipment Procedure and implementing it, which was done with no audit problems thereafter including the G.E. programs and later the Northrop and Hazeltine programs. Plaintiff was also made responsible for all Inhouse Work Authorizations (I.W.A.) associated with the Air Asia division in Taiwan, which did overhaul and repair work for a number of world airlines, coincidentally including Korean Air Lines (K.A.L.). Air Asia also did machine and plating work for the Montek Division. During this period of time, Plaintiff was called to a meeting in the flight controls engineering department. The meeting was held in an open area, in full view and listening distance of anyone who would be interested. A man, not a Montek employee, began discussing the requirements for a mechanical swing arm on which a surveillance camera was to be mounted. When it was mentioned that the swing arm was to be mounted in a Boeing 747, like Air Force #1 and Air Force #2 that are worked on periodically at the Greenville Texas division of E-Systems, Plaintiff asked if it was a military application. We were told that it was to be secretly mounted on a Korean Air Lines Boeing 747 commercial airliner that would fly over a Russian base in order to gather intelligence. Plaintiff immediately told everyone at the meeting that he did not want any part of potentially getting civilians killed. After some crude and ignorant "good ol boy" comments and verbal abuse, He got up and left the meeting. His life and that of his family have never been the same since. In September of 1983, a soviet fighter shot down the Boeing 747 South Korean Airliner, flight KAL 007-See Exhibit A. To mention just a few of the events subsequent to the meeting, his life and the life of his son have been repeatedly threatened by telephone while at work and at home all hours of the night. After a hiking trip with his son, three men confronted him and threatened him in person. He purchased a phone tap alert and found that both his office and home phone were tapped. His home was later broken into and the alert disabled. Plaintiff was slandered and taunted by Montek employees. He was refused security clearance after Buchanan apparently was told to provide a secure environment for their "spook" programs. A secure room and telephone line were installed and security clearances monitored. Suffice it to say, there are at least three books on the market that were written after the plane crashed killing all two hundred sixty nine (269) passengers. Since the recent release of the transcript from the flight voice recorder to both United States and South Korean Officials by Russian President Yeltsin, interest has rekindled and much more evidence should be forthcoming-See Exhibit B. Any other information regarding the incident Plaintiff prefers to hold for an open court jury trial or congressional investigating committee, which ever comes first. By standing behind his morals and religious beliefs Plaintiff went from a friendly basis in both business and social arenas to an outcast under constant harassment and scrutiny.

During the period subsequent to the murder of two hundred sixty nine people, most civilians, aboard KAL 007 until Plaintiffs termination, his work load responsibilities increased disproportionate with other employees at the same level. His department was removed from Williams and organizationally placed under Joe Still, Vice President of Finance. He was given the responsibility of Small Business Administrator which entailed setting up a mentor program and active participation as the President of the Utah Supplier Development Council in order to keep government auditors appeased rather than drawing attention to the divisions weak Affirmative Action Policy-See Exhibits C and D. Plaintiff did most of the divisions minority hiring into the Traffic Department which also came under his responsibility. Plaintiff was also responsible for not only contracting for consultants to install and revise a complex computer program, but also for designing the procurement, receiving, and traffic functions. During the PMS implementation, Plaintiff was placed in charge of a division wide inventory and later cochaired a Value Management Committee in order to reduce the costs and increase profits for the division. Plaintiff once again fell under Williams on the organization chart after Williams was promoted from Flight Controls to the General Managers position. Mr. Still reported to Williams and Plaintiff to Mr. Still. Williams, however, on an ongoing basis directly assigned Plaintiff tasks and held him accountable, bypassing Plaintiff's organizational boss, Mr. Still. Upon becoming General Manager, Williams fired Bill Savage who was the Vice President of Navigational Aids programs and brought Curtis Ritchie from the parent division in Garland Texas to be a project

Vice President in charge of the Hazeltine program to try to extricate pricing, technical and legal problems with Hazeltine, Montek's teaming partner during the bid process, and the F.A.A.- See Exhibit E. Williams continued to bypass both Mr. Still and Mr. Ritchie and come directly to Plaintiff with action items and frequently threaten to fire Plaintiff if every goal was not met and schedules not met. The next major project was the Northrop contract. Plaintiff was also given an experimental/research project, known at the H.T.T.B. to procure. Other programs with similar problems to the three mentioned in Plaintiff's complaint included the Bell output structure casting, mentioned in Plaintiff's deposition and focused upon by the Defendants' first Request For Summary Judgment. Another included a mechanical actuator and controller assembly, code named Solitude and Alta. All of these "problem" programs were Williams'. The Plaintiff feels that it was necessary to go to this detail, as Defendants did in their affidavits, to show a pattern by Williams beginning when he was over Flight Controls in 1983 through the time

of William's preplanned firing of Plaintiff. Plaintiff took Williams abuse and worked thousands of hours of overtime to meet his dictates. Since Plaintiff could not be forced to quit, Plaintiff was fired. Each of the programs mentioned will be covered in detail later with appropriate topic titles, beginning with the three referenced in Defendants' Motion for Dismissal of cause two of Plaintiff's complaint.

## General Electric

As previously referred to in Plaintiff's sequence of events, the purchase of a mill run of plate stock from Ducommun Metals was the first purchase contract worked on by Plaintiff after being recruited and hired at the Montek Division. The order was for approximately one hundred thousand pounds of material and was purchased on an advance work authorization specifically for G.E. to be used only in the manufacture of G.E. products. Since the purchase of N Stamp material is unique, not related to DAR, FAR, DOT, or UCC purchasing requirements, Plaintiff flew to meet with the G.E. purchasing representatives at their facility near San Jose California. While at the G.E. facility, plaintiff met the procurement representatives and the Vice President in charge of the program. The procurement and storage of the mill run of material was discussed in detail as well as training requirements for N Stamp material and other purchased items. Sub-Contractors to be used were also discussed and how material, due to the size and weight factor, could be drop shipped from one vendor to another without having to be physically received at the Montek facilities. Also, source inspection and property control were discussed.

After Plaintiff's Subcontracting review, the material became the responsibility of Meril Rowley's product procurement group where value added operations were performed by a group of qualified and certified vendors, including but not limited to Flameco, Blanchard Grinding, Omnico and in some cases Pemco and United Precision. Gerald Perks, of the Materials Department and Max Pollard of the Industrial Products group were in charge of CFP/CFE before the responsibility was assumed by the Plaintiff and members of the material handling group in the Traffic Department, specifically Ron Duggar and Ivo Shanks.

Business in the Nuclear Products dropped to a point where the dedicated building was closed and used for storage in anticipation for future business. Most employees associated directly with the product line/program were either laid off or transferred to other departments. Plaintiff assumed responsibility for the limited activity and assigned Harley Ostmark as a dedicated buyer to keep a N-Stamp training card.

Plaintiff was made aware that due to the limited business activity, Ducommun Metals would start charging a storage fee to keep the G.E. N-Stamp material at their facility and maintain it. Plaintiff had the material moved to Montek facilities after reorganizing to create space for it. The material was first stored in the Industrial Products building that Plaintiff renewed a lease for. The vacant office space in this building was also used for storage of traceability records and some CFP/CFE records since this program was so unique.

Williams personally asked Plaintiff to rent an off site building on a short term basis because a meeting was scheduled to be held at Montek that would be attended by officers/officials from Corporate

Headquarters and other divisions. He personally authorized the move of the GE material from the Industrial Products building to the newly leased space. Williams told Plaintiff that since a corporate official had previously visited the main facility and found excessive scrap that he, Williams, had told was reworkable; he wanted all scrap either disposed of or moved to the "secret" building.

The GE material was also inventoried as part of the division wide "wall to wall" inventory that Plaintiff was placed in charge of. Teams of approximately two dozen people worked with Plaintiff to accomplish this task. The inventory audit team was headed by Kathy Reeder of the accounting/auditing/finance group under Mr. Still. Plaintiff was informed at that time the material was not valued on the books since it was GE owned. Plaintiff had Ron Duggar reconcile the inventory results of the GE material with his CFP records.

It was after this sequence that Montek began to get small orders for the Industrial Products. As mentioned during my deposition, in paraphrased language--not direct quotes as implied by Defendants' attorney, Mr. Still, Vice President of Finance informed me that GE material was being pulled from inventory after Ed Head had assumed responsibility for the product line and the inventory functions for all product lines. Plaintiff was at that time still responsible for Customer Furnished Property (CFP). As stated in Plaintiff's deposition, the material was used on products to customers without Montek having to pay for or purchase raw material. The Johnson Affidavit is very specific that the material was not sold back to General Electric, but did not state that it had not been sold to what is referred to as "others" in his affidavit on Page 2.

In response to Defendants' statement in the Petition for Dismissal of Plaintiff's Cause Two, reference is made several times that Plaintiff's deposition states that Plaintiff had no personal knowledge that any fraud was committed and that none of the Defendants intended to commit fraud. This is not the case. During the deposition taken under duress, plaintiff did at one point state in so many words that he felt most of the people were ignorant perhaps rather than intentionally committing fraud. During a break in the deposition Plaintiff's attorney advised him to be truthful and not try to assume Defendants were still his friends and not to go easy on them, and to tell it like it was. After the deposition began again, Plaintiff did recant his previous statement as he was having the emotional break down referred to earlier. This was a specific area of the deposition copy that Plaintiff brought to the attention of his attorneys after receiving a copy to review, that had been deleted and paraphrased.

In the Williams Affidavit under Paragraph 9, the second sentence states "In particular, the Vice President of Finance has a separate reporting channel direct to the Corporate Finance Department through which he can report any fraudulent or inappropriate activities by a general manager without risk to his job. Plaintiff can state that in each case that inappropriate and fraudulent

activity was recognized by Plaintiff after the 1983 time frame, it was reported directly to his direct supervisor, in this case Joe Still, Vice President of Finance. Plaintiff has no knowledge whether Mr. Still reported the actions to either Williams or Corporate. It is true, to the best of my knowledge, that Mr. Still did retire in August of 1986, as stated in the Johnson affidavit in Paragraph 5. It is of interest, however, that Mr. Still was replaced by Jim Cocke as Vice President of Finance, prior the firing of Plaintiff, therefore demeaning Mr. Still by not allowing him to retire from the Montek Division that he has served so well. Mr. Still was forced to relocate to Dallas and finished out his retirement time there.

Mr. Cocke's background and the activities that he was involved in prior to and after his coming to the Montek Division has a relevant bearing but will be covered in Plaintiff's final summation.

Plaintiff stands behind the statement that under Williams direction material purchased for and paid for by General Electric was knowingly used to manufacture and sell products, thereby constituting inappropriate and fraudulent business dealings.

Plaintiff feels that employees and ex-employees of the Montek Division can be subpoenaed and under oath will support his claim. Although a mysterious fire destroyed the records and office area in the Industrial Products building previously referred to, See Exhibit F, the nature of N-Stamp traceability should allow records to be subpoenaed from vendors, customers, and government agencies to confirm Plaintiff's claim.

## NORTHROP

As previously referred to, Plaintiff was hired by Montek primarily because of his experience, expertise in both the commercial and government fields of business. In Mr. Johnson's Affidavit on Page 2, he refers to his familiarity with "the pertinent Federal Acquisition Regulations applied to government contracting and acquisition practices". He also states that he is "also familiar with government contracting practices, including bidding and award processes for various types of contracts with the federal government or its contractors". Since Mr. Johnson prefaced his statement by sharing his knowledge and expertise, Plaintiff wishes to respond in kind.

Plaintiff possessed basically the same skills, knowledge, and expertise after he was fired as he did when he was hired at Montek. For a brief summary please refer to Exhibit G and Exhibit H. Plaintiff is recognized by several national professional organizations as an authority in his fields of expertise referenced in this response. While employed at Montek, Plaintiff had to have considerable knowledge of different contracting, procurement, traffic, materials, M.R.P., property control, and small business issues, as well as many others in order to know how to respond to each distinctly different customers requirements. Northrop, being a contractor for the Air Force, required extensive knowledge of Defense Acquisition Regulations (DAR) as stated repeatedly in Mr. Johnson's Affidavit Exhibit A, P200354 through P200357. The Federal Acquisition Regulations (FAR) referred to by Mr. Johnson in his Affidavit are different and came into practice much later. Plaintiff admits that Mr. Johnson at present would have a good knowledge of FAR since several of E-Systems Divisions, including Montek, have had considerable problems remarkably similar to the ones set forth in Plaintiff's claim, thereby requiring E-Systems to implement training programs throughout the Corporation. Reference Exhibit D and Exhibit I.

Plaintiff was involved in the bid and procurement process long before Northrop issued the Purchase Order-Mr. Johnson's Affidavit Exhibit A. Plaintiff was asked to attend a meeting at the request of Mr. Johnson in order to take advantage of his knowledge and expertise. At the meeting with three of Northrop's representatives Plaintiff exchanged business cards and began participation in what was a lengthy meeting. The essence of the meeting was for Northrop to complete their evaluation/survey of Montek's facilities and capabilities while negotiating technical and price factors. The meeting ran late into the afternoon and was postponed. Montek representatives entertained the Northrop people that evening. Plaintiff declined an invitation because he was behind on several other projects that he was working on for Williams. Plaintiff joined the meeting again the next morning. During the meeting both days the Plaintiff discussed lead time on materials, small business requirements, and property control, after Plaintiff asked if the contract would provide for progress payments. This was very important since a progress payment clause is a "flow through" or

passed down to the sub-tier contractors, see Johnson's Exhibit A, P200328 authorizing/confirming progress payments. When a progress payment is made against an itemized invoice, that material, work in process, value added becomes the property of the customer who has an ownership interest in it. Northrop had its own stringent requirements for property control as evidenced in Johnson's Exhibit A P200355 and P200356. Northrop led us to believe that Montek had passed their criteria for being qualified to build their tooling and actuators. An advance work authorization was discussed to allow Plaintiff to start the purchase of long lead time materials. Never at any time in the meeting while Plaintiff was in attendance did Montek representatives tell Northrop that there was not available shop capacity to produce the contract to their required schedule.

According to Johnson Exhibit A, the "formal" Purchase Order with all its Terms and Conditions, referred to by Defendants as the contract, was not issued and executed until August 12, 1985. In such case the Plaintiff had to rely on the information gained during the meeting and the advance work authorization that was released by Northrop on February 15, 1985, as confirmed in Johnson Exhibit A, P200355.

Plaintiff began the procurement process by directive and PMS computer system release of purchase requisitions. Rather than Montek building the tooling listed in Johnson Exhibit A, the actual parts that the tooling was supposed to be designed for were purchased from outside vendors.

Note that Johnson's Exhibit A does not provide the standard terms and conditions customarily printed on the back of a Purchase Order. Also, the "General Provisions dated 01 April 1985" as stated on Johnson Exhibit A P200354 and the special property requirements unique to Northrop set forth on P200355 are not included. Also of interest, it appears that the words "TOOLING-TOOLING OWNED" appear to have been added at the bottom of P20355 and the word "tool" handwritten without being initialed on P200356.

Virtually all contracts of the type being focused on have a clause prohibiting any major subcontracting without the written consent of the customer. Even common sense would dictate that Northrop would expect their contract to be performed in the facilities that they inspected/surveyed/and approved.

As stated in Plaintiff's deposition, he was subsequently contacted by Northrop's property control administrator attempting to set up a survey of property in work ie: the tooling. This led plaintiff to believe progress payments were being made. Upon discussing this with Hazen Watson the meeting described in Plaintiff's deposition with Williams took place where Plaintiff explained the situation. Defendants have again tried to paraphrase and read a biased meaning into the Plaintiff's deposition statement. Plaintiff has been known to keep copious notes on every meeting attended but he does not profess to be able to repeat dialogue from memory. Basically, Williams was informed that we were in breach of contract and we had

a Northrop property representative wanting to survey the work in process. The final result was that Plaintiff got the Northrop representative to agree to accept audit results and the approved system monitored by the local government representative.

Joe Still, Vice President of Finance was informed of the situation. Plaintiff made copious weekly reports to Mr. Still in detail. Mr. Still was uneasy about Williams management methods and had told Plaintiff to document all "out of the ordinary" situations. Plaintiff did. Both Plaintiff and Mr. Still's secretary Diane Snow kept files. Mr. Still also kept weekly reports from the Director of Pricing, Frank Campbell for whom both Ed Johnson and Steve Ausman worked at the time.

To the best of Plaintiff's knowledge, progress payments on the production items were made. Even if the tooling invoice was not submitted until 1988, this indicates that unnecessary tooling was made on the hope of future business being run in Montek's shop. Progress payments on production items alone and later tooling would still have been a breach of contract.

If Plaintiff is allowed access to a court trial, he intends to spend most of February in Salt Lake City subpoenaing records and people. Plaintiff feels that even some of E-Systems employees will tell the truth on a witness stand under oath and vendors records would be more unbiased.

## HAZELTINE

Plaintiff will not dwell on the numerous proposals and negotiations associated with Hazeltine as a teaming partner going back well before 1984.

Concise and to the point, after contract award neither Hazeltine nor Montek could perform to contract specifications. Neither could meet the technical requirements that they had assured the Federal Aviation Administration they could. Plaintiff personally negotiated and executed contracts with major subcontractors that knew the technical expectations could not be achieved, as did Montek engineers and Williams.

Williams, as referred to earlier, fired Bill Savage, the Vice President in charge of the P.D.M.E. and, at corporate insistence, was replaced by Curtis Ritchie from the Garland Texas Division in order to try to take control of the program.

Williams was trying to look good to what he called a "corporate spy", Mr. Ritchie. Williams would still go directly to Plaintiff with action items that Mr. Ritchie was not aware of, hence the second bid on the P.D.M.E. bill of materials referenced in Plaintiff's deposition. Williams began posturing for a legal battle with both Hazeltine and the F.A.A.. Williams position was that Montek was on schedule, meeting specifications, and the only problem was with Hazeltine and the F.A.A. themselves.

Plaintiff does not feel that he can explain the product as well as it is described in this months issue of Popular Science, Reference Exhibit E page 79. The article refers to a five year delay due to default, which is about the time E-Systems was in court over the issue. If given the opportunity to subpoena the court records it will become clear why Williams was wanting what he used to refer to as "funny numbers". Montek was trying to change the scope of work or anything else that could be done to jockey for position. The P.D.M.E. was viewed as a long term business investment, counted in decades.

It should be further noted that the Hazeltine contract was not D.A.R., F.A.R., N.R.C., or U.C.C. but D.O.T.--Department of Transportation, which had its own unique procurement, property control, and small business requirements, that Plaintiff was responsible for.

Both Bill Savage, the Ex-Vice President in charge of the program, and Tom McCallum, the Ex-Director of Contracts and Pricing that bid the program in the early stages before Frank Campbell, Director of Pricing took over the responsibility, can be subpoenaed. Plaintiff even believes that E-Systems Corporate Attorney, Gary Hopkins can be subpoenaed since he was the focal point of the litigations.

## Bell Output Structure

Montek had purchased a large quantity of investment castings (P/N 141509) from Dolphin Castings in Phoenix Arizona in order to get a low price. Dolphin representatives had participated in setting up an inspection procedure along with Montek engineers. Dolphin had been given approval to process with production after Montek approved samples. Dolphin poured all of the castings and inspected /x-rayed them to the agreed upon specification. All were shipped to Montek in increments with pertinent inspection data and x-rays. The parts and x-rays were again inspected by Montek's certified radiographic inspector, accepted and placed in stock.

The Flight Controls machine shop, under Williams, began machining the parts. After several shipments of the assembled actuators to Bell for assembly into a critical area of their helicopters, Plaintiff was made aware of a reject problem with the castings. The shop floor inspectors suddenly began rejecting large numbers of parts.

After getting shop reject reports, Plaintiff, not knowing he had been exposed only to the tip of the ice burg, informed his supervisor Joe Still, Vice President of Finance and Williams that he felt there was a possibility of going back to Dolphin for replacement castings based upon the latent defect rule.

All castings, hundreds that had been accepted well over a year before the problem was reported, were pulled from stock for re-inspection of the critical area where the defects were found. Plaintiff began discussions with Dolphin's General Manager and their chief engineer. Plaintiff also sought legal advice from E-Systems Corporate Attorney, Bill Strange.

The urgency quickly escalated and Bell and the F.A.A. were advised of the problem.

Having previously been a machinist and manufacturing engineer, Plaintiff visited Dolphins facility on several occasions and began piecing together the history. During Plaintiff's fact finding mission, it became apparent that the same percentage of the first lots of castings should have the same problems due to the design and manufacturing technology used. Plaintiff tried to reinspect the x-rays originally shipped with the parts from Dolphin and was informed that they had been "stolen", probably for silver content. Plaintiff was informed that Jerry Ludlow, Head of Security, coincidentally also responsible for security clearances, had reported to the police that the x-rays had been stolen. Mr. Ludlow worked for Defendant Buck Buchanan.

Plaintiff has numerous conversations, which he tape recorded, with Dolphin representatives and their attorney, Mr. Strange-E-Systems attorney and Montek design engineer Herb Friess, who had been involved with project since its conception. Plaintiff finally got Dolphin to make a small cash settlement offer to drop the issue.

After completing the fact finding process, Plaintiff concluded that the original castings had the same problems but were "bought off" to ship in order to keep on schedule and generate cash flow. Upon sharing his findings with a key management level person at Montek, the person informed Plaintiff that the problem had been known long before it was reported and that plaintiff's conclusion was correct in his opinion. When questioned about the stolen x-rays Plaintiff was informed that they were taken and destroyed at Williams direction.

Plaintiff immediately informed his supervisor, Joe Still Vice President of Finance and scheduled for Mr. Strange, Corporate Attorney, to visit the facility to review the situation. During his visits, Mr. Strange met with Plaintiff and Herb Friess, engineer on several occasions. Mr. Strange also met with Williams--alone.

The bottom line was that there were parts with defects on numerous helicopters that could cause a crash if there was a failure. Plaintiff was once again in the middle of a situation that could cost civilian lives. Once before in Plaintiff's career at a previous company, only one machined casting was found to be defective on a government contract of the same critical nature and Plaintiff and all management personnel were visited and interrogated by an F.B.I. agent. Plaintiff never wanted to be in the same situation again.

After Plaintiff's experience with the KAL 007 incident in 1983 and the string of problems thereafter, there was cause for concern. Plaintiff had been previously handicapped for several years and needed his job with a self insured company like E-Systems. Mr. Strange decided to take a "wait and see" approach rather than try to settle the issue with Dolphin. By leaving the "door open", if there was a crash, E-Systems would have someone to lay the blame on and deny any liability. At the time Plaintiff was fired, all files, tapes, minutes of meetings, and diary notes had been given to Theresa McLaughlin, the Program Manager of the program at that time.

Although, to the best of Plaintiff's knowledge, none of the parts has yet caused a death. Hopefully, units made from the parts Plaintiff assisted in designing have replaced those in the field.

## RESPONSE CONCLUSION

With just the few examples previously given, it should be enough to qualify as fraudulent activity under Utah State Law. But, to further support Plaintiff's position that he was fired for being an antagonist to Williams by not acquiescing to his fraudulent business practices, it should be noted that when Plaintiff's supervisor Joe Still was replaced as the Vice President of Finance, it was by Jim Cocke who had transferred from the Memcor Division of E-Systems after it had been virtually shut down by the Government for defective pricing and fraudulent business practices. After Mr. Cocke came to Montek, most of his time was occupied flying back and forth to Memcor and Corporate legal trying to defend his position. He was Plaintiff's supervisor for only a short time and never visited the Procurement Department but once before Plaintiff was fired for reasons previously described. Also of interest, after Plaintiff was fired, Frank Campbell Director of Pricing became the Director of Procurement. Ed Johnson and Steve Ausman both worked for Mr. Campbell before the transfer.

E-Systems has been a swaggering Goliath for so long and has been "fed" by Black Budget "spook" programs not even voted on by Congress, that the whole corporation has had difficulty adjusting subsequent to the passing of the Graham Ruddmann Act and the increased enforcement of the Foreign Corrupt Practices Act and more stringent audit criteria. Plaintiff feels that when the Corporate Counsel gave an affidavit supporting the previous Motion For Dismissal stating that E-Systems got no government grants, that he actually interprets the Black Budgets as "manna from heaven".

It was recently reported that the family of one of Reba MacIntire's band members that died in an airplane crash was awarded three million dollars for a negligence decision. After multiplying three million times two hundred sixty-nine, the number of passengers killed in KAL007, it is no surprise that Plaintiff has been put through hell.

The Defendants have been so confident that this case would never get to court, E-Systems annual reports do not even mention it, or the others in the exhibit news paper article for that matter. The S.E.C., and G.A.A.P. require such suits be defined under the classification of contingent liability.

Plaintiff respectfully requests that he be given his "day in court".

# Kremlin records show KGB urged

By Brian Friedman  
Associated Press

MOSCOW — Newly released Kremlin documents show that the KGB and the military urged then-Soviet leader Yuri Andropov to withhold flight data of Korean Air Lines Flight 007 because the information would undercut the Soviet contention that the plane was on a spy mission.

A Soviet fighter jet shot down the Boeing 747 on Sept. 1, 1983, killing all 269 people on board, after the commercial airliner had strayed into Soviet airspace over military installations in the Far East. The attack provoked deep Western hostility toward the Soviet Union.

Cockpit transcripts made public Thursday also indicated that the pilots of KAL 007 gave no indication that they knew a Soviet missile had struck them.

They shouted "Get up!" and "I can't!" before the jumbo jet crashed into the sea, according to transcripts.

According to the transcript, the passengers had at least 75 seconds of warning that the plane was going down. Announcements in English, Korean and Japanese told them: "Urgent descent. Fasten seat belts. Put on oxygen masks."

Russian President Boris Yeltsin released the documents to U.S. and South Korean delegations on Wednesday to clear the record on Flight 007 after nearly 10 years of Soviet deception.

For years, the Kremlin denied that it had found the so-called "black box" recordings of flight data and cockpit conversations.

In fact, the recordings were found seven weeks after the plane plunged into the Sea of Japan, in 594 feet of water, the documents said.

That the pilots did not indicate they had been fired upon by a Soviet fighter plane adds to the evidence that the crew "had no idea who attacked them and why," Seymour Hersh, who wrote a book about the shootdown, said in an interview with The Associated Press.

In a December 1983 letter to Mr. Andropov, the Soviet defense minister and the KGB chief advised against making public the jet's flight and data recorders because they were too ambiguous.

"The objective data of the flight and voice recorders, in case they are handed over to Western countries, may be used both by the U.S.S.R. and Western countries to substantiate the opposite viewpoints concerning the aims of the flight of the South Korean plane," said the letter, signed by then-KGB chief Viktor Chebrikov and then-Defense Minister Dmitry Ustinov.

"Another wave of anti-Soviet hysteria can't be excluded," they said.

The location of the flight and data recorders "must be kept secret," they advised Mr. Andropov.

The documents said the Korean crew was regularly reporting false data about the jet's path along the international flight route, and the KGB concluded that this was "an alibi" to be used in case the plane were forced to land at a Soviet airfield.

"The plane's crew for more than five hours kept the route unchanged

... and didn't take measures to leave Soviet air space," the documents said.

The KGB concluded that the flight was part of "a large-scale political provocation, meticulously organized by the U.S. special services ... to gather intelligence data about Soviet air defense systems," the documents said.

The United States and South Korea have always denied that the jet was on a spy mission, but no one has proved why it strayed more than 400

miles off course.

In his 1986 book, "The Target Destroyed," Mr. Hersh theorized the Flight 007 went off course because of errors the crew made in programming the jet's computerized navigation system before takeoff from Anchorage, Alaska. The flight engineer entered a wrong digit into the computer, and the crew did not catch the error during the flight, he suggested.

The transcript of the final 30 minutes from the cockpit voice recorder contained some casual conversation

## data be withheld in '83 jet downing

A flight attendant gave another crew member a cigarette, and there was a sound of laughter and talk between Flight 007 and another Korean jet.

About four minutes before the end of the tape, Flight 007 radioed Japanese air traffic controllers that it was at an altitude of 35,000 feet.

In the first sign of trouble — 90 seconds before the tape ends — a warning signal sounded in the cockpit and one of the crew members shouted to another, "Get up!"

"I can't," came the reply.

Fifteen seconds later, a cabin announcement in Korean, English and Japanese warned, "Urgent descent. Fasten seat belts. Put on oxygen masks." The warning was repeated several times.

After 23 seconds, the crew radioed: "Tokyo, this is Korean Air zero-zero-seven."

"Korean Air zero-zero-seven, this is Tokyo," came the reply.

"This is Korean Air zero-zero-seven, don't break communications. Give directions. We have rapid com-

pression. Descending to one-point-zero thousand," the doomed jetliner radioed 41 seconds before the end of the tape. That refers to 10,000 feet — the altitude at which passengers can breathe in case of decompression of the cabin.

"Korean Air zero-zero-seven," Tokyo radioed five seconds before the end, but there was no response given.

"End of tape," the transcript states, indicating the destruction of the jumbo jet.

# EXHIBIT B Yeltsin releases papers on downed Korean jet

Washington Post

MOSCOW — Russian President Boris Yeltsin moved Wednesday to clear up one of the lingering mysteries of the Cold War by releasing transcripts of documents on the shooting down of a South Korean jumbo jet by the Soviet Union in 1983.

The decision to make public the contents of flight and voice recorders from the ill-fated Korean Air Lines flight appeared designed in part to emphasize Russia's break with its Soviet past.

It was the first time that Russian officials have officially acknowledged that the "black boxes" from KAL Flight 007 were in their possession, although the newspaper *Izvestia* reported last year that Soviet divers recovered them from the Sea of Japan several weeks after the shootdown.

The United States, which has been pressing successive Soviet leaders to hand over documents relating to the downing of KAL 007 for many years, hailed Mr. Yeltsin's action as "courageous."

The attack on the South Korean Boeing 747 after it strayed into Soviet airspace on a routine flight from Anchorage to Seoul severely strained relations between Moscow and Washington.

At a Kremlin ceremony Wednesday, Mr. Yeltsin offered his condolences to the relatives of the 269 passengers and crew who were killed in the crash and accused former Soviet leaders from Yuri Andropov to Mikhail Gorbachev of hiding the truth from the world.

A recently published transcript

of a meeting of the ruling Communist Party Politburo shortly after the incident shows that Mr. Gorbachev, then a rising star in the leadership, defended the decision to shoot down the plane.

Mr. Yeltsin and Mr. Gorbachev have been involved in an increasingly bitter feud over the past few months. The Russian leader has accused the former Soviet president of breaking a promise not to get involved in political activities.

The Kremlin archives have provided Mr. Yeltsin with an apparently inexhaustible supply of political ammunition to use against his mentor-turned-rival.

In another move that could embarrass Mr. Gorbachev, Mr. Yeltsin handed over to Poland formerly secret documents showing that Soviet dictator Josef Stalin ordered the massacre of 15,000 Polish officers during World War II. Presidential spokesman Vyacheslav Kostikov went out of his way to make the point that all subsequent Soviet leaders up to and including Mr. Gorbachev were fully informed about the crime after taking office.

The newly released documents on KAL 007 could help resolve the mystery of how the plane managed to stray some 300 miles off its designated flight course and fly over the militarily sensitive Kamchatka Peninsula and Sakhalin Island. In addition to transcripts of the flight and voice recorders, the documents include two reports on the incident to Mr. Andropov, then the top Soviet leader, and several analyses by Soviet military experts.

10/15/92  
MOSCOW NEWS

# Inquiry finds discrimination at E-Systems

By Gregg Jones **EXHIBIT C**  
Staff Writer of The Dallas Morning News

E-Systems Inc., the Dallas defense electronics contractor, discriminated against black employees in pay and promotion policies at the company's Garland Division, a U.S. Department of Labor investigation has concluded.

The Labor Department notified E-Systems on June 21 that its investigation identified 47 workers as victims of discrimination. A spokesman said the Labor Department has asked E-Systems to respond to the findings and would have no further comment on the case.

If E-Systems refuses a Labor Department-brokered settlement, the government could take enforcement action against the company, the spokesman said.

John Kumpf, E-Systems spokesman, said Wednesday that the company has not received details of the Labor Department investigation. "It would be presumptuous on our part to comment when we haven't seen anything yet. We haven't seen the report," he said.

Mr. Kumpf added, "We felt from the very beginning that there has been no discrimination. We practice affirmative action, and we promote based on merit regardless of race or sex."

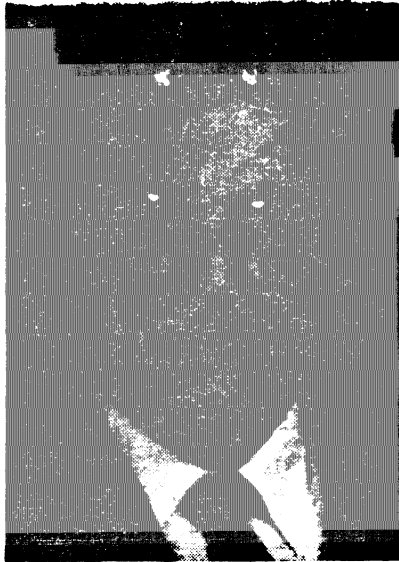
Leala Green, president of the Garland NAACP branch, called the decision "a victory for those people who were discriminated against. This will at least make them feel a little better — those who had their lives disrupted and were discriminated against."

The Labor Department investigation

stemmed from a Nov. 16, 1988, complaint filed by the Garland branch of the National Association for the Advancement of Colored People on behalf of several E-Systems workers. The workers accused the company of discriminating against black workers in a number of areas, including promotions, pay, training and job opportunities.

The investigation compared records of black and white employees hired in similar positions or occupying similar jobs.

"Blacks were found to be treated differently than whites in salary placement, job and salary progression. (The investigators) identified 47 blacks that have been determined to be victims of discrimination," the Labor Department said in a letter notifying E-Systems of its findings.



E. Gene Keiffer . . . has established credentials as "a very good, astute businessman," an observer says.

## E-Systems chief called influential

Experts say Keiffer can rally Pentagon support

By Gregg Jones

Staff Writer of The Dallas Morning News

A few weeks ago, with the German government locked in debate over whether to move ahead with production of the Egrett spy plane, Defense Secretary Dick Cheney fired off a letter to his German counterpart.

Warning of the possible negative effect on the "U.S.-German industrial team" — the project is expected to be worth \$600 million in sales for Dallas-based E-Systems Inc. — Mr. Cheney urged the German government to push ahead with the Egrett, according to the weekly trade journal *Defense News* and a Pentagon official.

To defense industry analysts in Washington, the letter appeared to be an effort by the U.S. defense secretary to promote a contractor's valued foreign program.

But it also was seen as evidence of E. Gene Keiffer's ability to rally support at the highest levels of the

# Secretive firm

## EXHIBIT D

Continued from Page 1A.

have operated on the principle that the less the world knows about E-Systems, the better. The payoff has been that few companies, if any, enjoy as close and profitable a relationship with the CIA, Defense Intelligence Agency, National Security Agency and other clandestine U.S. government entities, say Wall Street analysts, defense industry executives and former intelligence officials.

Now that's changing.

The economic, social and international political realities of the 1990s are forcing E-Systems out of the protective shadows of the defense and intelligence industries. For the first time in years, big new projects have slowed to a trickle. Its primary customer, the U.S. government, has far less money to spend on exotic spy programs and is watching more closely how its dollars are parceled out. Costs are rising, and demands for workers to produce are so intense, a former E-Systems engineer says, that one supervisor at the Greenville division pasted gold stars on the office doors of engineers who would work overtime without pay.

### Various allegations

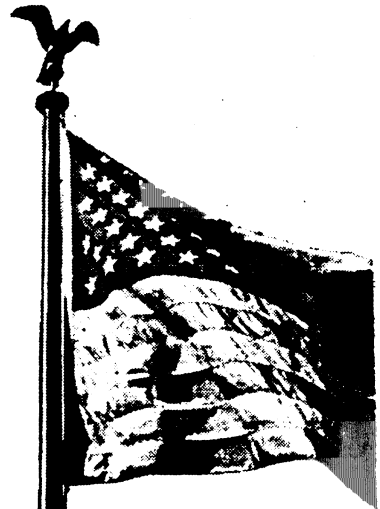
Further, the company is facing a variety of allegations that threaten to thrust it into the spotlight it has assiduously shunned:

■ Several federal agencies, including the U.S. attorney's office in Dallas and the Air Force's Office of Special Investigations, are investigating criminal allegations that E-Systems sold the Air Force defective aircraft parts and submitted illegal charges to the government, investigators say.

E-Systems said it believes that the government already has "put to rest" some areas of questioning and said it is cooperating with investigators "to put to rest other aspects of the investigation." In a statement, E-Systems also said, "The company has no reason to believe that it or any of its employees have committed any illegal acts."

■ In a related case, the General Accounting Office and the Senate subcommittee on oversight of government management are investigating allegations that E-Systems retaliated against past and present em-

## BEHIND THE V



### Our Pledge

I pledge allegiance to the flag of the United States of America and to the Republic for which one nation under God, indivisible, with liberty and justice for all

E-Systems' advertising the past two decades American flag and the Allegiance. But economic political upheavals are changing times at the premier spy-technology

## BUSINESS LINES

### ELECTRONIC WARFARE

Involves the production of complex, software-intensive intelligence, imagery and surveillance systems. Products

include the electronics that adorn the being built for Germany and the U.S. 135 reconnaissance plane, and the software used to analyze data collected electronic "black boxes." It includes systems and electronic border security as the one E-Systems hopes to build Arabia.



The Egrett sp

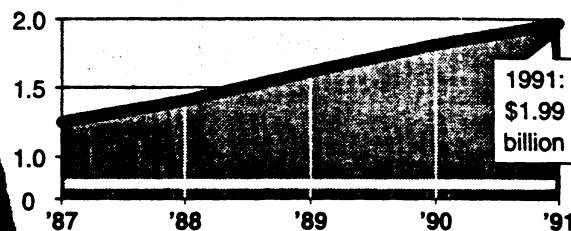
# coming out of shadows

## EIL OF E-SYSTEMS INC.

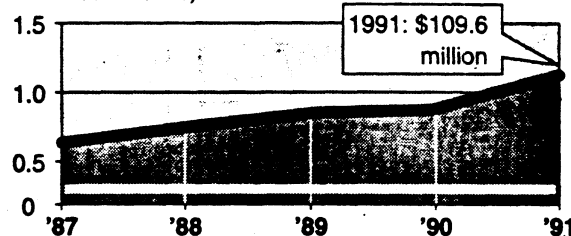
E-Systems Inc. was established in 1972 when LTV Corp. spun off its electrosystems division as a publicly held company. More than 90 percent of its business is defense-oriented, and much of that is highly classified work for U.S. intelligence agencies. In 1991, it ranked No. 210 in sales and No. 135 in profits on *Fortune* magazine's listing of the 500 largest industrial corporations in the United States.

### FINANCIAL PERFORMANCE

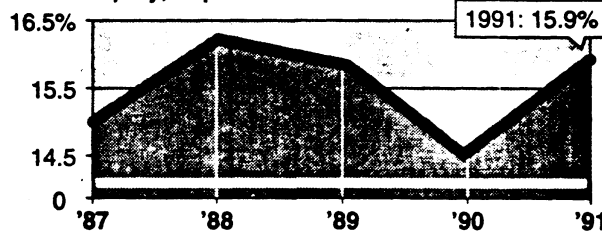
Revenues, in billions



Net Income, in millions



Return on average stockholders' equity, in percent



stands.

g staples for have been the Pledge of mic, social and giving rise to nation's ry supplier.



y plane

e Egrett spy plane. Air Force's RC-computers and ted by the digital imaging ity systems, such 1 for Saudi

### AIRCRAFT MAINTENANCE, MODIFICATION, TRAINING AND SIMULATION

Maintains and modifies U.S. special mission aircraft, including



Air Force One

Air Force One — the president's plane — and the so-called Doomsday Plane, the aircraft that would be used to command U.S. forces in the event of a national emergency. It also modifies commercial aircraft for use by the Pentagon as flying hospitals and performs special services such as facility operations, logistics support and electronics repair.

and Defense Intelligence Agency vice director — heard the Dixon recruiting spiel firsthand in 1982 when he retired from government service. Mr. Inman, who first encountered Mr. Dixon in the mid-1970s, recalls the E-Systems chief as “a tough manager, but he attracted good people and held onto them.”

Mr. Keiffer, too, has shopped for such experienced hires, naming Peter A. Marino, the former director of the CIA's technical services division and a defense industry executive, as an E-Systems senior vice president in 1991.

“Those are the guys that tried to invent poison darts and James Bond-type spy paraphernalia,” says former CIA analyst Victor Marchetti.

During the 1970s, the company built its business as an intelligence community supplier, winning its first contracts to install communications systems on Air Force One, the president's plane, and on other Air Force special-mission aircraft, such as the Doomsday Plane that would be used to command U.S. forces around the world in a national emergency.

When Congress ordered the CIA in 1975 to divest its vast network of front companies, E-Systems stepped in to buy Air Asia for \$1.9 million. The Taiwan-based company, which had been involved in countless clandestine operations in Southeast Asia, gave E-Systems the largest aircraft repair-and-maintenance facility in Southeast Asia and a vast network of CIA affiliations. In 1987, E-Systems sold Air Asia to an Everett, Wash., firm for an undisclosed amount.

By the time the Reagan-era defense buildup began in 1981, E-Systems was a leading member of an elite contractors club. In President Ronald Reagan's first year in office, order backlog jumped 34 percent, topping \$1 billion for the first time.

Business grew as the Pentagon's secret budget ballooned. In an 18-month period in 1985-86, the company hired 2,100 people in the Dallas area alone. Revenue broke the \$1 billion mark for the first time in 1986, the year that earnings topped the \$100 million plateau.

Through the years, the company has largely avoided embarrassing scandals and costly contract cancel-

"E-Systems is able to pull the right strings in the Pentagon," Mr. Lambert said. "Ninety-five percent of the nation's defense companies wouldn't be able to get the secretary of defense to write a letter to a foreign government to promote their program."

Since taking over as E-Systems chairman and chief executive officer in April 1989, Mr. Keiffer, 63, a Dallas native, has received credit for guiding E-Systems to rapid foreign expansion.

He is also seen by industry analysts as an increasingly influential figure in behind-the-scenes gatherings. Mr. Keiffer sits on the exclusive Defense Policy Advisory Commission on Trade, a group of senior defense industry executives that meets regularly with top Pentagon and U.S. trade officials.

Like most current senior E-Systems managers, Mr. Keiffer rose through the ranks, a Southern Methodist University electrical engineering graduate steeped in the company's conservative culture. He began his career at LTV Corp.'s defense electronics unit, specializing in designing antenna and microwave systems. In 1972, the unit was spun off as E-Systems Inc.

In 1983, Mr. Keiffer, a husky ex-Marine who was then general manager of the company's Garland division, was named a senior vice president over the electronic systems.

Although his reputation is fundamentally that of a technical expert, Mr. Keiffer has quickly established credentials as "a very good, astute businessman," says Elliott Rogers, a vice president at Wall Street's Cowen & Co.

Defense electronics analysts honored Mr. Keiffer as one of the industry's top two CEOs in 1990.

Although he maintains a stealthy public profile, Mr. Keiffer is a prominent figure among intelligence community contractors. He is a member of the Association of Old Crows, a society of electronic warfare specialists through which many intelligence community ties are made and maintained.

Mr. Keiffer has maintained another tradition begun by E-Systems' first CEO, John Dixon: He shuns interviews, preferring to let the company's financial performance do the talking.

"I don't want a big spread in the paper," he said in a brief phone conversation. "We try to keep our stockholders informed as much as we reasonably can."

E-Systems said it believes that the charges arise from "a disgruntled former employee and some of his collaborators." The company added: "Harassment and retaliation are prohibited by written, rigorously enforced policies" and "are completely contrary" to the company's standards of ethical conduct.

■ A Labor Department report last year accused E-Systems' Garland division of discriminating against black employees in pay and promotions, after an investigation prompted by complaints from more than 15 black workers. The department's Office of Federal Contract Compliance Programs found that 47 black E-Systems workers had suffered discrimination. The Garland NAACP chapter is representing the workers in the ongoing dispute.

For the past year, the Labor Department has been meeting with E-Systems officials in an effort to reach a settlement, said Joseph Nash, Dallas district director of the Office of Federal Contract Compliance Programs.

E-Systems said "discussions are continuing." The company denies that discrimination occurred and said it believes that it has "appropriate policies and procedures in place to hire, promote, compensate and treat employees on a nondiscriminatory basis."

■ Three former E-Systems workers recently filed an age discrimination lawsuit against the company, alleging that it systematically discriminates against older employees. More than 100 former E-Systems workers over 40 — all of whom have been dismissed in the last two years — have been meeting with lawyers, and several say they plan to join the lawsuit, which seeks class-action status.

The company says its policies prohibit any kind of discrimination. It attributes the lawsuits and related charges in part to an explosion in employment-related litigation. E-Systems noted that the allegations surfaced only after it had to dismiss employees to reflect changes in its business and said that "a number of plaintiffs' lawyers are aggressively soliciting ex-employees" to bring lawsuits.

## Business booming

Despite the problems, business continues to boom at E-Systems, which ranks 20th among the Dallas-Fort Worth area's largest public companies. Its sales grew 10 percent in 1991 to \$1.99 billion, profits soared 28 percent to \$109 million, and the company ended the year with un-

## GUIDANCE, CONTROLS AND NAVIGATION

Develops and produces flight-control equipment and systems for commercial and military aircraft, which are designed to play an integral role in the modernization of the nation's air-traffic-control system. Products include ground- and ship-based navigation aids for commercial, military and general aviation.

1991 sales: \$95.9 million

1991 pretax income: \$15.8 million

SOURCE: E-Systems Inc.

**"It's absolutely crucial that the German contract come in. If it doesn't, certainly the long-term numbers will not be as good for E-Systems."**

**— Peter Aseritis, First Boston Corp.**

filled orders worth \$2.5 billion. For the first nine months of this year, net income was up about 11 percent over the same period last year, to \$88.3 million, and sales rose about 6.5 percent to \$1.54 billion.

Meanwhile, many military contractors are struggling to survive in the face of declining defense spending. But E-Systems specializes in products and services that are in much demand: converting commercial aircraft for military and business uses, making sensors for troubled borders, developing secure communications systems and building devices that can pick up enemy radio signals from hundreds of miles away.

Still, even for E-Systems, life after the Cold War can be disconcerting. Production of Germany's Egrett high-altitude spy plane, which would include as much as \$600 million in E-Systems equipment and services, has been delayed while the German government determines its defense priorities. And the award of a nearly \$3 billion contract for Saudi Arabian border security systems — a project for which E-Systems is the top contender — has been pushed back by cash-flow problems in Riyadh.

E-Systems says the German government is expected to decide in favor of at least a scaled-down Egrett program by year's end. The Saudi program could begin moving slowly

forward next year. But which was counting on contracts for continued robust is watching anxiously, financial analysts.

"It's absolutely crucial German contract come doesn't, certainly the numbers will not be as good for E-Systems," says Peter Aseritis, First Boston Corp.

Despite its vital — and — role in the nation's defense known about E-Systems happens any other major military contractor in the country, say and defense industry analysts competitors. An estimated of its revenues this year were created by making electronic that detect and jam enemy intercept enemy radio communications, and computers and that collect and analyze those and radio messages gathered electronic intelligence programs.

At least \$500 million in are hidden in the Pentagon "black budget," which closed for national security the Wall Street analysts estimate.

"There's a certain mystique E-Systems, a certain amount of intrigue," says Dan Peterson, vice president for Washington operations at Martin Marietta. "Occasional E-Systems companies personally think it's because so much in the way of secrets. No one can examine the detail that the rest of us missed."

He adds with an admiration of the head, "They're able to get contracts no one else even about," a comment that may be more on the E-Systems side than reality.

The company discourages publicity.

E. Gene Keiffer, E-Systems chairman and chief executive officer, answered a few general questions

AND Develop system trans network comput inform Product Storage and re inform

1991 1991

58 million

and retrieve huge amounts of disk and tape information, and U.S. Navy shipboard radios.

1991 sales: \$315.5 million

1991 pretax income: \$19.3 million

The Dallas Morning News

EXHIBIT D  
4 of 7

forward next year. But Wall Street, which was counting on these contracts for continued robust growth, is watching anxiously, say four financial analysts.

"It's absolutely crucial that the German contract come in. If it doesn't, certainly the long-term numbers will not be as good for E-Systems," says Peter Aseritis, a defense electronics industry analyst at First Boston Corp.

Despite its vital — and lucrative — role in the nation's defense, less is known about E-Systems than perhaps any other major military contractor in the country, say financial and defense industry analysts and competitors. An estimated two-thirds of its revenues this year will be generated by making electronic devices that detect and jam enemy radar or intercept enemy radio communications, and computers and software that collect and analyze the pictures and radio messages gathered in electronic intelligence programs.

At least \$500 million in revenues are hidden in the Pentagon's secret "black budget," which isn't disclosed for national security reasons, the Wall Street analysts estimate.

"There's a certain mystique about E-Systems, a certain amount of intrigue," says Dan Peterson, senior vice president for Washington operations at Martin Marietta Corp., an occasional E-Systems competitor. "I personally think it's because they do so much in the way of secret programs. No one can examine them in the detail that the rest of us are examined."

He adds with an admiring shake of the head, "They're able to win contracts no one else even knows about," a comment that may draw more on the E-Systems mystique than reality.

The company actively discourages publicity.

E. Gene Keiffer, E-Systems chairman and chief executive officer, answered a few general questions but

"Those are the guys that tried to invent poison darts and James Bond-type spy paraphernalia."

— Victor Marchetti, ex-CIA analyst

declined to be interviewed at length for this story. He cited a policy "not to participate in extended discussions or interviews with members of the press regarding the company's business or operations."

Instead, the company agreed to provide written responses to written questions.

Mr. Keiffer also telephoned a reporter to ask repeatedly that this story not be written.

"It's a very competitive world out there right now, more competitive than it's ever been," he said. The story "will hurt us. It just won't do us any good. Think about it in terms of your responsibility to the community."

## Intelligence links

To this day, E-Systems bears the imprint of its first chief executive, a gruff, conservative economist named John W. Dixon. A longtime employee of the electrosystems division of what is now LTV Corp, the Kentucky native was named to run the money-losing unit when it was spun off as a public company in 1972.

From the beginning, E-Systems sought top-notch engineers and experts with connections to the intelligence community. Drawing on contacts made as deputy Pentagon comptroller and at LTV, Mr. Dixon hired men such as a former CIA deputy chief of science and technology and a National Security Agency signals-intelligence expert.

Even retired Adm. Bobby Inman — a former National Security Agency director, CIA deputy director

cause they have the highest security clearances. These companies "would have to fall flat on their face" to lose their membership in the club, Mr. Rogers says. There is competition, "but it's not a free-for-all."

## Shunning the spotlight

For all its efforts to shun the spotlight — and its success at steering clear of major scandals for years — E-Systems now finds itself embroiled in several disputes that threaten to spoil the company's record on both fronts.

The problems involve E-Systems' largest units: the Greenville division, which employs 5,082 workers who, among other things, maintain and modify Air Force One, the Doomsday Plane and other government aircraft; and the Garland division, which handles many top-secret computer software and electronics programs, employing 4,694 people.

Since 1988, several federal agencies have been investigating allegations that E-Systems sold defective aircraft parts and illegally charged the government.

The company said that it has been aware of the U.S. attorney's investigation since September 1990 and that the government has subpoenaed hundreds of E-Systems documents. Investigators may decide this year whether to file criminal charges, according to an official familiar with the case.

E-Systems said in a statement that it "hopes and believes the investigation will move toward a conclusion, but we have no indication from the government on how quickly or how long it will be."

The alleged mischarges are for work done on Air Force One and various spy planes, according to Winfred Richardson, a former E-Systems Greenville division employee whose allegations triggered the investigation.

E-Systems says Mr. Richardson is a disgruntled former employee who was dismissed for "just cause" in 1987 after working in Greenville for eight years.

However, a congressional source familiar with the case said federal investigators concluded that Mr. Please see E-SYSTEMS on Page 27A.

# E-Systems faces suits, go

Continued from Page 26A.

Richardson's allegations were "credible."

## GAO Inquiry

The GAO also is looking into allegations that some Greenville division workers have been harassed or fired for talking with federal investigators, according to a congressional staff member and former workers who have been interviewed by investigators.

One of those workers is Terry Briggs, 38, a former policeman who was fired from his job as a Greenville division security guard in September 1989 after nine years at E-Systems. Mr. Briggs said his dismissal occurred six months after he began talking to Senate investigators. Among other things, Mr. Briggs says he told investigators that he had seen a special wing plate that E-Systems had installed on a Doomsday Plane fall off as the aircraft took off, forcing the command plane to make an emergency landing.

Officially, he says, he was fired for taking off his shoe when he propped up an injured leg during a break.

"There's no doubt in my mind that I was fired because I was talking to the investigators," Mr. Briggs says. "Whenever they fire you for having your shoe off after nine years (of employment), what else could it be?"

E-Systems says such allegations arise from "a disgruntled former employee" — an apparent reference to Mr. Richardson — "and some of his collaborators and are intended to bolster his (or their) alleged legal claims against the company."

A wrongful termination lawsuit that Mr. Richardson filed against E-Systems in 1989 was dismissed without prejudice, but he could still file a whistle-blower claim against the company. E-Systems says it is not aware of any pending legal claims Mr. Richardson has against the company.

At the Garland division, home to many of the company's most sensitive programs, E-Systems is battling charges of race and age discrimination made in complaints to the U.S. Labor Department and in a lawsuit.

In June 1991, the Labor Department notified E-Systems that its investigation showed that the Garland

"There's a certain mystique about E-Systems, a certain amount of intrigue. I personally think it's because they do so much in the way of secret programs. No one can examine them in the detail that the rest of us are examined."

— Dan Peterson,  
Martin Marietta Corp.

division had "discriminated against blacks as a class." Black employees "were found to be treated differently than whites in salary placement, job and salary progression," the department said.

E-Systems said the matter is pending before the U.S. Equal Employment Opportunity Commission, and it declined to comment on cases individually or collectively, except to say that it "denies that any such discrimination has occurred."

In separate interviews with *The Dallas Morning News*, 12 current and former black E-Systems employees who worked in a cross section of Garland division departments laid out a litany of complaints against the company.

"It's hard to prove (discrimination), but you know it's there," says former E-Systems engineer Ray Humphries, 52, an African-American who says he worked as a prime engineer at the Garland division for 11 years without any promotions before being laid off in April 1991.

Ken Beasley, who also is black, says he got one promotion in nearly 12 years at E-Systems' electronic warfare digital lab, while several white employees who started work at the same time were promoted four times or more.

Bill Major, an electrical engineer who worked at the Garland division for 10 years before losing his job in March, says he complained to his supervisor in March 1991 when someone scrawled the word "nigger" on a

letter in his office mailbox.

The supervisor "smiled and said something like, 'Some people could be called worse,'" Mr. Major says. Nothing was done, he says. Later, Mr. Major had to repaint his Corvette and Jaguar after someone badly scratched both with a sharp object while they were parked at the company's monitored parking lot, he says.

## Age bias alleged

In the recently filed age-discrimination lawsuit against E-Systems three former employees accuse the company of terminating an undetermined number of management and nonmanagement personnel over 40 in the last two years and not including these workers in recalls.

One of the plaintiffs, William Burns, a 52-year-old software engineer, worked at E-Systems for more than 15 years before losing his job in March.

In interviews, 15 former employees also expressed a belief that their ages played a role in the decision to give them pink slips.

"I think it's obvious they've gone and gotten rid of a lot of higher-expense, older employees, people who have expensive benefits," says a 55-year-old former E-Systems worker who assembled electronic components at the Garland division for 24 years before he was dismissed with 170 other workers in March.

The former employee, who asked not to be named because he hopes to work again in the defense industry and because he fears that E-Systems might "do something to my retirement (benefits)," says he believes that his age and the fact that he was seeing a kidney specialist led E-Systems to dismiss him.

Afterward, he and the others interviewed contend, the company brought in younger workers to do his job and those of other colleagues who were dismissed.

Because of legal proceedings, E-Systems said it would be "inappropriate for the company to release information on the merits of any individual's case."

# GRA

# suits, government inquiries

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— Terry Briggs,  
former E-Systems  
security guard

Mr. Keiffer, the E-Systems chair-man, says that dismissing workers is "the hardest thing in the world for us to do." But he says that cuts are necessary to remain competitive — particularly at plants such as the one in Garland, where orders have fallen below expectations.

E-Systems said it is "impossible" to say how many workers it has dismissed or hired in the last two years. In a statement, the company said that its job cuts were "made on the basis of business necessity and are not discriminatory or retaliatory in nature." The company says changing technology has resulted in demands for new and different skills; for instance, E-Systems hires far more software engineers than it did a decade ago.

The discrimination accusations seem out of place for a company whose primary advertising campaign for 17 years has consisted of an American flag and the Pledge of Allegiance — "Our Pledge," the ad says. Company officials proudly note that E-Systems has led the nation in employee U.S. Savings Bond purchases every year for two decades with an average of 99 percent participation, although participation slipped to 98 percent this year.

Mary Jean Edwards, a Garland di-

vision computer operator, says that record is so stellar because participation is expected. When she declined to buy savings bonds this year, she says her area manager and then a division vice president asked her to reconsider. She didn't change her mind, but most workers end up buying savings bonds for fear of winding up on the next layoff list, she says.

"That's how things work at E-Systems," she says.

## Looking overseas

While the company has worked to keep its costs in check in the face of a smaller Pentagon budget, it also has sought new business overseas.

Under Mr. Keiffer's leadership, E-Systems has parlayed its standing with U.S. intelligence agencies into foreign contracts, although the extent of its success is anybody's guess because most of the offshore deals are state secrets.

"They've done a good job, and they've kept their mouth shut," says Mr. Rogers, the Cowen analyst. "When they (outfit) a VIP aircraft for a foreign head of state, you won't hear about it, even off the record."

E-Systems' reputation for discretion, its ability to rally the support of government friends and its record for completing difficult jobs helped the company seize the inside track on the Saudi border security contract, despite intense French government lobbying on behalf of its team, including a personal appeal by French President Francois Mitterrand, according to U.S. consultants with business and political contacts in Saudi Arabia.

E-Systems has begun to cautiously branch out into some commercial areas, although well over 90 percent of its sales still come from defense businesses. The company recently won a U.S. Education Department data-processing contract that is expected to bring in more than \$70 million during the next eight years. E-Systems officials also see its advanced data storage and retrieval

systems as attractive to the energy industry and others.

## No 'acquisition binge'

But Mr. Keiffer isn't about to "go off on a wild acquisition binge to balance the company's mix of business between defense and non-defense," says Mr. Rogers. Mr. Kieffer makes it clear that E-Systems sees defense as its future.

Still, says Michael Lauer, a defense industry analyst at Kidder, Peabody & Co., "If I had my druthers, I would have them be a little more aggressive, particularly in the acquisitions arena," taking advantage of the depressed industry to add new defense businesses.

Analysts also believe that the company's business mix will allow it to thrive even in the current environment.

"Nobody's immune to the downturn," says Lior Bregman, who tracks the defense electronics industry for Oppenheimer & Co. "But I think E-Systems is one of the companies that is very well-positioned to take advantage of the downturn because of their financial strength and their technology base."

Most Wall Street analysts project annual earnings growth of 10 to 12 percent for the next few years, although some believe that the figure could be cut in half if the Egrett program is canceled. The company's stock price has languished around \$36 a share for much of the year, a disappointment that some analysts attribute more to Wall Street's dim view of the defense industry than E-Systems shortcomings. It closed Friday at \$37.75 in New York Stock Exchange trading.

As E-Systems slowly moves from the shadows into a new, uncertain world, Mr. Keiffer remains committed to its low profile. The company tries "to be a good member of the community," he says, noting that E-Systems recently funded a professorship at Texas A&M University.

He adds, "We do it very quietly."

# GRAND OPENING!

EXHIBIT D 7 of 7

Texas' Leading Newspaper

10/18/92  
**E-Systems**  
**coming out**  
**of shadows**

**Secretive firm adjusts  
to changing climate**

**By Gregg Jones**

*Staff Writer of The Dallas Morning News*

At a recent gathering of the nation's top spies in Washington, D.C., Wall Street analyst Elliott Rogers posed a question to several veterans of global intelligence capers: Who is your most trusted supplier of spy-trade tools?

One distinguished agent after

■ Chairman of E-Systems. 26A

■ A look at E-Systems. 26A

another cited the same company: E-Systems Inc.

With good reason. For 20 years, E-Systems has prospered because of two finely developed strengths: technical prowess that is almost without rival and an almost fanatical obsession with anonymity.

E-Systems developed the communications gear for Air Force One and the top-secret "Doomsday Plane," the flying command post that would be used if the United States were ever attacked. Its engineers probably know as much, if not more, about radar, electronic eavesdropping and satellite spy pictures as anyone in the business.

Maintaining secrecy has been almost as important. Despite 18,000 employees, including 10,000 in the Dallas area, and more than 11,000 shareholders, company officials. Please see SECRETIVE on Page 26A.

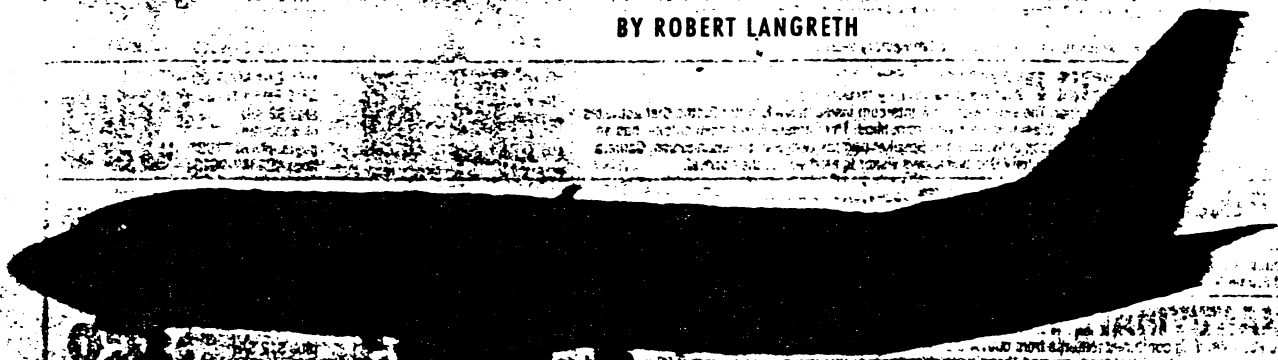
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# FAIL-SAFE SKIES

## COMING IN THE 21ST CENTURY?

**With commercial air traffic expected to double in the decade ahead, the FAA is playing catch up. Can it design a highly automated computer control system to reduce delays and eliminate collisions? Here's the \$32 billion plan.**

BY ROBERT LANGRETH



THE YEAR 2000, 33,000 FEET OVER KANSAS

The pilot of United Airlines Flight 235 doesn't know it, but 200 miles away, another plane is on a collision course with his airliner. The other jet, approaching at an oblique angle, is too distant for the pilot to see and too far away for a human air traffic controller watching this sector of airspace to notice on his radarscope.

But deep inside a ground-control center, an "intelligent" computer discovers the problem. It quickly calculates the best solution, and with the approval of the human controller, sends the data to the United pilot.

On Flight 235's cockpit computer, a new message pops up: "Descend to 32,000 feet. Turn right heading 286." The pilot complies, and 15 minutes later the planes pass each other with miles to spare. The United captain never even sees the other plane.

Today, this is science fiction. But if the FAA has its way, that won't be for long. Virtually all the technology needed for this scenario already exists, in prototype form, at a laboratory sponsored by the Federal Aviation Administration (FAA) in Virginia. Dubbed AERA—Automated En-Route Air Traffic Control—this computer program is probably the most elaborate part of the FAA's \$32 billion plan to automate air traffic con-

trol. The product of a decade of intensive development, it can identify and resolve conflicts as much as 20 minutes before they happen.

Automation of air traffic control is sorely needed. Unlike the modern hardware used by pilots, controllers use computers and equipment that is often 20 years old. Meanwhile, U.S. air traffic has increased in the last 20 years from 390,000 to about 900,000 scheduled flights per month. As evidence of this, aviation critics point to several runway collisions or near-misses that have occurred recently, including fatal accidents in 1990 at Detroit and Los Angeles airports. During each of the past five years, U.S. airports have averaged, as a whole, more than 200 close calls on runways.

"We have been relying on human controllers to be machines, and that is idiotic," says John Nance, an aviation writer and FAA watchdog. "Controllers are overloaded, and we're gambling they can remember everything."

Naturally, FAA officials dispute this, pointing out that per mile traveled, flying is still much safer than other means of transportation. But they can't dispute the airlines' horrible on-time record. In 1991, commercial airlines experienced nearly 300,000 delays of 15 minutes or longer. The year before, at the ten busiest airports alone, airplanes were delayed 590,000 hours, robbing the public of a staggering 50 million

hours of lost time. The second leading cause of delays, after bad weather, is overcrowded airspace and airports.

With commercial air traffic expected to double over the next ten years, the FAA calls automation "the key" to the future of air traffic control, and it will happen in two stages: During the next five or six years, the FAA will add automated databases for tracking flight information and advanced radar monitors to replace vintage scopes designed in the 1960s.

After that, it will begin installing intelligent programs like AERA. Under the supervision of humans, such programs may someday make 80 percent of routine air-traffic decisions.

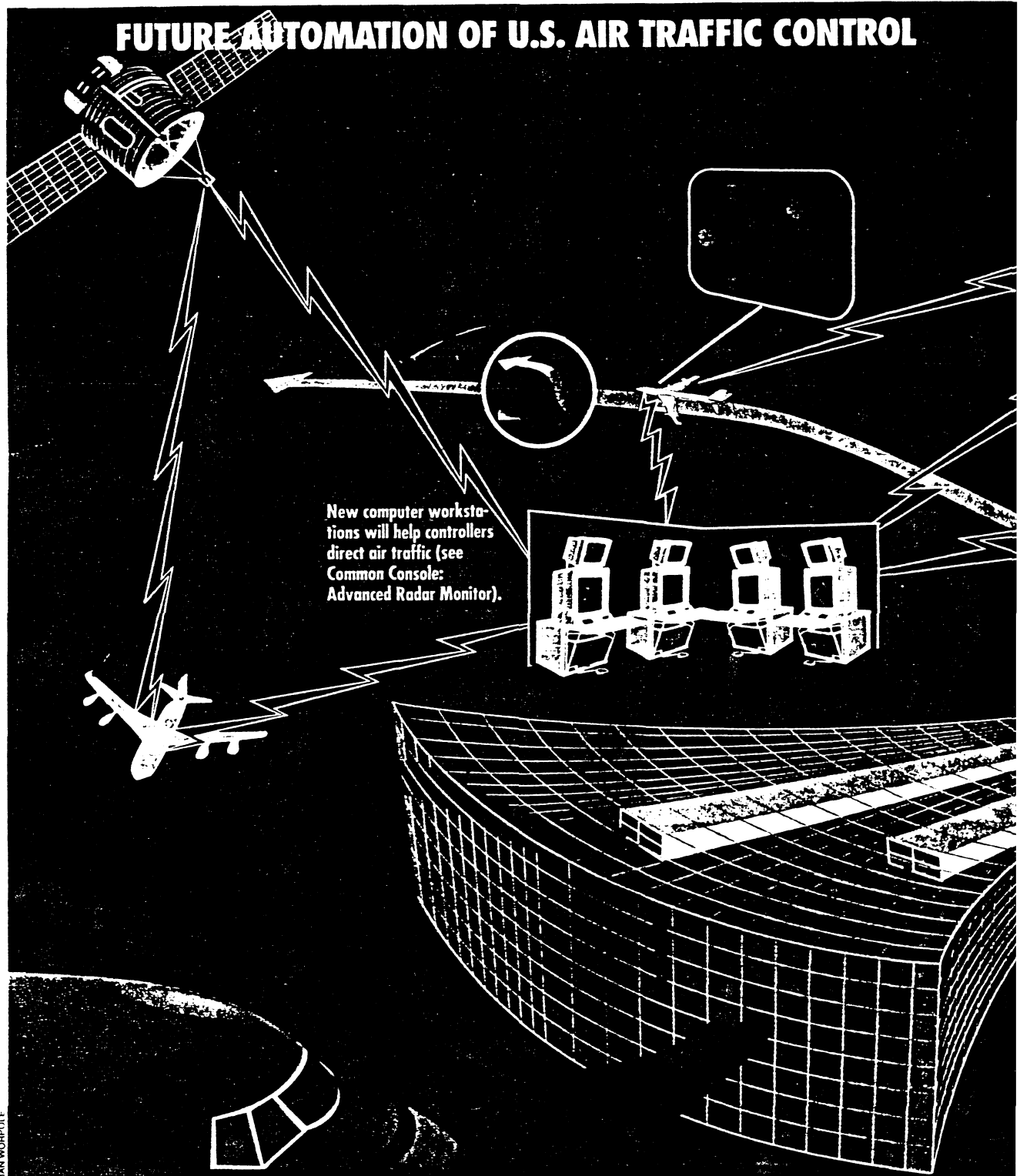
"There's no question that the system of the future will have more automation than today," says Joseph Del Balzo, a leading technical officer for the FAA. "I believe we can teach computers to think like air traffic controllers."

In addition to AERA, the FAA is also working on:

- A computer program called the Center Tracon Automation System (CTAS), which predicts the optimal spacing of planes approaching for landing, and advises controllers how to maneuver jets during their descent.
- A voice-recognition computer for control towers that understands controllers' spoken commands to pilots and automatically tracks where the planes are supposed to be. This would

TONY STONE Worldwide





allow controllers to keep their eyes on the airport.

- Direct links between ground and cockpit computers, which will transmit everything from routine landing clearances to up-to-the-minute weather information, freeing up crowded voice airwaves for emergencies.

Automation should have major benefits for both controllers and passengers. "Computers can fly aircraft more precisely than humans," says Martin

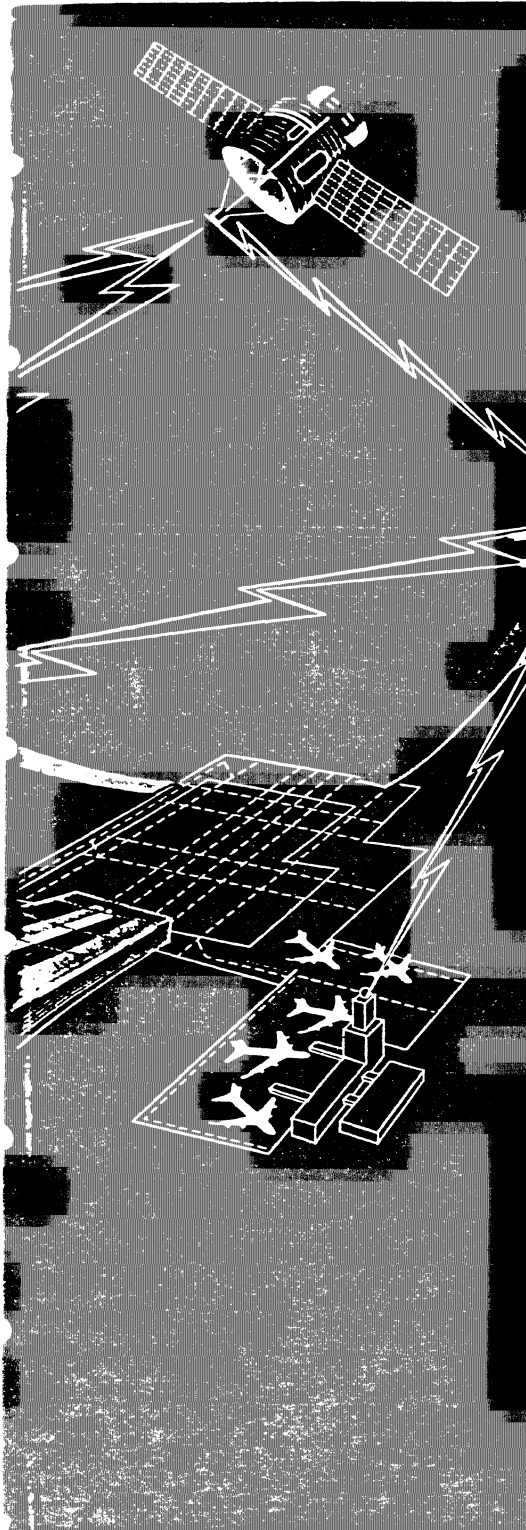
Pozesky, the FAA's associate administrator for system engineering and development. He estimates that new computers may increase U.S. air traffic capacity by 30 percent, making the skies safer without building a single additional runway.

Over the next decade, advanced computers and other new technologies could revolutionize a controller's job. Today's controller, juggling up to three dozen planes per hour, generally reacts

to problems as they happen. In the future, computers will allow them to plan further ahead, preventing bottlenecks.

"The controller will become more of a strategist than a tactician," says Larry Roberts, a Seattle controller who's testing new air-traffic-control computers. This will allow them to chart out more direct routes than the rigidly controlled paths that aircraft usually follow now.

Ultimately, say automation enthusiasts, the controller could become some



## 1 MICROWAVE LANDING SYSTEM DEBUTS

Over the next few years, a new system for bad-weather landings may keep airports closer to schedule. After long delays, the Federal Aviation Administration's (FAA) Microwave Landing System (MLS) is finally making its debut. The chief advantage of MLS is that it allows pilots to fly curved landing approaches. Under the current method—the Instrument Landing System—planes must follow a straight, pencil-shaped beacon during the last several miles of flight. Near busy airports, this often creates delays.

In contrast, MLS sends out a funnel-shaped beacon from the runway. As long as jets stay within this funnel, they can approach the runway from any direction they want. MLS may eventually allow planes to perform a Category III—completely blind—landing. "The New York area airports will save between 3 and 19 minutes [per plane], depending on which runways are being used," asserts the FAA's Steven Wolf.

After being postponed for more than five years because of a contractor default, MLS is being installed at 26 U.S. airports over the next two years, starting with Seattle. By 1995, the FAA will decide whether to scale up production to 1,250 runways across the country.

## 2 SATELLITES FOR LANDING AND NAVIGATION

The Microwave Landing System clearly works, but is it worth the \$60,000 to \$120,000 it will cost to install in large jets? No, say many airline industry officials. Instead, they favor using the military's global-positioning satellites for poor-visibility landings.

Using an inexpensive receiver, anyone can use this network of 19 satellites (24 when completed by the end of 1993) to locate position within an accuracy of about 330 feet. Coupled to a ground station that corrects for errors, these accuracies can be improved to about three feet. Although the technology is still in its infancy, independent-minded pilots support it because they would no longer have to rely so heavily on ground control.

Satellites will also replace the existing ground-based navigational beacons, which have limited accuracy when planes are far away from them. The first use of satellites for commercial jets, however, will likely be over oceans. Today, planes often must rely solely on their own internal navigation systems. Korean Airlines Flight 007, shot down in 1983 after straying off course over Soviet waters, proved that this can lead to disaster.

## 3 MIDAIR COLLISION-AVOIDANCE DEVICE

One device for avoiding midair collision is already in most airplane cockpits, and it's prevented at least 15 possible near-misses or midair collisions, according to pilot reports.

Over the last two years, airlines have installed the Traffic Alert and Collision Avoidance System (TCAS) in 60 percent of passenger jets; by the end of 1993 they're required to put it in all their planes. The product of years of development, TCAS scans the air every second for transponder signals emitted by other jets. From these signals the system computes the ranges and velocities of the other jets, displaying nearby planes on a screen in the cockpit. If an aircraft comes within 45 seconds of collision, a voice warns "Traffic! Traffic!" Twenty to 30 seconds before impact, the voice commands "Dive!" or "Climb!"

Although pilots love it, controllers complain that TCAS produces too many false alarms. For example, when a plane is rapidly ascending through a crowded airspace, but about to level off at a safe altitude, TCAS—not knowing the plane's intentions—sometimes wrongly anticipates a collision. The FAA is planning changes to eliminate such glitches.

thing like a supervisor on a high-speed assembly line, deciding how much air traffic different regions can handle, but leaving most of the routine decision-making to the computers. In such a system, Del Balzo speculated in a speech last year, "An aircraft [may] depart its origin along a route predetermined by computer projections, and barring . . . unforeseen [problems], reach its destination without being impeded by any other aircraft, and

without any intervention by the air-traffic-control system."

Critics of the FAA don't question the need for automation, but rather the agency's ability to get the job done. Just about every major improvement has been delayed for one reason or the other, they note. For instance, the FAA is two to four years behind schedule in the first stages of its Advanced Automation System (AAS),

which includes the new computer monitors for controllers. Until these new monitors are completed in the mid-to-late 1990s, air-traffic-control computers won't have enough brawn to perform advanced functions like AERA.

For its part, the FAA insists it simply underestimated the difficulty of designing and building the new equipment. Critics beg to differ. The FAA has an "inherent tendency to study things to death," says John Nance. As an exam-

ple, he points to the Traffic Alert and Collision Avoidance System (TCAS), a cockpit computer system for preventing midair collisions ["TCAS: Can it Stop Midair Collisions?" Aug. '88]. First developed in the 1970s, TCAS has been installed on airplanes only within the last two years (see Midair Collision-Avoidance Device). "The FAA did everything they could to niddle, block, dodge, delay, foot drag, and think about something else that should have been put in place" more than a decade ago, he says.

Money—or the lack of it—also hinders the FAA. While the agency is spending tens of billions of dollars on short-term improvements, such as faster computers, it only budgets approximately \$200 million each year for longer-range projects, such as AERA. "By any standard [the current level of research funding] equates to neglect," thundered Democratic Representative Tim Valentine of North Carolina, chairman of the House Subcommittee on Technology, at a hearing last March. He's not alone. A blue-ribbon review

panel of aviation experts concluded unanimously last fall that "FAA research and development will require substantially increased funding if objectives in . . . safety, capacity, and security are to be achieved."

Complicating matters even more, the would-be users of new air-traffic-control technology are often at odds with each other. Pilots want new technology quickly—especially if it decreases their dependence on ground control. On the other hand, controllers prefer a more cautious approach, involving careful training. Says William Faville, director of safety and technology for the controllers' union: "Controllers don't want to have [new technologies] shoved down their throats."

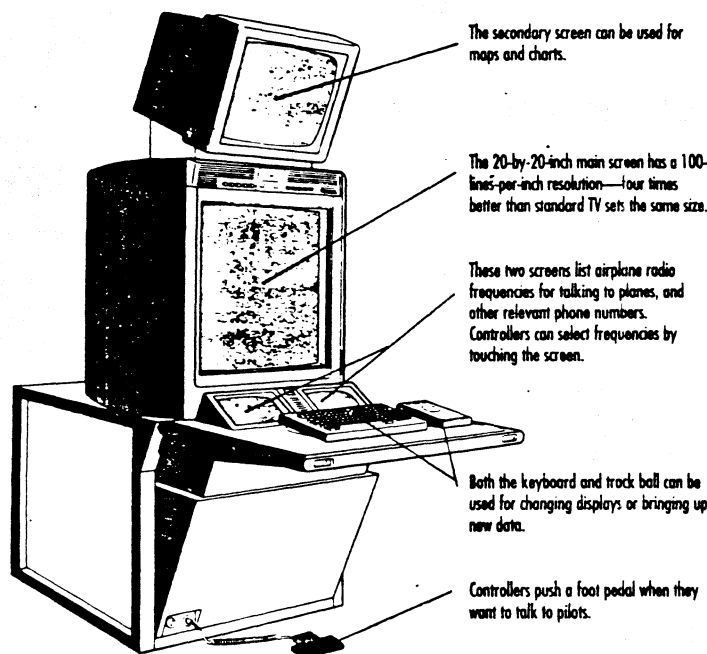
In the United States, serious steps toward automation began in 1981, when the FAA decided its air-traffic-control methods were obsolete and laid out a new vision in its National Airspace System. The plan included several kinds of new computers, better

radar, a precision microwave landing system for easier landings in poor weather, and two different kinds of collision warning devices (see Microwave Landing System Debuts; Satellites for Landing and Navigation).

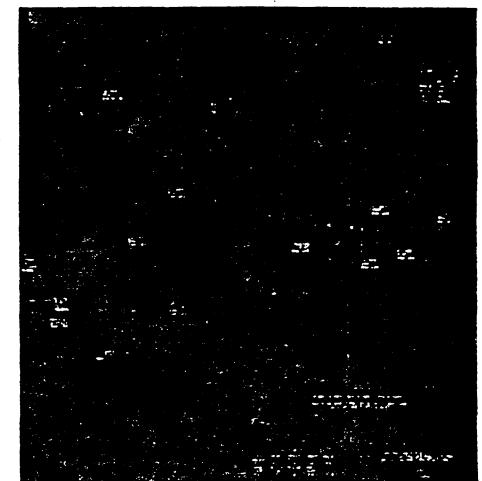
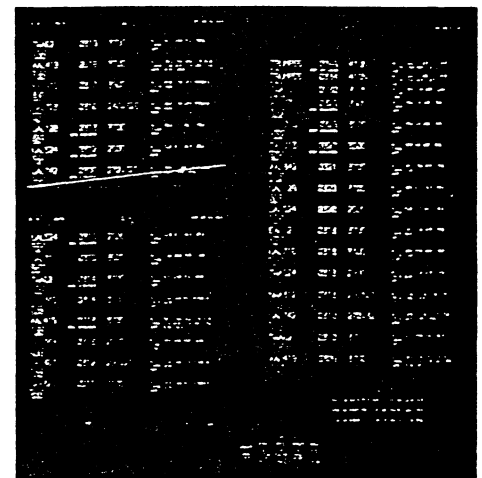
Today, 11 years and numerous delays later, the AAS—the "heart and soul" of the plan—is nearing completion, says Del Balzo. Scheduled to be installed for the most part between 1995 and 1998, it will provide controllers with new computer workstations that will both automatically keep track of basic flight data, such as destination or type of plane, and serve as radar displays (see Keeping an Eye on Busy Runways).

The AAS will make improvements at all three types of air-traffic-control centers. Although most people associate air traffic control with airport control towers, in actuality, control towers manage planes only while they are on the ground and give landing or takeoff clearances. Once planes are in the air, they are controlled either by TRACON (Terminal Radar Approach and Control)

## COMMON CONSOLE: ADVANCED RADAR MONITOR



This computer workstation is called the common console because it combines the functions performed on many different machines today. By 1998, it will be used at both approach control and en-route air-traffic centers; each center will contain many common consoles connected to a central computer. The console's large main screen can be switched between a radar-display (bottom right) and flight information display (top right). In the radar-display mode, controllers can zoom in on an area of particular interest. Furthermore, the flight-information display is color-coded to help controllers distinguish between and assign priority levels to various airplanes.



trol facilities, usually located near major airports, or by en-route centers scattered across the country. TRACONs direct planes during their final approach or initial ascent, while the en-route centers direct planes at or near cruising altitude.

Currently, the controllers at all three types of air-control centers trace this information with typewritten strips of cardboard about the size of an office name tag. At an airport, for example, controllers will line up these strips in the order of scheduled takeoff.

Although the FAA insists this method works, it's not exactly a reassuring system. What happens if one of these strips somehow gets lost?

That, in fact, is exactly what happened at Los Angeles International Airport on Feb. 1, 1991. That night, a USAir 737 landed on top of a Skywest commuter flight, which had been cleared onto the same runway by the control tower, killing 34 people. The cause: A flight strip for a third jet (not involved in the accident) had been misplaced, causing a controller to "misidentify an airplane and issue... a landing clearance that led to the runway collision," according to the National Transportation Safety Board.

The AAS computers should make it nearly impossible for controllers to make such errors, say officials at IBM, the chief contractor for the project. Perhaps the most dramatic part of the AAS will be in airport control towers, where the computers will track planes by listening to a controller's voice.

A recent demonstration at an IBM laboratory in Gaithersburg, Md., suggests how the control tower of the future will work. When a controller is about to give a command—such as "United 456, pull back from the gate and proceed to Taxiway 4C"—he will press a button on a joystick. This, an IBM engineer showed, activates a voice-recognition program that "understands" the limited set of commands controllers use. After hearing the controller's command, the computer will move United 456 out of its list of planes at the gate and into a list of planes on the taxiway.

If a controller forgets where a plane is supposed to be, this information can be called up on the computer by pressing another joystick button. Controllers won't have to take their eyes away from monitoring the airport for more than a few seconds. "We expect this to have considerably greater accuracy than other voice-recognition computers—at least 98 percent, Doug Miller, an IBM engineer, told me. "I don't know any study that has shown typing [paper strips] to be this accurate."

## KEEPING AN EYE ON BUSY RUNWAYS

Despite two deadly runway collisions between planes in the last two years, most major airports still don't have radar that can watch planes on the ground.

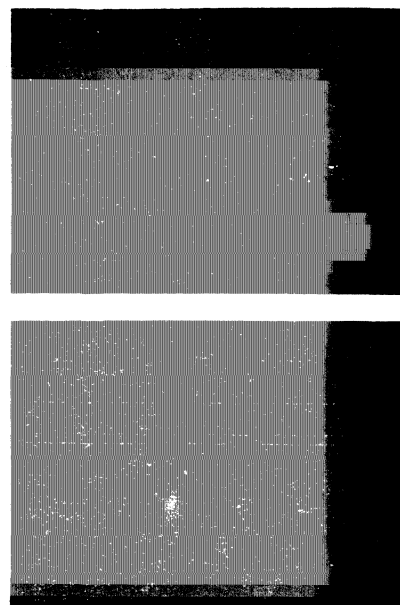
Only 13 airports are equipped with such radar equipment, and they are stuck with a vintage device designed in the late 1950s. Called ASDE-II, it features a low resolution that makes aircraft difficult to distinguish, and worse, it often fails during stormy weather. "It really stinks," says a controller at New York's John F. Kennedy Airport. "When we need it most it doesn't work."

This sorry situation is starting to change. Last summer, the Federal Aviation Administration (FAA) began introducing a new, more reliable ground radar at 29 major airports. Built by Norden Systems in Norwalk, Conn., the new equipment uses radar pulses at 16 different frequencies, rather than just one, giving it a vastly increased resolution, says Armand Maillet, an FAA engineer.

While the old radar showed aircraft as tiny blips, the new radar can distinguish parts of aircraft, such as the wings and tails, and can even detect humans walking on a runway. "It's 100 percent better," says Pittsburgh controller Tim Haines, who has tested the new radar.

It should also work in bad weather. Currently, radar antennas are protected by a stationary dome, which gets covered with water during storms, interfering with the radar signal. The new radar dome rotates along with the antennas, preventing water from building up.

Like some other FAA modernization efforts, the new radar has been plagued by technical glitches. Most problematic, when controllers activate a feature that zooms in on a particular region of the airport, the



It's hard to distinguish planes on the old radar (top), but not on the new version (bottom).

radar often gets double vision, dividing longer jets into two or more separate planes.

Once the radar is fully functioning, the FAA is planning some improvements. Norden is developing a computer program that will determine if two aircraft have accidentally entered the same runway and alert the controller with a message like WARNING, POSSIBLE RUNWAY INCURSION. Also, the radar information may be transmitted to planes and displayed on cockpit computers, further reducing the chance of collisions.—R. L.

For controllers who handle planes once they're airborne, the same computer that manages flight data will also serve as a new high-tech radar monitor. Unlike today's radar scopes, which indicate airplanes with green smears, the new computers show the precise location of airplanes on high-resolution, seven-color screens.

Today, each air traffic controller manages a small region of airspace (generally, several thousand square miles), but has no simple way of knowing how commands to planes in his region will affect traffic patterns in other regions. Thus, a controller's actions can have unintended consequences. Ordering a plane to turn right ten degrees, for instance, may solve an immediate problem, but cause a more serious jam-up in another controller's sector 15 minutes later. For the first time, the new computers will allow controllers to monitor the regions of airspace adjacent to their own—preventing such difficulties.

The scope of these projects combined

is staggering. IBM has written more than two million lines of computer instructions for the different parts. Also, the new radar monitors and databases are required to be 99.99999 percent reliable. That's only three seconds of failure per year—hundreds of times better than existing air-traffic-control computers. "It's the largest computer project of its sort ever," says Del Balzo.

**B**y the late 1990s at the earliest, the FAA hopes computer programs will be making some decisions for controllers. The AERA prototype, which I saw demonstrated at a Mitre Corp. laboratory in McLean, Va., shows how this will work.

AERA consists of hundreds of thousands of lines of computer programming language. From radar returns, AERA receives aircraft locations, altitudes, and velocities. Combining this information and the wind speed predictions for the area in question, it then projects the aircraft courses as much as

(Continued on page 86)

**EXHIBIT P**

The Salt Lake Tribune **LOCAL** Saturday, November 23, 1991

## **Fire Damages Firm's Warehouse**

WEST VALLEY CITY — A fire raced through an airplane navigational systems warehouse Friday morning, destroying the office area.

The fire at E-Systems, 2236 S. 3270 West, erupted about 12:10 a.m. and took firefighters at least an hour to put out, said West Valley City Fire Marshal John Blundell.

Flames were shooting through the roof of the one-story building, which houses E-Systems and a sign company, said Mr.

Blundell.

"We made an exterior attack because the roof was caving in. We weren't able to send any firefighters inside," he said.

The blaze was probably caused by a water heater, furnace or exhaust fan in the attic, said Mr. Blundell.

**More Local/Regional  
News: C-6, C-12**

# Radars failure blamed for KAL incident

**EXHIBIT J** 1 of 4  
Ex-Soviet's account casts 1983 downing of Korean jet as tragic mixup

Reuters

WASHINGTON — A Soviet radar failure over the Kamchatka Peninsula led to the 1983 downing of Korean Air Lines Flight 007, a Cold War-era Soviet defector said.

In an interview on the CBS program *60 Minutes* to be broadcast Sunday, former Soviet air force Capt. Alexander Zuyev said Arctic gales knocked out key warning radars 10 days before the ill-fated Sept. 1, 1983, flight.

His account tends to support those who have argued that the disaster, in which all 269 people on board were killed, was a tragic mixup and not a deliberate attack by Soviet fighters on what was known to be a civilian airliner.

Mr. Zuyev, described in the broadcast as the last important defector of the Cold War, flew his advanced MiG-29 fighter to Turkey

May 20, 1989. He was whisked to the United States and has been extensively debriefed by military and intelligence officers in secret locations.

Until now, U.S. officials had blocked him from speaking publicly about how and why he fled the Soviet Union, correspondent Mike Wallace reported.

With full radar coverage, Mr. Zuyev said Soviet pilots could have intercepted KAL Flight 007 over Kamchatka, identified it as a civilian Boeing 747 and forced it to land.

But because of the failure, they did not catch up to the aircraft until hours later, over Sakhalin Island, where it was shot down after having flown off course for five hours and 26 minutes.

Moscow insisted at the time that the flight had been a joint U.S.-South Korean spying mission, a charge

that heightened U.S.-Soviet tension.

Mr. Zuyev said Moscow had been aware of the radar problems and had pressed local military authorities for a quick fix. Unable to correct the problem, the Soviet Far East command lied to Moscow about having corrected the problem, he said. He said he obtained this account in 1985 from a friend who had been an air traffic controller on Sakhalin at the time of the shooting.

James Oberg, a Houston aerospace engineer, author and expert on Soviet technology who has closely followed the KAL 007 affair, said Mr. Zuyev's account dovetailed with others by defectors and Moscow press disclosures in 1991.

But he said blaming Kamchatka radar problems for the shooting over Sakhalin was stretching the imagination.

# E-Systems could be dragged into German political scandal

New York Times News Service

BONN, Germany — This is such a small town that even political scandals don't usually meet the international standards set by Washington, London and Paris.

A few weeks ago the German economics minister had to resign over a letter he wrote on behalf of a cousin's company, which made plastic tokens to spring shopping carts loose in supermarket chains.

The housing minister was accused of writing letters she should not have penned for a big real estate investment company.

But an affair is brewing that has all the ingredients of a major scandal: European-American aerospace rivalry, charges of bribery reaching high up into the German ruling party, big-spending contractors, lavish trips to South America — everything, so far, except sex.

The world, with bigger things to think about, has scarcely noticed, nor has it paid much attention yet, to the charges centering on a \$1-billion contract for a high-altitude electronic reconnaissance system.

An American company, Dallas-based E-Systems, is the prime contractor for the reconnaissance system, known as Lapas.

The German Defense Ministry has already spent more than \$500 million on the project, but temporarily halted the next phase, worth \$220 million, last month after German prosecutors raised charges of bribery against the main German subcontractor.

According to the prosecutors and to German press reports, the owner of Grob Air and Space Travel GmbH of Mindelheim, the German company, was generous to officials who were in a position to see to it that he got the contract.

The German company makes the high-flying, non-metallic turboprop aircraft, called the "Egrett D-500," that carries the airborne part of the system to heights above 50,000 feet. The Defense Ministry has ordered ten of them, plus the extensive air- and ground-based electronic equipment that goes with them.

The system, according to the authoritative Jane's Defense Review in London, can be used for everything from environmental monitoring to disarmament verification.

The prosecutors and press say the owner of the company invited a four-star general in the German air force, now retired, as well as the conservative governor of the state of Bavaria, where the factory is, to lavish parties at

an estate in Brazil in the late 1980s.

Retired Gen. Eberhard Eimler and Gov. Max Streibl of Bavaria have vigorously denied that they took any money from the company.

"I am not bribable, and I have never been bribed," Mr. Streibl said last week during a tumultuous session of the Bavarian state parliament where he was repeatedly called upon to resign.

Mr. Eimler, formerly the senior officer in the German air force, said he saw nothing wrong with accepting Burkhart Grob's invitation to visit Brazil at his expense in the late 1980s, before the general retired in 1990.

And Mr. Streibl said that he had gone to Brazil twice at Mr. Grob's invitation, which he said he regarded as completely private.

Mr. Grob did not even write off the costs as business expenses on his tax returns, officials in Munich said. Mr. Streibl also acknowledged that he had taken a trip to Kenya at Mr. Grob's expense in 1985.

Mr. Eimler told the *Bild am Sonntag* newspaper that he had never had anything to do with the German decision to procure the system, but that Mr. Grob was an old friend whose invitation he had accepted with pleasure. "Perhaps that was a mistake, because the trip came to a sum one could raise questions about," he said.

German newspaper reports have also said that E-Systems paid for a trip to Texas by a former official of the Defense Ministry, Norbert Gilles, in 1988.

Klaus Meyer, the E-Systems vice president in charge of the project in Bonn, said that the trip had taken place after Mr. Gilles's retirement.

Mr. Grob's companies also contributed 105,000 marks, more than \$65,000, to Mr. Streibl's Christian Social Union Party in 1990, according to documents filed by the party with the national parliament in Bonn.

Mr. Meyer of E-Systems said, "We are not aware of any investigation of us, and we have never been contacted by the prosecutors." He said that his company fully expected to continue with the contract after the German authorities resolved their problems with it, which he said he hoped would be soon.

But with the opposition Social Democrats raising charges that unfair methods had steered the contract into American hands and away from big German companies such as Dornier, also in Bavaria, the affair seemed, as *Der Spiegel* magazine pointed out last week, to be destined for a long run.

EXHIBIT C 211141X7 3 of 4

4 D

The Dallas Morning News

Thursday, February 4, 1993 A

# Billion-dollar project falls through for E-Systems

Continued from Page 1D.

"I'm completely surprised," said Elliott Rogers, an analyst at Cowen & Co. in New York. "This is a very, very quick change in official Germany policy. It's a political rather than a financial decision. This was using the budgetary issue as sort of a graceful exit."

Mr. Ruehe told reporters of the move previous to testifying before a German legislative committee Wednesday. A German embassy official in Washington confirmed the cancellation of the spy-plane program.

As of late Wednesday, E-Systems executives in Dallas still had not been formally notified of the German government's decision. "There's nothing we can say because we haven't heard anything official," said spokesman John Kumpf.

Mr. Ruehe's disclosure shocked investors and financial analysts. E-Systems stock, which had been falling over the past five days reflecting investor jitters, plunged more than \$4 a share in frantic trading shortly after the news reached Wall Street. The stock then rebounded some to close down \$1.75 at \$40.25, a 4 percent decline. About 1.2 million shares, more than 10 times the average daily volume, changed hands in New York Stock Exchange trading.

"The impact is more psychological than material," said Mr. Rogers, who tracks the defense electronics industry. "Obviously it's damaging to E-Systems in the sense that it was going to be a

major program. I'm concerned that it effectively derails this year's growth. But is it a mortal blow? No."

Mr. Kumpf, the E-Systems spokesman, downplayed the impact of the loss of the Egrett program on the company's Greenville division, which has been building the sophisticated electronic eavesdropping equipment for the lightweight Egrett.

"We ended 1992 with a backlog of business of nearly \$2 billion. We're pursuing a lot of programs out there," he said. "If this doesn't happen, it would be disappointing. But it's not 'the sky is falling' either."

The company's stock had been climbing in anticipation of the contract, reaching a 52-week high of \$44.625 on Jan. 15. But on that date, German officials abruptly canceled a contract-signing ceremony and announced that prosecutors were investigating corruption allegations involving the Egrett. The opposition Social Democratic party in Germany seized on the allegations, criticizing a competition that allowed an American company to win such a huge military program over German companies.

Despite the simmering controversy, E-Systems officials and industry analysts last month had expressed confidence that the Egrett program would move ahead within a matter of weeks.

Most of the allegations have focused on E-Sys-

tems' German partner, Grob Air and Space Travel GmbH. But German press reports also have questioned a 1988 trip to Texas by a former German defense ministry official, allegedly paid for by E-Systems.

E-Systems has denied any wrongdoing and said it has not been approached by investigators.

The Egrett program could still be revived in some form, but almost certainly with a reduced role for E-Systems, financial analysts said.

Last year, facing worsening budget constraints, Germany announced its withdrawal from a multinational effort to develop a European fighter. Germany has since quietly rejoined the program with a reduced financial commitment.

Some financial analysts theorized that the Egrett could be revived in a similar fashion.

"It's a long shot," Mr. Rogers said. But if the program were resuscitated in some form, E-Systems could still possibly sell \$300 million or more in electronic surveillance and listening equipment, he said.

The German decision is symptomatic of an increasingly protectionist mood around the world in defense matters.

"The Germans and others are finding it increasingly difficult to fund defense projects, particularly those products that aren't producing an economic impact at home," said Brett Lambert, vice president for corporate programs at Defense Forecasts Inc.

EXHIBIT J 40f4

# E-Systems loses spy plane project Germany drops billion-dollar deal

By Gregg Jones

Staff Writer of The Dallas Morning News

In the face of a brewing scandal and political pressures, the German government has abandoned development of its \$1 billion Egrett spy plane, a stunning setback for E-Systems Inc., the prime contractor.

E-Systems, one of the nation's fastest-growing defense concerns, had been counting on the contract to continue its rapid growth. The Dallas-based company expected to receive more than \$600 million from providing electronics for the high-altitude spy plane program over the next seven years, including \$70 million in 1993 and \$110 million in 1994, fi-

nancial analysts said.

E-Systems has annual revenue of about \$2 billion.

German Defense Minister Volker Ruehe, who also disclosed a freeze on other, unrelated defense contracts, cited budget constraints as the reason for halting the spy plane program that has been in the works for several years. But domestic political pressures and swirling allegations that a German partner of E-Systems provided trips and entertainment to former German air force and defense officials apparently played a prominent role in the decision, financial and political analysts said.

Please see BILLION on Page 4D.

# Germany delays E-Systems contract

by Gregg Jones

Staff Writer of The Dallas Morning News

The German Defense Ministry has delayed the signing of a \$1 billion spy plane contract with E-Systems Inc. of Dallas because of a criminal investigation by Bonn authorities, the company said Friday. The program — which could be worth more than \$600 million to E-Systems over the next decade — is critical to future growth at the Dallas manufacturer of top-secret electronic surveillance and reconnaissance equipment, financial analysts said. E-Systems had been scheduled to sign a \$225 million contract on Friday for initial production of the spy plane. E-Systems said it has "absolutely no reason to believe it is a subject or target of the investigation," nor has it been contacted by investigators. An E-Systems spokesman emphatically denied that the company is the focus of the investigation.

However, a German Press Agency report from Bonn, citing "reliable sources," said that a prosecutor is investigating allegations that "a U.S. firm" bribed several employees of the German Defense Ministry and a former German air force general involved in the spy plane program. The state prosecutor's office in Bonn confirmed that

an investigation is under way. The German news agency story did not identify the U.S. firm by name but said it was supposed to install the spy plane electronics. E-Systems is building the super-sensitive electronic eavesdropping and observation equipment for the Egrett spy plane, which is also known by its German acronym, LAPAS, E-Systems' German partner — Burkhardt, Grob, Luft and Raumfahrt, or Grob — is building the

A report from Bonn by the European financial news service AFP said that authorities had searched

off because of an investigation by the prosecutor."

The spokesman, who did not wish to be identified, said he could provide no additional details.

E-Systems, which had an estimated \$2.1 billion in sales in 1992, has risen rapidly in recent years to a position of prominence in the international defense electronics industry.

The 11th-hour delay in the signing of the spy plane contract comes as a disappointing blow for E-Systems. Company officials had said for months that it expected a contract for production of the Egrett spy plane to be awarded before the end of 1992. The program has been stalled for the past year as German officials have debated the country's defense needs.

The Egrett will operate at altitudes above 50,000 feet and be able to stay aloft more than seven hours at a time, according to aviation experts. The German Defense Ministry order is believed to be for 10 planes, with delivery to begin around 1996.

Trading of E-Systems stock on the New York Stock Exchange was halted at midafternoon upon news of the German investigation and contract delay. The stock was trading at \$42.75 a share — a decline of \$1.50, or 3.4 percent — at the time. Earlier Friday, E-Systems stock hit a 52-week high of \$44.625, apparently in anticipation of the Egrett contract award.

Financial analysts have recently

canceled. It just adds an element of uncertainty to something that everybody thought was essentially a done deal. I still think that once this issue is resolved the contract will be signed in the first half of this year."

E-Systems said it had been informed by German officials that a contract award will be delayed at least two weeks. Financial analysts speculated that it could take several weeks to resolve the controversy.

"It's correct that the agreement has been postponed," a German embassy spokesman in Washington, D.C., said. "It was supposed to be signed today but has been put Please see PROBE on Page 14F.

## signing of pact

Continued from Page 1F.

off because of an investigation by the prosecutor."

The spokesman, who did not wish to be identified, said he could provide no additional details.

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## Fail-safe skies

[Continued from page 81]

20 minutes into the future. When it discovers an impending conflict it indicates the expected collision (or near-collision) course in bright red lines on the controller's computer monitor.

Next, it looks for a solution that alters the airplane's course the least amount, according to specific priorities. For example, a plane that has already started to descend for landing shouldn't be forced to climb again, if at all possible. AERA then ranks the solutions according to the priorities and displays its choices to the controller, who decides what to do.

Controllers who have tested the system are generally enthusiastic. "AERA's going to redefine the types of things controllers do," says Philip Kain, an air-traffic-control manager from Leesburg, Va., who has been testing AERA. Rather than having to spend all their time making sure aircraft don't hit each other, he says, controllers will be able to spend more time assigning planes more direct routes or finding the most fuel-efficient altitudes.

### Landings like clockwork?

AERA works well for ensuring airplanes at or near cruising altitudes stay safely separated. However, it doesn't address the most difficult problem in aircraft control: maneuvering planes on approach for landing. At major airports, controllers must channel dozens of planes converging from different directions onto just a few runways. Even a small mistake can cause delays—or collisions.

For this job, the FAA is counting on CTAS, currently being developed by aviation scientist Heinz Erzberger at NASA's Ames Research Center in Moffett Field, Calif.

"CTAS mimics what the controller normally does," says Erzberger. There's one difference, though: Instead of relaying commands directly to aircraft, CTAS makes recommendations that appear on controllers' computer screens; the controllers then decide whether to take the advice.

Starting as much as 200 miles away from an airport, CTAS checks radar returns. The program then suggests what order planes should land, estimates arrival times, and recommends how to space aircraft as close together as safety permits. As aircraft come closer to an airport, the program informs controllers when aircraft should make turns, speed up or slow down, and descend. Like AERA, it also checks for future conflicts.

But the software also can do things that busy controllers simply don't have time for, Erzberger explains. Among

other capabilities, it can adjust for airlines' preferences in how to fly. Airline X may prefer to descend at a faster rate than airline Y, for instance.

During tests simulating Denver's approach control center, a CTAS prototype increased airport landing and takeoff capacity about 10 percent. Experts say that even such a small change in capacity makes a big difference in delays. If the number of landings and takeoffs at Chicago's O'Hare International Airport declines 20 percent from normal, for example, "it's a disaster," according to United Airlines captain and chief of systems development Bill Cotton. Most flights that day and even some the next day fall behind schedule.

And there's another benefit to CTAS: safety. "You're more likely to lose safety margins when controllers are distracted [by heavy traffic]," says Chuck Johnson, an FAA air-traffic-control specialist. By reducing stress, CTAS may prevent incidents like the 1986 midair collision between a small private craft and an Aeromexico jet over Cerritos, Calif. In that incident, a busy controller failed to notice that the smaller plane had entered restricted airspace without permission. All 67 people aboard both planes died.

### Computer conversations

In their current forms, both CTAS and AERA make recommendations to controllers, who then relay their decision to pilots by voice radio. In the future, however, more of the talking will be done between computers.

"Voice communications are archaic," says Nance. "As long as we're dependent on human brains to understand what is stated, we run a high risk of making mistakes." A second problem, say pilots, is that airwaves often get so jammed with controllers relaying instructions that pilots can't break through even in an emergency.

Computer data links between planes and air-traffic-control centers will ease both of these hazards. Already such links are being used while planes are on the ground. Most airports, for example, now transmit preflight clearances to planes via computer while they are at the gates, freeing up radio frequencies for less mundane transactions.

In the next several years, a variety of new devices—based on either radar or satellite technologies—will let controllers transmit routine information, such as weather forecasts, directly to airborne cockpit computers, say experts. These computer links will also perform tasks that humans cannot. CTAS, says Erzberger, can receive continual updates on aircraft weight,

which decreases as a plane burns fuel, from cockpit computers, allowing it to chart more fuel-efficient courses.

Eventually, all ground-to-air communications may be conducted between computers, with major benefits. One study done at NASA's Langley Research Center in Hampton, Va., for instance, found that doing so reduced confusion between pilots and controllers by a factor of seven. "I think pilots are very surprised by how many errors and repeats there are [with spoken communications]," says Charles Knox, one of the authors.

### No subway in the sky

Will we ever completely automate air traffic control? Most experts say no—at least for the foreseeable future. "There are huge uncertainties involved in predicting air traffic control," says Jerry Welch, an electrical engineer and aviation expert at Lincoln Laboratory in Lexington, Mass. Runway changes, thunderstorms, and other emergencies all can and do occur unexpectedly. "It's not like a subway system," he says.

Nor have computers proven reliable enough to trust when lives are at stake, say many others. On Sept. 17, 1991, a single faulty instruction in a computer program caused much of AT&T's long distance telephone network to shut down, leaving millions of customers stranded without phone service. Two of these customers happened to be the air-traffic-control centers for the New York City area, which lost communications not only with other control centers, but also some planes. (The centers were able to improvise makeshift phone connections.)

For its part, the FAA agrees that humans will always "exercise management and control" over computers, according to a 1991 concept paper. Nevertheless, top FAA officials like Martin Pozesky think automation will improve virtually every aspect of air traffic control.

*Now over Denver, United Flight 235 has run into turbulence. Using a menu on his computer monitor, the pilot sends a message to a ground computer: "Encountering turbulence. Request new altitude." The ground computer first checks possible new altitudes for conflicts with other planes, then examines up-to-the-minute weather conditions that previous planes passing through the same area have provided.*

*A second later, a message pops up on the pilot's screen. "United 235, climb to 34,000 feet and continue heading 245. Weather data indicates clear skies ahead."*

# E-Systems case has the plot of a spy thriller

By Gregg Jones

Staff Writer of The Dallas Morning News

**W**hen Erwin Rautenberg decided to sue E-Systems Inc. in 1981 for breach of contract, the Los Angeles freight shipper just wanted to get the attention of his former customer.

Now — 12 years, two trials and \$1 million in legal fees later — Mr. Rautenberg wants to make the secretive Dallas spy contractor pay. In a big way.

If two previous trials Mr. Rautenberg has won against E-Systems are any indication, he soon could get his wish. The 72-year-old Holocaust survivor who once handled secret cargo for E-Systems is scheduled to square off against his old customer for the third time, on Feb. 23 in U.S. District Court in Los Angeles.

The case is not your routine breach-of-contract lawsuit. Its roots lie in the Central Intelligence Agency's covert operations of the 1950s and '60s, and the network of front companies used to supply those secret missions. Justice Department and E-Systems officials contend that there still are national security considerations at stake.

E-Systems spokesman John Kumpf would not comment on particulars of the case.

Not coincidentally, national security is E-Systems' business. The company manufactures everything from the electronic eyes and ears for the nation's spy satellites to the sophisticated communications equipment for the president's plane. Its biggest customers are the CIA, National Security Agency and Defense Intelligence Agency.

E-Systems says it's not concerned with Mr. Rautenberg's lawsuit — despite already losing federal and state jury trials in California.

"This is an old case," Mr. Kumpf says. "He lost in appeals" — a federal judge overturned Mr. Rautenberg's original jury victory over E-Systems — "and now he's coming back. We don't consider it material."

Still, the trial comes at an uneasy moment for E-Systems. The company is reeling from the German government's unexpected cancellation earlier this month of a \$1 billion spy plane program amid corruption allegations.

Matthew Steinberg, one of Mr. Rautenberg's Beverly Hills

## ERWIN RAUTENBERG VS. E-SYSTEMS



■ 1956: Erwin Rautenberg strikes a deal that makes his company, Air-Sea Forwarders, the exclusive shipping agent for the CIA's Air Asia — and in return operated and provided legal cover for an Air Asia warehouse in the Los Angeles suburbs.

■ 1975: The CIA sold Air Asia to E-Systems, which verbally assured him that business would continue "as usual," Mr. Rautenberg contends.

■ 1981: E-Systems abruptly fired Mr. Rautenberg. Later that year, he filed a federal breach-of-contract suit against E-Systems.

■ 1986: A jury awarded Mr. Rautenberg \$6.2 million in damages for what it said was E-Systems' bad-faith denial of the existence of his verbal contract. But a judge overturned the verdict. Mr. Rautenberg appealed and won a retrial.

■ 1987: E-Systems sold Air Asia.

■ 1992: A California state court ordered E-Systems and Air Asia to pay Mr. Rautenberg \$4.8 million in damages for "malicious" counterclaims E-Systems filed in response to his federal suit. The counterclaims had already been dropped. E-Systems is appealing.

■ 1993: The retrial of the original suit begins next week.

The Dallas Morning News

attorneys, says the lawsuit is one of the most bizarre cases of his career. He jokes that the cloak-and-dagger backdrop would make a fitting plot for a screenplay thriller. In a more serious vein, Mr. Steinberg says he is mystified that E-Systems, despite having lost the two jury judgments totaling more than \$11 million, has never made any effort to settle the dispute.

"This is an unusual case. It's not so unprecedented that the CIA or this big company would try to push people around," he says. "What is unprecedented is that you have a guy like Erwin Rautenberg who has the resources and the will to take them on. That's what they never bargained for."

Mr. Rautenberg is the owner of Air-Sea Forwarders Inc., a California freight forwarding firm. He has pursued the case for so long for a simple reason: E-Systems has committed a "tremendous injustice" against him, he says.

In his lawsuit, Mr. Rautenberg contends that E-Systems violated an oral contract he had with the CIA when E-Systems fired him as the exclusive shipper for an E-Systems subsidiary formerly owned by the CIA. The subsidiary — Air Asia — was once a legendary CIA front company, involved in gunrunning and other clandestine operations in Asia in the 1950s and '60s.

E-Systems sold Air Asia in the late '80s after the legal troubles. Please see E-SYSTEMS on Page 3D.

# E-Systems saga to play in court

Continued from Page 1D.  
began.

The oral contract, which Mr. Rautenberg says he forged with the CIA in 1956, made his company the exclusive shipper for Air Asia. In return, Mr. Rautenberg's company acted as a front for an Air Asia warehouse in suburban Los Angeles.

In 1975, the CIA sold Air Asia to E-Systems. E-Systems officials met with Mr. Rautenberg at his office in California and flew him to Greenville, Texas, to assure him that it would be "business as usual" with Air Asia, Mr. Rautenberg has testified. Then, in 1981, E-Systems fired Air-Sea Forwarders. Mr. Rautenberg says he was rebuffed when he tried to discuss the matter with E-Systems officials. He filed his original lawsuit a few months later, "just to get the attention of E-Systems," he says.

At the conclusion of the first trial in 1986, a federal jury awarded Mr. Rautenberg \$6.2 million in damages for what it said was E-Systems' bad faith denial of the existence of Mr. Rautenberg's oral contract. The judge overturned the verdict. Mr. Rautenberg appealed and won a retrial, which begins next week.

Last February, in a trial stemming from counterclaims E-Systems had filed against Mr. Rautenberg, a California state court ordered E-Systems and Air Asia to pay him \$4.8 million in damages for malicious prosecution. E-Systems is appealing the verdict.

When the trial begins next week, a secret Justice Department protective order will limit Mr. Rautenberg's ability to discuss E-Systems' connections with various agencies of the U.S. government. The order was imposed by a federal judge, ostensibly for reasons of national security, Mr. Steinberg says. Mr. Steinberg

himself can only discuss those aspects of the order that have become part of the public record.

In recent days, a Justice Department attorney called Mr. Steinberg to ask when Mr. Rautenberg would be testifying so he could attend, the attorney says. Mr. Steinberg views the phone call as an attempt to intimidate Mr. Rautenberg, who is still under order not to disclose details of E-Systems' government relationships.

Justice Department spokesman Joe Krovisky says that a department official will "monitor part of the testimony to make sure that there is no disclosure of classified information."

"There is definitely a relationship going on between E-Systems, the CIA and the Justice Department in this case," Mr. Steinberg says. "The government is not technically a party to this case. The only way this (Justice Department) attorney has information about this trial is through E-Systems' lawyers."

Mr. Kumpf says it is "preposterous" to suggest that the Justice Department and the CIA are actively aiding E-Systems in the Rautenberg case.

But, he adds, "These are matters that involve national security. It isn't appropriate for me to comment further."

As he approaches the end of a legal odyssey stretching over a dozen years, Mr. Rautenberg says his fight with E-Systems has become more than a point of principle.

"Initially, principle was more important," he says. "Now, money is. The future of my 100 employees is involved. This has cost me so much money. They could have settled long ago. They owe me."

### **Yeltsin says Russia has Flight 007 transcript**

■ **MOSCOW** — Nine years after a Soviet fighter jet shot down a South Korean passenger plane over the Sea of Japan, the transcript of the airliner cockpit's "black box" recorder has been found in the KGB archives, President Boris Yeltsin said Friday. The black box, which was thought to have been lost at sea, recorded the conversations between the pilot and copilot of Korean Air Lines Flight 007 in the final minutes before it was hit by a Soviet air-to-air missile, killing all 269 passengers and crew, including a U.S. congressman. Mr. Yeltsin did not say what the transcript contained.

### **Yeltsin hands over data on KAL 007 to S. Korea**

■ **SEOUL, South Korea** — Boris Yeltsin surprised President Roh Tae-woo on Thursday by giving him the flight data and voice recorders from a Korean Air Lines passenger jet shot down in 1983 by a Soviet fighter jet. "I am going to hand over the black box and taped recordings to resolve all lingering doubts about the incident," the Russian president said as he opened an orange case containing the recorders.

Bill ? Ann. 11-19-92

Exhibit "D"

Letters of Penney's counsel re Deposition of Penney

LAW OFFICE  
L. ZANE GILL  
A UTAH PROFESSIONAL CORPORATION  
50 WEST BROADWAY, SUITE 900  
SALT LAKE CITY, UTAH 84101

801-364-1046

August 13, 1990

Douglas R. Davis  
PARSONS, BEHLE & LATIMER  
185 South State Street  
Suite 700  
P.O.Box 11898  
Salt Lake City, Ut 84147-0898

Re: Penney v. E-Systems, Inc., et al

Dear Doug:

I have received your August 10, 1990 letter. As I indicated in our telephone conversation, I am more than happy to grant your request for a 30 day extension based upon the representations set forth in your August 10, 1990 letter. I do not agree to grant you that extension for purposes other than responding to our discovery request.

I appreciate your accommodation with regard to the scheduling of the depositions set for my client. Mr. Penney's physical condition makes it very difficult for him to do anything that requires constant attention for more than two or three hours at a time.

Yours very truly,

L. ZANE GILL, P.C.



L. Zane Gill

LZG/dvh  
cc: Wm Penney

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FACSIMILE (801) 328-8419

FORMERLY  
DICKSON, ELLIS, PARSONS & MCCREA  
1882-1959

C.C. PARSONS  
(DECEASED)

CALVIN A. BEHLE  
(RETIRED)

GEORGE W. LATIMER  
(DECEASED)

T. PATRICK CASEY  
VALDEN R. LIVINGSTON  
MICHAEL J. STAAB  
MICHAEL L. LARSEN  
JONATHAN K. BUTLER  
DAVID G. MANGUM  
JULIA C. ATTWOOD  
DEREK LANGTON  
LUCY B. JENKINS  
LORNA ROGERS BURGESS\*  
THOMAS R. GRISLEY  
DAVID L. DEISLEY  
RICHARD M. MARSH  
HAL J. POS  
W. MARK GAVRE  
DAVID J. SMITH  
MARK S. WEBBER  
MARK M. BETTILYON  
JAMES C. HYDE  
J. MICHAEL BAILEY

E. RUSSELL VETTER  
CY H. CASTLE  
J. THOMAS BECKETT  
M. LINDSAY FORD  
JIM BUTLER  
KENNETH R. BARRETT  
THOMAS B. BRUNKER  
DOUGLAS R. DAVIS  
ELIZABETH S. CONLEY  
ELIZABETH S. WHITNEY  
ELISABETH R. BLATTNER  
JAMES H. WOODALL  
JAMES E. KARKUT  
COLE A. WIST  
WILLIAM J. EVANS  
C. KEVIN SPEIRS  
HOWARD C. YOUNG  
DAVID W. ZIMMERMAN  
MONICA M. WHALEN

KEITH E. TAYLOR  
JAMES B. LEE  
SCOTT M. MATHESON  
GORDON L. ROBERTS  
F. ROBERT REEDER  
LAWRENCE E. STEVENS  
DANIEL M. ALLRED  
ROY G. HASLAM  
DALLIN W. JENSEN  
W. JEFFERY FILLMORE  
KENT W. WINTERHOLLER  
BARBARA K. POLICH  
RANDY L. DRYER  
CHARLES H. THRONSON  
DAVID R. BIRD  
RAYMOND J. ETCHEVERRY  
FRANCIS M. WIKSTROM  
DAVID W. TUNDERMANN  
JAMES M. ELEGANTE  
VAL R. ANTCHAK  
PATRICK J. GARVER  
SPENCER E. AUSTIN  
LEE KAPALOSKI  
STEPHEN J. HULL  
JOHN B. WILSON  
ROBERT C. HYDE  
CRAIG B. TERRY  
DAVID A. ANDERSON  
GARY E. DOCTORMAN  
KENT B. ALDERMAN  
JOHN T. ANDERSON  
KENT O. ROCHE  
PATRICIA J. WINMILL  
RANDY M. GRIMSHAW  
LAWRENCE R. BARUSCH  
WILLIAM D. HOLYOAK  
PAUL D. VEASY  
DANIEL W. HINDERT  
LOIS A. BAAR  
LYNN R. CARDEY-YATES

OF COUNSEL  
MAXWELL A. MILLER  
RONALD S. POELMAN

August 10, 1990

L. Zane Gill  
Law Offices of L. Zane Gill, P.C.  
50 West Broadway, Suite 900  
Salt Lake City, UT 84101

Re: Penney v. E-Systems, Inc., et al.

Dear Zane:

As I indicated in our telephone conversation this morning, because of pre-committed vacation schedules of E-Systems employees who will be assisting in preparing responses to plaintiff's extensive discovery requests, and because of other work-related matters that we have scheduled in the near future, including a trial which will require significant time, we request a 30-day extension, up to and including September 26, 1990, to complete and file defendants' responses to the discovery requests.

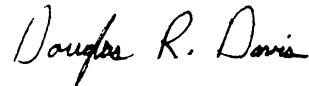
After you have had a chance to review this letter, I would appreciate receiving a letter from you responding to our request for an extension of time. As you are aware, under the local rules we do not technically need your stipulation for an extension, but I always feel a stipulation in such cases is in the best interest of all concerned.

Regarding your request to limit the number of hours your client must sit through his deposition scheduled for September 10, 1990, we will certainly be willing to make any appropriate accommodations, including continuing the deposition until the next day, September 11, 1990, if necessary.

L. Zane Gill  
August 10, 1990  
Page 2

If you have any further questions or comments regarding this matter, please feel free to contact me. Your cooperation is greatly appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Douglas R. Davis".

Douglas R. Davis

DRD:cj

cc: David A. Anderson

LAW OFFICE  
L. ZANE GILL  
A UTAH PROFESSIONAL CORPORATION  
50 WEST BROADWAY, SUITE 900  
SALT LAKE CITY, UTAH 84101

801-364-1046

*See 9/14 at  
meeting with David Bryant  
in which L. Zane Gill*

September 14, 1990

David A. Anderson  
PARSONS, BEHLE & LATIMER  
50 West Broadway, Suite 400  
Salt Lake City, Utah 84101

Re: Penney v. E-Systems, Inc., et al.

Dear David:

As we have just finished your lengthy deposition of Mr. Penney, I would like to take this opportunity to voice some concerns. In reviewing the correspondence between our offices, it is clear that Mark Gavre agreed with L. Zane Gill in a telephone conversation initiated by Mr. Gavre for the purpose of confirming the deposition dates that Mr. Penney would be deposed over the course of two days, with the deposition to be performed only in the morning hours. The original request for deposition date covered only one day. The request to split it into two days was done in order to accommodate Mr. Penney's severe, physical limitations. Your pleading ignorance to such an arrangement illustrates an extreme insensitivity of Mr. Penney's condition and limitations and a breakdown in communication channels in your office.

Instead of the deposition taking place as scheduled and agreed upon, Mr. Penney was forced to sit through more than three gruelling days of questioning. No doubt that Mr. Penney's answers were often lengthy and that you are entitled to have a reasonable opportunity to probe into Mr. Penney's understanding of the facts; however, your unreasonably repetitious questioning played a large part in drawing out the deposition. We now understand that you would like to have Mr. Penney return for more of the same. We will oppose this and seek an order protecting Mr. Penney from a repeat session.

The extension of the deposition from one day to three has caused Mr. Penney unnecessary physical and emotional distress as well as considerable expense. In addition to the hotel and food costs associated with his longer stay, Mr. Penney was forced to make alternate travel arrangements which resulted in additional

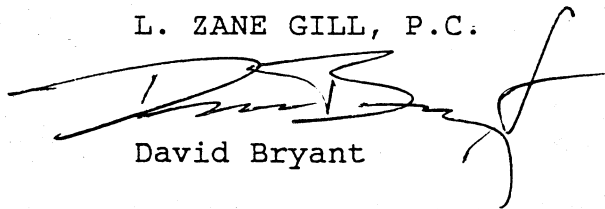
David A. Anderson  
September 14, 1990  
Page 2

airfare. Mr. Penney's original ticket was purchased on a special fare which did not allow the extension you necessitated.

In the future I would ask that you remain aware of agreements made by you or on your behalf by your colleagues.

Yours very truly,

L. ZANE GILL, P.C.

A handwritten signature in black ink, appearing to read "David Bryant", with a long, sweeping horizontal stroke extending to the right.

David Bryant

DFB/dvh  
cc: William Penney

B:PENNEY.LTR:1

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----  
E-Systems, Inc., et al  
Plaintiff - Appellant  
VS  
Hazeltime Corporation  
Defendant - Appellee  
-----

Clerk's Certificate  
District Court No. 890904469  
Supreme Court No. 900053  
-----

I, clerk of the above entitled court, do hereby certify that the hereto attached file contains all the original papers, as requested by the designation on file herein, filed in the court in the above entitled case, including the Notice of Appeal which was filed on the 25th day of January, 1990. I further certify that the above described documents constitute the Judgment Roll and that the same is a true and correct transcript of the record as it appears in my office.

I further certify that an Undertaking on Appeal in due form has been properly filed and that the same was filed on the 25th day of January, 1990.

I further certify that said Judgment Roll is this date transmitted to the Supreme Court of the State of Utah, pursuant to such appeal.

Witness my hand and the Seal of said court at Salt Lake City,  
Utah, this 27th day of July 1990.

CRAIG E. LUDWIG  
CLERK OF THE COURT

By

*Craig E. Ludwig*

000001

Exhibit "E"

E-Systems, Inc./Montek Division v. Hazeltine Corporation  
filed 7/20/89 as Civil No. C-89-890904469, Third  
Judicial District Court, Salt Lake County, State of Utah.

FILED  
DISTRICT COURT

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MERLIN O. BAKER (A0180) and  
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Telephone: (301) 659-2700  
Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----oo0oo-----

**JUDGE J. DENNIS FREDERICK**

7509  
15000  
1390052  
E-SYSTEMS, INC./MONTEK DIVISION, :

Plaintiff, :

v. :

HAZELTINE CORPORATION, :

Defendant. :

C O M P L A I N T

(Plaintiff Demands  
Trial by Jury)

Civil No. C-89-890904469  
Judge \_\_\_\_\_ CN

-----oo0oo-----

Plaintiff E-Systems, Inc./Montek Division, by counsel,  
files this Complaint against defendant Hazeltine Corporation, and  
for its Complaint states and alleges as follows:

000002

### JURISDICTION

1. Jurisdiction of this Court is based upon Utah Code Ann. § 78-3-4, and upon the Utah long-arm statute, Utah Code Ann. § 78-27-24.

### VENUE

2. Venue in this Court is based upon Utah Code Ann. § 78-13-4, in that the plaintiff is doing business in this judicial district and the events and actions giving rise to this cause of action occurred or were taken or the effects were felt in this judicial district.

### PARTIES

3. Plaintiff E-Systems, Inc., Montek Division ("E-Systems"), is a division of E-Systems, Inc., a Delaware corporation having its principal place of business in Dallas, Texas. The Montek Division, which designs, develops and manufactures advanced electronic navigational equipment and avionics, maintains its principal office at 2268 South 3270 West, Salt Lake City, Utah 84119.

4. Upon information and belief, defendant Hazeltine Corporation ("Hazeltine") is a Delaware corporation having its principal place of business on Cuba Hill Road, Greenlawn, New York.

### FACTS COMMON TO ALL COUNTS

5. In early 1982, E-Systems began research and development work on a ground-based transponder system known as

"DME/P," an acronym standing for "Precision Distance Measuring Equipment." The DME/P is crucial to, and E-Systems' efforts were made in anticipation of, the Federal Aviation Administration's ("FAA") Microwave Landing System program ("MLS"), a "next generation" navigation and guidance system designed to increase the number of instrument approaches and landings that could be made at various airports across the nation. The DME/P system, function of which the ground-based DME/P transponder is a crucial part, provides very precise, continuous information regarding distance (range) between the airport and an aircraft executing an MLS instrument approach, and displays that distance in the cockpit for use by the crew during the approach.

6. On December 7, 1982, and in anticipation of the solicitation of bids for the MLS program, E-Systems and Hazeltine entered into a Teaming Agreement, one of the purposes of which was to facilitate an integrated approach by the parties to compete for, and meet the demands of, the anticipated FAA contract award for the MLS program. A copy of the December 1982 Teaming Agreement is attached hereto as Exhibit 1 and incorporated herein by reference.

7. Pursuant to the terms of the 1982 Teaming Agreement, Hazeltine was to serve as the prime contractor on any contract awarded by the FAA. E-Systems, in turn, was to act as the subcontractor for the design, testing and production of the

DME/P. The 1982 Teaming Agreement further imposed certain pre-award and post-award obligations on both parties, including significant obligations on E-Systems' part to provide technical expertise and assistance in the preparation of Hazeltine's proposal for the MLS contract.

8. Based upon performance specifications released by the FAA in advance of its formal Request for Proposals and upon Hazeltine's instructions as to what would be necessary to meet the FAA specifications, E-Systems continued work at its own expense on the development and testing of the DME/P through the spring of 1983.

9. It was Hazeltine's and E-Systems' intent to develop a full system design prior to submission of a proposal to the FAA so that the Hazeltine proposal could include actual, measured data demonstrating that the E-Systems' design for the DME/P fully complied with the FAA specifications. The parties believed that this strategy would serve several objectives. First, it would provide a high degree of confidence that the specification requirements could be met by the proposed design. Also, it would both permit the submission of the offer to perform under a fixed-price contract requested by the FAA and demonstrate an ability to meet the FAA's 18-month schedule. Because the E-Systems' DME/P design had very nearly been completed and tested prior to the award of the FAA contract, and with the understanding

that this proven design was to be utilized in the event of the award of the FAA contract to Hazeltine, E-Systems agreed to absorb the non-recurring costs for research and development of its DME/P design. At the time of the FAA contract award, E-Systems had already expended approximately 95 percent of the anticipated development costs for its design, using its own funds.

10. On April 18, 1983, the FAA published its formal Request for Proposal No. DTFA-01-83-R-27174 for the MLS program (the "RFP"). Subsequently, in June 1983, Hazeltine submitted its proposal in response to the RFP, which included, among other things, actual test data for the E-Systems' DME/P. As anticipated, this data demonstrated that all of the major performance specifications called for by the FAA's RFP could be met by the originally developed E-Systems' design.

11. During the latter part of 1983, Hazeltine and the FAA performed their evaluation of the E-Systems technical and cost proposals. As part of that review process, E-Systems met with Hazeltine and the FAA to provide clarification and answers to questions regarding E-Systems' proposed design for the DME/P system. As evidenced by the ultimate award of the prime contract to Hazeltine and the subsequent award of the subcontract to E-Systems, the originally proposed DME/P was determined by Hazeltine and the FAA to be adequate for contract performance.

12. On January 12, 1984, Hazeltine was awarded FAA Contract DTFA01-84-C00008 for the Microwave Landing System. Shortly thereafter, on January 31, 1984, Hazeltine issued to E-Systems its telex authorization to proceed with work. In accordance with the telex authorization and the 1982 Teaming Agreement, E-Systems accepted Hazeltine's telex offer and commenced work as a subcontractor to Hazeltine at that time.

13. On December 21, 1985, to "definitize" the telex authorization, Hazeltine and E-Systems agreed upon additional terms of the subcontract ("Subcontract K25213") for the development, production and delivery of 178 DME/P systems plus options for a total firm fixed price of \$13,064,549.73. Modifications to the subcontract not relevant hereto subsequently reduced the fixed-price to \$11,539,925.94. At the same time, the parties entered into a second Teaming Agreement, which superseded their prior agreement of December 7, 1982. Copies of the December 21, 1985 Teaming Agreement and Subcontract K25213 are attached hereto as Exhibits 2 and 3, respectively, and are incorporated herein by reference.

14. To date, Hazeltine has made progress payments to E-Systems under the subcontract of approximately \$7,000,000.

15. By the time E-Systems received authorization to proceed under the subcontract, and as a direct result of E-Systems' company-funded program of development, an engineering model of

E-Systems' DME/P was 95 percent complete. It was understood and agreed upon by the parties that the subcontract would not contain any additional research and development costs because the DME/P proposed by E-Systems was based upon an existing, nearly finalized design, the cost of which had already been borne by E-Systems, and which previously had been shown to be capable of meeting all major performance specifications contained in the FAA's original RFP.

16. In negotiating the terms of the Teaming Agreement and subcontract, the parties relied upon the following understandings, each of which was material to E-Systems' decision to enter into an agreement with Hazeltine:

a) the DME/P design which was proposed and priced by E-Systems during the proposal phase would be used for purposes of subcontract performance;

b) because research and development of that DME/P design was essentially complete prior to contract and subcontract award, no additional development costs would have to be passed on to Hazeltine or, in turn, to the FAA;

c) the E-Systems' design would meet all major DME/P specification requirements contained in the original FAA Request for Proposal; and,

d) in order to comply with the FAA's 18-month program schedule, use of the existing DME/P design was not only preferable, but was, in fact, required.

17. After the issuance of the telex authorization to E-Systems, Hazeltine imposed a series of design and specification changes and new interpretations of existing specifications, which together constituted a drastic revision of the basic understandings on which the telex authorization, the definitized subcontract, and the Teaming Agreements were based. These changes and interpretations had not been made known to E-Systems at the time of the proposal preparation or subcontract award and, in virtually each instance, were contrary to the express understandings of both Hazeltine and E-Systems at the time the telex authorization was accepted and the subcontract entered into. Hazeltine subsequently refused to recognize these modifications under the "Changes" clause of the definitized subcontract and, therefore, refused to reimburse E-Systems for the added costs and expenses reasonably incurred by it in order to perform these changes.

18. The modifications had the effect of altering the subcontract from a contract for the production of equipment using an existing design (properly designated a "fixed-price" contract) to a contract under which Hazeltine claimed that E-Systems was responsible for developing an entirely new system that would meet its revised and considerably more demanding requirements (properly designated a "cost reimbursement" contract). However, a cost reimbursement contract was not provided to E-Systems, and yet

E-Systems was required by Hazeltine to perform the new development under the original fixed-price contract.

19. Because of the modifications imposed upon it by Hazeltine, E-Systems was forced to abandon the design upon which its subcontract with Hazeltine was based and virtually to "start from scratch." Indeed, in actual flight testing by the FAA, the new design forced upon E-Systems provided test results ten times more precise than those required by the original specifications.

20. As a further consequence of these modifications, E-Systems was required to perform substantial additional work and to incur additional costs over and above those contained in Subcontract K25213. These costs included both recurring costs (e.g., material and production) and non-recurring costs (e.g., research and development) not envisioned by the parties.

21. Pursuant to the terms of the subcontract, E-Systems submitted separate claims totalling more than \$10,000,000 for equitable adjustments for non-recurring and recurring costs on November 30, 1988 and May 12, 1989, respectively. In derogation of its contractual obligations under the subcontract, Hazeltine has: 1) refused to submit E-Systems' certified claims for non-recurring costs in a timely manner or to pursue those claims in good faith; 2) unreasonably delayed the processing of E-Systems' certified claim for recurring costs and has otherwise failed to pursue that claim in good faith; and 3) by its actions under the

prime contract with the FAA, has further prejudiced both E-Systems' certified claims for non-recurring and recurring costs.

22. Upon information and belief, and in further derogation of E-Systems' rights and Hazeltine's duties under Subcontract K25213, Hazeltine informed the FAA in August 1988 that it intended to phase down its efforts under the prime contract in order to enter into a study period as a result of which virtually all work on the contract and related Subcontract K25213 came to a halt. Upon further information and belief, Hazeltine and the FAA subsequently entered into a Memorandum of Understanding to permit resolution of the various contractual issues between them.

23. E-Systems was not informed of such agreement or Memorandum of Understanding prior to its execution, nor was it permitted to participate in key meetings prior thereto, despite the fact that such meetings and agreement plainly affected terms, conditions and ultimate performance of the E-Systems' subcontract with Hazeltine. Hazeltine's failure to keep E-Systems informed as to these and other matters pertinent to E-Systems' performance violates and is in breach of the terms of the Teaming Agreement, which expressly provides that "Hazeltine will at all times during the period of this Teaming Agreement keep [E-Systems] fully advised of the status of each proposal, contract, subcontract or modification to the prime contract which affects [E-Systems] and inquiries and comments with respect thereto. Hazeltine will also

afford [E-Systems] the opportunity to be present at all key presentations, discussions, conferences or program reviews, whether pursuant to a solicitation or under awarded contract(s), where the product of E-Systems is under discussion. . . ."

Exhibit 2 at page 3.

24. Throughout the performance period of the subcontract, Hazeltine has repeatedly breached the terms of its agreement with E-Systems by failing to provide necessary support services requested by E-Systems as provided for under the terms of the subcontract. By way of example, and without intended limitation, Hazeltine failed to resolve several issues regarding the number and unit price of equipment called for under the subcontract, claiming that the issue was pending final resolution of Hazeltine's own disputes with the FAA under its prime contract. Similarly, Hazeltine has refused to witness various testing procedures or to pursue FAA approval of so-called First Article Testing ("FAT"). As a result, and despite repeated requests by E-Systems for this and other similar support, Hazeltine's breach of contract has rendered E-Systems unable to perform necessary testing of its new DME/P, and has left it in a position in which it is clearly untenable, if not impossible, for E-Systems to proceed with the production and delivery of the system.

25. Hazeltine's conduct has placed E-Systems in a "stop-work" position under the terms of its subcontract, by virtue of the fact that Hazeltine has called an effective halt to the program by not permitting E-Systems to proceed with the testing and production of the DME/P system despite E-Systems having been ready, willing and able to do so. By letters dated July 13, 1988, July 21, 1988, July 27, 1988, August 3, 1988, August 26, 1988, September 19, 1988 and September 26, 1988, E-Systems documented the delay and disruption occasioned by Hazeltine's conduct, and ultimately informed Hazeltine that, as a result, E-Systems had been placed in a stop-work position for purposes of future performance under the subcontract. Copies of these letters are attached hereto as Exhibits 4 through 10, respectively, and are incorporated herein by reference.

26. Hazeltine initially took the position that, despite its phase-down, E-Systems could nevertheless complete various discrete tasks under the subcontract. Hazeltine was, however, unable to identify any such tasks during a meeting convened for that purpose in January 1989.

27. As a consequence of Hazeltine's constructive stop-work order, E-Systems has been required to expend substantial resources in order to assure that it would remain ready to perform its obligations under the subcontract should Hazeltine lift the

stop-work and request E-Systems to complete performance. To date, no such request has been received by E-Systems.

28. Pursuant to Article XXXVII of Subcontract K25213, Hazeltine must, within 90 days of the date that it imposes a stop-work condition upon E-Systems, either cancel the stop-work condition (that is, permit E-Systems to complete performance) or terminate the subcontract for convenience pursuant to the "Termination for Convenience" clause of Article XXXVII of the subcontract. See Exhibit 3, Art. XXXVII at pages 111-10 and 111-30.

29. Because Hazeltine has permitted the stop-work condition to persist for more than 90 days without permitting E-Systems to return to work, the subcontract has, by its terms, constructively been terminated by convenience, entitling E-Systems to an award of the various costs, together with a reasonable margin of profit, as more fully set forth under Article XXXVII of the subcontract.

30. At all times relevant hereto, E-Systems has remained fully ready, willing and able to perform the services and obligations required of it under the terms of its agreement with Hazeltine.

COUNT ONE

(Breach of Contract -- Subcontract K25213)

31. E-Systems incorporates by reference the allegations

set forth in Paragraphs 1 through 30 as though fully set forth herein.

32. The unilateral acts and omissions of Hazeltine were in derogation of E-Systems' rights under, and in breach of the terms of, Subcontract K25213.

33. As a result of Hazeltine's breach, E-Systems has been unable to perform its obligations under the subcontract.

34. E-Systems has remained ready, willing and able to perform each and every obligation required of it under the parties' original agreement.

WHEREFORE, plaintiff E-Systems, Inc./Montek Division demands judgment against defendant Hazeltine Corporation as follows:

- a) a declaration that Hazeltine Corporation's conduct constitutes a constructive Notice to Stop Work under Article XXXVII of Subcontract K25213;
- b) a declaration that, by virtue of Hazeltine's inaction, Subcontract K25213 has been terminated for convenience pursuant to Article XXXVII of the subcontract;
- c) an award to E-Systems of its recurring and non-recurring costs incurred as a result of Hazeltine Corporation's wrongful conduct, in an amount not less than \$20,000,000, together with interest and a reasonable margin of profit thereon;

d) an award of E-Systems' costs and reasonable attorneys' fees, together with such other relief as the Court may deem appropriate.

COUNT TWO

(Breach of Implied Covenant of Good Faith and Fair Dealing -- Subcontract K25213)

35. E-Systems incorporates by reference the allegations set forth in Paragraphs 1 through 34 as though fully set forth herein.

36. In entering into Subcontract K25213 with E-Systems, Hazeltine impliedly agreed to carry out in good faith the obligations and duties imposed upon it, including, inter alia, the provision of support services which served as the necessary basis for E-Systems' performance under the subcontract.

37. By failing to honor its obligations under the subcontract and by purposefully delaying and disrupting E-Systems' performance thereunder, Hazeltine breached its implied covenant of good faith and fair dealing.

38. As a result of Hazeltine's conduct, including its failure to take any action regarding the constructive stop-work order imposed upon E-Systems by it, E-Systems has been damaged in an amount not less than \$20,000,000.

WHEREFORE, plaintiff E-Systems, Inc./Montek Division demands judgment against defendant Hazeltine Corporation as follows:

a) a declaration that Hazeltine Corporation's conduct constitutes a constructive Notice to Stop Work under Article XXXVII of Subcontract K25213;

b) a declaration that, by virtue of Hazeltine's inaction, Subcontract K25213 has been terminated for convenience pursuant to Article XXXVII of the subcontract;

c) an award to E-Systems of its recurring and non-recurring costs incurred as a result of Hazeltine Corporation's wrongful conduct, in an amount not less than \$20,000,000, together with interest and a reasonable margin of profit thereon;

d) an award of E-Systems' costs and reasonable attorneys' fees, together with such other relief as the Court may deem appropriate.

### COUNT THREE

(Breach of Contract -- Teaming Agreement)

39. E-Systems incorporates by reference the allegations set forth in Paragraphs 1 through 38 as though fully set forth herein.

40. The unilateral acts and omissions of Hazeltine were in derogation of E-Systems' rights under, and in breach of the terms of, the December 21, 1985 Teaming Agreement.

41. As a result of Hazeltine's breach, E-Systems has been unable to perform its obligations under the Teaming Agreement.

42. E-Systems has remained ready, willing and able to perform each and every obligation required of it under the parties' Teaming Agreement.

WHEREFORE, plaintiff E-Systems, Inc./Montek Division demands judgment against defendant Hazeltine Corporation in an amount to be determined at trial, but in no event less than \$20,000,000, representing the costs and expenses incurred by E-Systems as a result of defendant's breach of the Teaming Agreement, together with interest, costs and attorneys' fees, and such other relief as the Court may deem appropriate.

#### COUNT FOUR

(Breach of Implied Covenant of Good Faith  
and Fair Dealing -- Teaming Agreement)

43. E-Systems incorporates by reference the allegations set forth in Paragraphs 1 through 42 as though fully set forth herein.

44. In entering into the December 21, 1985 Teaming Agreement with E-Systems, Hazeltine impliedly agreed to carry out in good faith the obligations and duties imposed upon it, including, inter alia, its duty to keep E-Systems fully informed as to developments affecting its performance under the subcontract, as well as its duty to perform diligently its own obligations and responsibilities under the prime contract with the FAA.

45. By failing to perform diligently its obligations under the prime contract and by refusing to keep E-Systems fully informed as to all pertinent developments affecting E-Systems' performance under its subcontract with Hazeltine, Hazeltine breached its implied covenant of good faith and fair dealing.

46. As a result of Hazeltine's breach, E-Systems has been damaged in an amount not less than \$20,000,000.

WHEREFORE, plaintiff E-Systems, Inc./Montek Division demands judgment against defendant Hazeltine Corporation in an amount to be determined at trial, but in no event less than \$20,000,000, together with interest, costs and attorneys' fees, and such other relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiff E-Systems, Inc./Montek Division, hereby demands a trial by jury as to all issues of fact triable as of right by a jury.

DATED this 20<sup>th</sup> day of July, 1989.

RESPECTFULLY SUBMITTED,



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0825b

Exhibit "F"

Docketing Statement

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IN THE UTAH SUPREME

WILLIAM V. PENNEY,  Plaintiff/Appellant,  vs.  E-SYSTEMS, INC., a Delaware corporation, DAVID A. WILLIAMS, ALFRED B. BUCHANAN,  Defendants/Appellees.	<b>DOCKETING STATEMENT</b> <b>(Subject to Assignment to</b> <b>the Court of Appeals)</b>  No. 930185 Civil No. 900903522CV  Judge Frank G. Noel
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Appellant William V. Penney, appearing pro se, submits this  
Docketing Statement pursuant to Utah Rule of Appellate Procedure 9.

1. DATES OF ORDERS FOR WHICH REVIEW IS SOUGHT:

- a. Minute Entry dated March 23, 1992, denying plaintiff's Motion to Disqualify Counsel, i.e. to disqualify DAVID A. ANDERSON (0081), PAUL E. DAME (5683) of and for PARSONS BEHLE & LATIMER as counsel for defendants.
- b. Order dated July 10, 1992, granting defendants' Motion for Partial Summary Judgment filed on September 25, 1991, seeking summary judgment on and

dismissal of plaintiff's First Cause of Action, Third Cause of Action, Fourth Cause of Action and Fifth Cause of Action with prejudice.

- c. Scheduling Order and Trial Notice made about August 3, 1992, requiring "all discovery including responses must be concluded by Dec 1, 1992" and that "all dispositive motions are to be heard by Jan 4, 1992."
- d. Minute Entry dated February 16, 1993, granting defendants' Motion for Summary Judgment on the plaintiff's second cause of action.
- e. Minute Entry dated February 18, 1993, reaffirming the trial court's Minute Entry dated February 16, 1993, granting defendants' Motion for Summary Judgment on the plaintiff's second cause of action.
- f. Order dated March 9, 1993, granting defendants' Motion for Summary Judgment, dismissing with prejudice plaintiff's second cause of action.
- g. Judgment dated March 9, 1993, granting judgment in favor of defendants and against plaintiff, dismissing plaintiff's action, including all claims asserted therein, with prejudice.
- h. The trial court's failure to rule on plaintiff's Motion for Continuance & for Leave to Complete Discovery.

**2. STATUTORY AUTHORITY CONFERRING JURISDICTION TO HEAR THIS**

**APPEAL:** Utah Code Ann. § 78-2-2.

**3. THIS APPEAL IS FROM EIGHT (8) DIFFERENT RULINGS, ORDERS OR** refusals to rule of the district court made prior to or as part of the summary judgment dismissal with prejudice of plaintiff's five (5) count complaint, depriving plaintiff of a trial on the merits in the above-styled action.

**4. THE FOLLOWING FACTS ARE MATERIAL TO THE COURT'S  
CONSIDERATION OF THE QUESTIONS PRESENTED:**

**Background of Lawsuit**

In December 1980 plaintiff William V. Penney ("Mr. Penney") was hired by defendant E-Systems, Inc. ("E-Systems") as a procurement manager.<sup>1</sup>

Prior to his employment with E-Systems, Penney had received a total disability from Social Security in 1972 because of prior industrial and job related accidents that had left Penney with respiratory and spine problems.<sup>2</sup>

At all times while employed with E-Systems, Penney, due to his health concerns, purchased the maximum of insurance possible, and always made sure he had long term disability insurance.<sup>3</sup> Defendant E-Systems was informed at or before its hiring of Penney that he had a Social Security grace period whereupon if he were totally disabled again within a designated period of time, that Social Security Disability benefits could be reinstated without the customary waiting period.

Prior to Penney's employment with defendant E-Systems, defendant E-Systems initiated contact with and solicited Penney to

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<sup>1</sup> Verified Complaint, p. 3, ¶ 8; Answer p. 3, ¶ 8.

<sup>2</sup> Verified Complaint, p. 3, ¶ 9.

<sup>3</sup> Verified Complaint, p. 7, ¶ 40.

become an employee of E-Systems. Penney did not initiate contact with E-Systems seeking employment.

As a requirement of employment with E-Systems, Penney relocated from Texas to Utah, where he became a resident and citizen of the State of Utah for the duration of his employment with defendant E-Systems until after June 18, 1986.<sup>4</sup>

One of the material inducements Penney relied upon in accepting employment with E-Systems was the fact that E-Systems was self insured, which allowed Penney to obtain essential insurance which he would not otherwise have been able to obtain.<sup>5</sup>

From about 1985, when defendant David A. Williams ("Williams") became the general manager of E-Systems' Montek Division in which Penney was then employed as Director of purchasing, through June 18, 1986, Defendant Williams attempted to intimidate and coerce Penney into resigning employment with E-Systems by words and actions which included without limitation continuously mocking and deriding Penney's physical disabilities<sup>6</sup>, unfairly, illegally and in contravention of E-Systems express written policies dictating

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<sup>4</sup> Verified Complaint, p. 3, ¶ 10; Defendants' Memorandum in Support of Summary Judgment, p. 1, fn. 1.

<sup>5</sup> Verified Complaint, p. 3, ¶ 9 & 10.

<sup>6</sup> Verified Complaint, p. 4, ¶ 16.

Penney and his department to work thousands of hours of overtime<sup>7</sup>, threatening Penney with being fired if he did not meet various dictated goals or if his department did not remain under budget<sup>8</sup>,

On or about May 9, 1986, Penney was injured in a hit and run accident, which caused Penney immediate, intense and continuous pain in three separate areas of his spine (cervical, lumbar, and thoracic).<sup>9</sup>

After being admitted to the emergency room at Pioneer Hospital in Salt Lake City, Utah, Penney received limited treatment and, upon release from the hospital, Penney was seen by defendant E-System's company doctor Dr. Hensleigh who had given Penney his annual physical the previous four years. Dr. Hensleigh recommended that Penney go to his orthopedic specialist in Texas Dr. Meril.

After conservative treatment and physical therapy, Penney's physical condition, and corresponding mental condition continued to deteriorate.

With the advancement of technology, primarily in the areas of C.A.T. and M.R.I. scans, Penney underwent the following five surgeries as medical treatment for the injuries and pain caused by the hit and run accident of May 9, 1986:

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<sup>7</sup> Verified Complaint, p. 5, ¶ 18 & 19.

<sup>8</sup> Verified Complaint, p. 5, ¶ 23.

<sup>9</sup> Verified Complaint, p. 6, ¶ 27-28.

- a. 07/27/1988 - Neck surgery to fuse three levels of the lower cervical spine due to multiple whiplashes incurred during the automobile accident.
- b. 05/04/1989 - Neck surgery to fuse two levels of the upper cervical spine due to multiple whiplashes incurred during four different directional impacts in the automobile accident.
- c. 11/13/1991 - Low back surgery to remove a broken fusion, from a previous successful fusion in 1976, in the lower lumbar spine. And, to install metal rods, pivots, bone stimulators, wires, and battery packs.
- d. 03/10/1992 - Chest surgery to remove a vertebrae and discs from the thoracic T-7 area. Then, to construct a vertebrae from a removed rib, fuse three levels, reinflate the left lung, remove scar tissue, and install a metal plate and bolts for support.
- e. 08/19/1992 - Low back surgery in the lumbar area to remove a broken rod, resulting from physical therapy subsequent to the 11/13/1991 surgery, and to remove the battery packs, wires and other bone stimulating hardware.

Penney asked Defendant Williams for permission to take sick leave/leave of absence and a temporary abatement of excessive overtime to help Penney recover from his hit and run accident, to which Defendant Williams responded that Penney could either complete his then current projects or be fired.<sup>10</sup>

Shortly before June 18, 1986, Penney completed the projects

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<sup>10</sup> Verified Complaint p. 6, ¶ 30.

which he had been given.<sup>11</sup>

Penney discussed his impending dismissal with both another director at defendant E-System's Montek Division and with a subcontract consultant<sup>12</sup> working on one of Montek's projects that Penney had retained him for. Penney explained that he felt sure he would be fired due to Defendant Williams threats and actions, and that rumor had it that defendant E-Systems/Montek Division's Procurement Department would be reorganized under a new director.<sup>13</sup>

At the suggestion of the subcontract consultant who was then working on a contract with defendant E-Systems and of one of the directors of the E-Systemns/Montek Division, Penney made preparations ("Traffic Package")<sup>14</sup> to try to, first justify the current organization structure of his department, which included the Traffic function; and, second, to prepare a justification package for his job as a fall back position, which Penney intended to present as a last resort to persuade defendant E-Systems/Montek Division's management that he should not be fired. This job "Justification Package" took days to put together and consisted of several years of salaried overtime statistics set forth in

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<sup>11</sup> Verified Complaint, p. 7, ¶ 34.

<sup>12</sup> Deposition of: WILLIAM V. PENNEY, 9/10/1990, at pp. 237, and 241.

<sup>13</sup> Deposition of: WILLIAM V. PENNEY, 9/10/1990, at pp. 78-88.

<sup>14</sup> Deposition of: WILLIAM V. PENNEY, 9/10/1990, at pp. 2220, and 233.

pictorial color graphs and charts, and especially emphasized the literally "back breaking" work load Penney had been forced to work while injured.<sup>15</sup>

As expected, Penney was called to a meeting ("Organizational Meeting") chaired by Defendant Williams on 6/18/1986. Penney took with him to the meeting the "Traffic Package". Defendant Williams was furious that his actions had been anticipated by Penney and Defendant Williams promptly fired Penney.<sup>16</sup>

In defendant Williams' Affidavit of December 24, 1992, he admitted that he had chaired a meeting to plan the firing of Penney.<sup>17</sup>

On the same day (June 18, 1986) and following the Organizational Meeting, Penney went back to his office and in a last attempt to keep his job, had his secretary modify the cover memo of the Justification Package by taking the advice of the E-Systems' contract consultant and changing the title to "Letter of Resignation" and modified the last paragraph of the memo. Within minutes of his being fired by defendant Williams, Penney had delivered one set of the "Justification Package" to Defendant Williams' secretary and one set to Mr. Cocke's secretary, together

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<sup>15</sup> Deposition of: WILLIAM V. PENNEY, 9/10/1990, pp. 231, 235-241.

<sup>16</sup> Deposition of: WILLIAM V. PENNEY, 9/10/1990, at pp. 78-88.

<sup>17</sup> Deposition of: WILLIAM V. PENNEY, 9/10/1990, at pp. 78-88.

with all graphs and charts on overtime.<sup>18</sup>

The Justification Package submitted by Penney to his immediate supervisor Mr. J. G. Cocke, with a copy to defendant Williams, complained of and documented the "back-breaking overtime load" and objected to certain recent and proposed changes that would require additional excessive overtime to implement. By said Justification Package, Penney also indicated that he was being forced out of employment with defendant E-Systems if a reasonable solution was not found to the problem of the excessive uncompensated overtime being unfairly and illegally imposed upon exempt salaried employees, including himself.<sup>19</sup>

Penney was called to Cocke's office to meet with him and defendant Buchanan where the firing was confirmed by Cocke's filling in the **blank** on the face of the modified memo of the Justification Package delivered by Penney the date of 6/18/1986.<sup>20</sup>

Having expected and anticipated such an action for days, Penney asked defendant Buchanan about benefits, and specifically requested **insurance conversion**. Buchanan said that he would take care of it and would talk further with Penney at his EXIT

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<sup>18</sup> Deposition of: WILLIAM V. PENNEY, 9/10/1990, at pp. 78-88.

<sup>19</sup> Attachment "A" to defendants' Memorandum in Support of Their Motion for Summary Judgment dated December 31, 1992.

<sup>20</sup> Deposition of: WILLIAM V. PENNEY, 9/10/1990, at pp. 78-88.

INTERVIEW. Though requested, the EXIT INTERVIEW was never granted. In a telephone call to Defendant Buchanan while packing to depart from his office at defendant E-Systems, Penney again requested an insurance conversion.<sup>21</sup>

On June 18, 1986, Defendant Williams told Penney he was fired, and subsequently that day issued orders resulting in Penney's discharge from employment with E-Systems.<sup>22</sup>

On June 18, 1986 and after receiving notice of his being fired, Penney requested of Mr. Alfred E. Buchanan ("Buchanan"), manager of human resources of E-Systems' Montek Division, paperwork necessary to allow Penney to convert all of his E-Systems' company provided insurance to personal privately held insurance.<sup>23</sup>

Though Defendant Buchanan promised he would later meet with Penney, perform an "exit interview" and provide Penney with all necessary insurance conversion forms, he refused and failed to hold the exit interview and the necessary insurance conversion forms were mailed to Penney after considerable delay caused by E-Systems.<sup>24</sup>

Although the completed and signed insurance conversion forms

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<sup>21</sup> Deposition of: WILLIAM V. PENNEY, at pp. 277, 278, and 279.

<sup>22</sup> Verified Complaint, p. 6, ¶ 33.

<sup>23</sup> Verified Complaint, p. 2, ¶ 5, and p. 8, ¶¶ 41-46.

<sup>24</sup> Verified Complaint, p. 8, ¶ 47.

were delivered to the insurance company by Penney promptly after he finally received them from E-Systems, the insurance company subsequently informed Penney that the conversion would not be allowed because the forms had not been received within the time limit set in the Montek Division's employee manual, leaving Penney, due to his health problems, uninsured and uninsurable from June 18, 1986, to this date.<sup>25</sup>

**Order of 7/10/1992 granting defendants' Motion for Partial Summary Judgment (Penney's Causes 1, 3, 4, and 5).**

On July 10, 1992, the trial court, pursuant to defendants' Motion for Partial Summary Judgment dated September 24, 1991 and without entering any findings of facts or conclusions of law, signed and filed an ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT in which the trial court granted defendants' Motion for Partial Summary Judgment, dismissing "with prejudice" Penney's First Cause of Action (breach of public policy against disabled), Third Cause of Action (breach of implied covenant of good faith and fair dealing), Fourth Cause of Action (breach of contract), and Fifth Cause of Action (intentional infliction of emotional distress, pain and suffering).

**First Cause (breach of public policy against disabled)**

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<sup>25</sup> Verified Complaint, p. 9, ¶¶ 48 & 51.

Penney offered uncontroverted sworn testimony that prior to his employment with E-Systems, Penney had received a total disability from Social Security in 1972 because of prior industrial and job related accidents that had left Penney with respiratory and back problems.<sup>26</sup>

Penney offered uncontroverted sworn testimony that, on or about May 9, 1986, Penney was injured in a hit and run accident, which caused Penney immediate, intense and continuous pain.<sup>27</sup>

As a result of said hit and run accident, Penney underwent major surgery on his neck in 1988 and 1989, on his lower back on November 13, 1991, on his T7 vertebral body on March 10, 1992, and on his L3-4 and L4-5 vertebral body on August 19, 1992.<sup>28</sup>

Penney testified that when Defendant Williams became the General Manager of the Montek Division of E-Systems which employed Penney, Defendant Williams showed a lack of toleration for health problems and made fun of Penney because of his disabilities, which Defendant Williams denied.<sup>29</sup>

Penney testified that, despite his physical disabilities and recent injury, he was required by Defendant Williams to work a vast

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<sup>26</sup> Verified Complaint, p. 3, ¶ 9; Answer, p. 3, ¶ 9.

<sup>27</sup> Verified Complaint, p. 6, ¶ 27-28; Answer, p. 5, ¶ 27-28.

<sup>28</sup> Affidavits of Dr. Allen J. Meril, M.D., and William V. Penney.

<sup>29</sup> Verified Complaint p. 4, ¶¶ 15 & 16; Answer, p. 15 & 16.

number of overtime hours,<sup>30</sup> and defendants conceded that Penney "may sometimes have worked long hours."<sup>31</sup>

Penney testified that Defendant Williams refused to give Penney sick leave or leave of absence to recuperate from the hit and run accident and, instead, gave Penney a ultimatum timely to complete all current projects or to lose his job, forcing Penney to work for the following five or six weeks in extreme back-breaking pain.<sup>32</sup>

Penney testified that Defendant Williams constantly threatened to fire Penney if he did not meet various goals dictated by Defendant Williams or if he did not remain under budget.<sup>33</sup>

On June 18, 1986, Defendant Williams instructed Penney's supervisor Mr. J. G. Cocke to involuntarily terminate Penney.

At all relevant times, Defendant Williams was a Vice President of E-Systems and the General Manager of E-Systems' Montek Division for which Penney worked.

Defendant E-Systems was, at all relevant times, a Federal contractor under contract with the Federal government, both as a prime contractor and as a subcontractor, working under more than

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<sup>30</sup> Verified Complaint p. 5, ¶ 21.

<sup>31</sup> Answer, p. 3, ¶ 14.

<sup>32</sup> Verified Complaint, p. 6, ¶¶ 29, 30, & 31.

<sup>33</sup> Verified Complaint, p. 5, ¶ 23.

one Federal contract, each of which was for more than \$2,500 in goods and/or services.

Penney was, at all relevant times, as an employee of defendant E-Systems, was an employee of a Federal contractor working on contracts or subcontracts each of which was for more than \$2,500 in goods and/or services.

One or more of the defendants discriminated against Penney in his employment and advancement while he was employed with defendant E-Systems and said discrimination was on the basis of Penney's physical handicap and disabilities.

One or more of the defendants discriminated against Penney by involuntarily terminating Penney's employment with defendant E-Systems on the basis of Penney's physical handicap and disabilities.

**Third Cause of Action (breach of implied covenant of good faith and fair dealing)**

Penney offered factually uncontroverted testimony that, as a condition of his employment with E-Systems, he was required by E-Systems to relocate himself, his family and home from his native State of Texas to Salt Lake City, Utah.<sup>34</sup>

Penney offered testimony<sup>35</sup>, which defendants admitted,<sup>36</sup> that

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<sup>34</sup> Verified Complaint ¶ 10.

<sup>35</sup> Verified Complaint, ¶ 17.

Penney was required, by E-Systems Corporate Policy Directive No. 230.1A, to take an annual physical as a condition of continued employment with E-Systems. Prior to Penney's May 9, 1986 automobile accident, Penney received four annual physicals by E-Systems' doctor which showed Penney to be in excellent health with no spine problems.

Defendants admitted that Penney received incentive compensation in January 1986, stock options in 1983 and 1984 and, received a commendation in November 1981.<sup>37</sup>

Defendants admitted<sup>38</sup> that E-Systems had "rules", "regulations", and "policies" which E-Systems "promulgated" and with which Penney was "duty bound to comply" as a condition of continued employment.

Defendants admitted<sup>39</sup> that E-Systems had a policy concerning overtime, which was set forth in E-Systems/Montek Directive No. 200.8, and provided, among other things:

- a. Overtime of indirect exempt employees is typically considered "unscheduled" or "casual" overtime, which is time required to

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<sup>36</sup> Answer, ¶ 17; Defendants' Response to Plaintiff's 1st Set of Interrogatories, Response No. 23.

<sup>37</sup> Answer ¶ 25 & 26.

<sup>38</sup> Answer, ¶¶ 53 & 58.

<sup>39</sup> Defendants' Responses to Plaintiff's 1st Set of Interrogatories, Response #22.

complete normal assignments and is considered part of the job. No additional compensation is paid for this type of overtime.

- b. Direct exempt employees, like engineers, may be required to work scheduled overtime in certain critical situations when failure to accomplish specific tasks without extra overtime would result in the failure of the Division to meet requirements or objectives.

Defendants expressly admitted<sup>40</sup> that E-Systems entered into an "oral contract" with Penney.

Defendants expressly admitted<sup>41</sup> that E-Systems had a corporate policy concerning "terminations" contained in E-Systems/Montek Directive No. 200.4, and that consistent with that policy, the procedure established and used at E-Systems' Montek Division for processing voluntary and involuntary terminations was to have the terminating employee sign a document entitled "Termination Checklist", affirming that he or she had discussed certain topics with a member of the employee relations department and has received a final paycheck for all wages.

Defendants expressly admitted that E-Systems has a written policy regarding performance appraisals and merit increases as set

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<sup>40</sup> Defendants' Response to Plaintiff's 1st Set of Interrogatories, Response No. 30.

<sup>41</sup> Defendants' Response to Plaintiff's 1st Set of Interrogatories, Response No. 44.

forth in E-Systems/Montek Division Directive No. 200.6<sup>42</sup> and that Penney received periodic performance appraisals as a condition of continued employment with E-Systems.<sup>43</sup>

Defendants expressly admitted that E-Systems had a written policy governing "severance pay" as set forth in E-Systems/Montek Division Directive No. 200.3 where severance pay was available for laid off employees but not for those involuntarily terminated.<sup>44</sup>

Defendants expressly admitted that E-Systems had written policies regarding and governing "treatment of the disabled" (E-Systems/Montek Division Directive No. 200.42),<sup>45</sup>, "business conduct and ethics" (E-Systems/Montek Division Directive No. 200.46)<sup>46</sup>,

Defendants expressly admitted that Penney had never been warned or disciplined prior to termination.<sup>47</sup>

Defendants expressly admitted that E-Systems management fired Penney on June 18, 1986.<sup>48</sup>

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<sup>42</sup> Defendants' Response to Plaintiff's 1st Set of Interrogatories, Response Nos. 46 & 31.

<sup>43</sup> Defendants' Response to Plaintiff's 1st Set of Interrogatories, Response No. 32.

<sup>44</sup> Defendants' Response No. 47 to Plaintiff's 1st Interrogatories.

<sup>45</sup> Defendants' Response No. 49 to Plaintiff's 1st Set of Interrogatories.

<sup>46</sup> Defendants' Response No. 52 to Plaintiff's 1st Set of Interrogatories.

<sup>47</sup> Defendants Response No. 54 to Plaintiff's 1st Set of Interrogatories.

<sup>48</sup> Defendants' Response No. 58 to Plaintiff's 1st Set of Interrogatories.

Defendants expressly admitted that the benefits lost to Penney because of his termination with E-Systems included Retirement Plan, Accidental Death and Dismemberment Insurance (Salaried), Employee Stock Ownership Plan ("ESOP"), Health Care and Weekly Income Disability Plan (Salaried Flexcomp Plan A), Long Term Disability Plan, Long Term Disability Plan Plus, Term Life Insurance, Dental Expense Coverage, Tax-Advantage Accumulation Plan ("T-CAP"), Health Care and Weekly Income Disability Plan (Salaried Flexcomp B+, B and New Plan C), Optional Life Insurance Program ("Pru-Opt"), E-Systems' Cancer Insurance Coverage, Your Employee Assistance Program (A Supervisory Guide), FHP Health Care Medical Benefits, Physicians Health Plan of Utah and Subsidiaries, 1990 Flexcomp (A Package of Plusses from E-Systems) and Universal Life Plan Benefits and Guidelines,<sup>49</sup> vacation pay, leave of absence, holiday pay, sick pay, retirement pay, retirement plan, medical plan, dental plan, weekly accident and sickness insurance, long-term disability plan, accidental plan, accidental death and dismemberment insurance, employee basic group life insurance, employee optional group life insurance, ESOP, bereavement pay, paid jury duty, military leave pay, employee's assistance program, universal life insurance, cancer insurance, 401K plan, credit union, workers compensation insurance, unemployment benefits, social security . guaranteed

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<sup>49</sup> Defendants' Response No. 61 to Plaintiff's 1st Set of Interrogatories.

investment contract, annual physical, parking and tuition reimbursement.<sup>50</sup>

The insurance benefits Penney was entitled to in connection with his employment with defendant E-Systems terminated on the last day of June 1986, the month in which Penney was fired by the defendants. The Federal C.O.B.R.A. law, which would have made available for an additional six (6) months Penney's E-Systems insurance benefits, came into effect July 1, 1986, leading Penney to conclude that his involuntary termination was intentionally planned by defendants so as to deprive Penney of any benefits or rights he might have enjoyed under C.O.B.R.A.<sup>51</sup>

Defendants admit - conversion of Health Care and Weekly Income Disability Plan required application and payment w/n 31 days of termination<sup>52</sup>

Defendants admit 40.04 hours of vacation leave and 240 hours sick leave at termination.<sup>53</sup>

Defendants admit no attempts were made to alter or reduce Penney's workload in consideration of injuries sustained in an

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<sup>50</sup> Defendants' Response No. 64 to Plaintiff's 1st Set of Interrogatories.

<sup>51</sup> Deposition of: WILLIAM V. PENNEY, 9/10/1990, at pp. 261, 276, and 288.

<sup>52</sup> Defendants' Response No. 62 to Plaintiff's 1st Set of Interrogatories.

<sup>53</sup> Defendants' Response No. 63 to Plaintiff's 1st Set of Interrogatories.

automobile accident on May 9, 1986.<sup>54</sup>

Defendants, in their sworn response to Penney's Interrogatories, when questioned as to whether Penney was ever over budget, were unable to or refused to cite one single instance in which Penney was ever over budget.<sup>55</sup>

Defendants admit that, before they fired Penney, defendant E-Systems had issued numerous formal written policies in the form of E-Systems/Montek Directives which established a contract for employment between E-Systems and Penney which was more than a contract at will.

The contract of employment between defendant E-Systems and Penney provided for progressive discipline prior to any involuntary termination and required the defendants not arbitrarily to terminate Penney nor arbitrarily to force him to resign BUT rather required defendants to give Penney adequate notice and warning regarding any actions by Penney that could result in his termination, together with an opportunity to cure any deficiency in Penney's actions or behavior that might result in his termination;

Until the very day defendants involuntarily terminated him, Penney had an excellent record with defendant E-Systems including without limitation numerous raises, promotions, and commendations

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<sup>54</sup> Defendants' Response No. 71 to Plaintiff's 1st Set of Interrogatories.

<sup>55</sup> Defendants' Response No. 74 to Plaintiff's 1st Set of Interrogatories.

and ABSOLUTELY devoid of any warnings, notices, progressive discipline or other negative or adverse personnel actions; and,

Defendants, in violation of the terms and conditions of defendant E-Systems' own express written policies and employment contract with Penney, arbitrarily, capriciously and without any justification involuntarily terminated Penney without any prior notice, warning, progressive discipline or opportunity to cure any alleged deficiency in Penney's actions or behavior that might result in his termination.

**Dismissal of Fourth Cause of Action (Breach of Contract)**

Defendant E-Systems had in place, at all relevant times, one or more formal written company policies requiring that the defendants promptly and timely make available to all employees terminating their employment with defendant E-Systems an opportunity to continue as a private individual the health insurance and other insurance benefits each had availed himself of as an employee of defendant E-Systems;

Penney had been disabled before he was employed by defendant E-Systems and was physically disabled and unable to obtain health insurance at the time he was employed by defendant E-Systems and the facts that defendant E-Systems was self-insured and that Penney would be able to obtain health insurance and other insurance benefits through employment with defendant E-Systems were material

inducements for Penney to accept employment with defendant E-Systems;

Defendant E-Systems and the other defendants had record of, knew and were thoroughly advised concerning the existence and severity of Penney's disabilities and uninsurability, and of his desperate need and desire to continue as a private individual the health insurance and other insurance benefits he had availed himself of as an employee of defendant E-Systems; and,

Defendants, arbitrarily, capriciously and without any justification whatsoever, breached their formal written company policies requiring that the defendants promptly and timely make available to Penney at his time of involuntary termination of his employment with defendant E-Systems an opportunity to continue as a private individual the health insurance and other insurance benefits he had availed himself of as an employee of defendant E-Systems;

**Dismissal of Fifth Cause of Action (Intentional Infliction of Emotional Distress, Pain and Suffering)**

Penney was, at all relevant times, a valued, trusted, loyal, dedicated, hardworking, skilled, highly motivated employee of defendant E-Systems, with an excellent personnel record to include without limit numerous raises, advancements, promotions, recognitions and awards;

Penney had been disabled before he was employed by defendant

E-Systems and was physically disabled and unable to obtain health insurance at the time he was employed by defendant E-Systems and the facts that defendant E-Systems was self-insured and that Penney would be able to obtain health insurance and other insurance benefits through employment with defendant E-Systems were material inducements for Penney to accept employment with defendant E-Systems;

Defendant E-Systems and the other defendants had record of, knew and were thoroughly advised concerning the existence and severity of Penney's disabilities and uninsurability, and of his desperate need and desire to continue as a private individual the health insurance and other insurance benefits he had availed himself of as an employee of defendant E-Systems; and,

One or more of defendants was negatively biased towards and disliked Penney because of his physical disability, and intentionally, wilfully, and maliciously took actions calculated to offend, intimidate, and coerce Penney into resigning employment with defendant E-Systems, including without limit, making fun of and otherwise mocking Penney to his face and to one or more of his co-workers in his absence all because of his physical handicap, threatening immediately to fire Penney for no reason at all or if he failed to accede to a growing list of unreasonable demands arbitrarily imposed upon Penney by one or more of the defendants,

refusing to allow Penney, after his severe injury in an automobile accident, to use sick leave he had already accrued and a leave of absence, refusing to allow Penney, after his severe injury in an automobile accident, to use vacation time he had already accrued, imposing upon Penney, after his severe injury in an automobile accident, an illegal, excessive, and unjustified overtime burden, going outside of the organizational structure to make burdensome assignments to Penney and to require constant detailed accountings from Penney, wrongfully terminating Penney in violation of the formal written policies of defendant E-Systems, failing to follow defendant E-System's formal written policies and procedures that required insurance benefits be made available to Penney, resulting in Penney's loss of all opportunity to keep in force the insurance benefits for which he had paid and had kept in force while working for defendant E-Systems.

**Dismissal of Second Cause of Action (Violation of Public Policy)**

The trial court had been advised in writing by Penney that he was scheduled for mandatory back surgery on August 19, 1992 as part of an ongoing medical treatment necessitated by the injuries he had sustained in a May 9, 1986 automobile accident, which injuries and defendants' reaction thereto were, at least in part, the cause of Penney's being subjected to weeks of outrageous and offensive

treatment by defendants and, ultimately, wrongful termination by defendants;

The trial court had been advised in writing by Penney that his recovery from the August 19, 1992 back surgery would be slow and painful and would, for its duration, greatly impair Penney's ability to complete his discovery and pre-trial motions;

The trial court was aware that Penney was greatly disadvantaged in his prosecution of this lawsuit in that he was forced to remove himself from Utah and to reside in Texas in order to receive necessary medical treatment, even though the trial court was in Utah, most of Penney's potential witnesses were in Utah, Penney's causes of action against the defendants had arisen in Utah during Penney's almost 7 years of employment there with defendant E-Systems;

Penney was forced to represent himself PRO SE in the above action because of his financial distress and impoverishment caused by the combination of his ongoing medical treatment and the defendants' illegally discharging Penney in a manner that left him devoid of any health or other insurance benefits; and,

The trial court's reasonably extending the time for Penney to complete his discovery and his pre-trial motions would not have materially prejudiced any of the defendants, especially where the

lawsuit was less than two and one-half (2 1/2) years old, having been commenced on June 15, 1990, the delays were caused in part because the actions of defendants had left Penney without any health, medical or other insurance and forced him to move to Texas where he could receive adequate medical treatment, and the probable witnesses and evidence were and would remain available for the reasonably foreseeable future.

**Scheduling Order of 8/3/1992 requiring end of discovery by 12/31/92 and all dispositive motions to be heard by "Jan 4, 1992".**

The Scheduling Order of 8/3/1992 issued by the trial court and mailed to Penney contained materials that were incomplete, apparently inaccurate, confusing and prejudicial to Penney including:

- a. Paragraph 3 mandated that the parties to the lawsuit were to submit Jury Instructions to the trial court by a certain date, BUT the date was left blank; and,
- b. Paragraph 4 mandated that all discovery including responses was to be completed by December 1, 1992, even though the trial court and other parties had been advised and were aware that Penney was scheduled for mandatory surgery immediately following the August 3, 1992 scheduling which would result in a temporary

incapacitation of Penney and in a slow painful recovery making it difficult to work on completing discovery, even though Penney had timely begun discovery which defendants had refused or failed properly and completely to respond to, even though Penney was required by his medical condition to reside in Texas and far away from Utah where most of the records and witnesses needed by Penney to complete his case were located, and even though Penney was forced by his impoverishment to represent himself PRO SE which further slowed down his completion of discovery and preparation for trial.

- c. Paragraph 5 improperly confused Penney by mandating that "ALL DISPOSITIVE MOTIONS ARE TO BE HEARD BY JAN 4, 1992", making it appear that the time had already passed for Penney to make any dispositive motions or to have any responses to dispositive motions heard by the trial court.

Minute Entries & Order granting defendants' Motion for Summary Judgment (Penney's Cause 2).

Judgment of 3/9/1993 granting summary judgment to defendants and dismissing Penney's lawsuit.

Trial Court's failure to grant Penney's Motion for Continuance & Leave To Complete Discovery

Prior to the trial court's granting the defendants' Motion for

Summary Judgment against Penney's second cause of action, Penney filed with the trial court and served on opposing counsel the following pleadings and evidentiary affidavits:

- a. Penney's RESPONSE TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT AND NOTICE TO SUBMIT FOR DECISION FILED JANUARY 15, 1993.
- b. Penney's MEMORANDUM IN OPPOSITION TO DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT supported by simultaneously filed AFFIDAVIT OF WILLIAM V. PENNEY, and AFFIDAVIT OF ALLEN J. MERIL, M.D.
- c. PLAINTIFF'S MOTION FOR CONTINUANCE & FOR LEAVE TO COMPLETE DISCOVERY, supported by simultaneously filed AFFIDAVIT OF WILLIAM V. PENNEY, and AFFIDAVIT OF ALLEN J. MERIL, M.D.

The trial court, in its Minute Entry of 2/16/1993, concluded that "Plaintiff [Penney] has conducted essentially no discovery ..." which was untrue, because:

- a. Penney had, promptly after filing the lawsuit, commenced discovery against defendants by serving on them EIGHTY-SEVEN (87) separate detailed formal written interrogatories and THIRTY-ONE (31) separate detailed formal written requests for production of documents, many of which defendants failed or refused to answer at all or

failed or refused to answer completely; and,

- b. Penney's former attorney had on numerous occasions attempted to schedule the depositions of the defendants but was prevented from doing so by scheduling conflicts on the part of the defendants and/or their counsel; and,
- c. Penney had, despite the intense suffering and pain he was experiencing as a result of his May 9, 1986 automobile accident and consequent surgeries, submitted himself to a grueling multi-day deposition to facilitate the ongoing discovery process associated with the trial preparation; and,
- d. Pennry had an expectation and a right under the Utah Rules of Civil Procedure of requiring the defendants to complete the discovery process initiated by Penney by delivering to Penney complete answers to Penney's interrogatories, and a specific date on which to take the depositions of the defendants.

The Motion For Continuance & For Leave To Complete Discovery was supported by the Affidavit of Dr. Allen J. Meril, M.D., the physician who had performed numerous surgeries on the Penney's spine, and who had a first hand personal knowledge of Mr. Penney's physical condition at all relevant times during the proceedings before the trial court.

The Motion For Continuance, together with the Affidavit of Dr. Meril, justified the trial court in granting Penney a continuance and leave to complete discovery because Penney's numerous surgeries and prolonged recovery constituted extraordinary circumstances beyond Penney's control that had materially impeded Penney's ability to complete discovery and because granting Penney's request for continuance and leave to complete discovery would NOT have unfairly prejudiced any of the defendants.

Penney NEVER received any copy of any ruling or other response from the trial court on said Motion For Continuance and Leave To Complete Discovery, EXCEPT for the trial court's JUDGMENT.

**5. ISSUES PRESENTED BY THE APPEAL:**

**I. Trial Court's conclusion that Penney was not involuntarily terminated but rather resigned.**

A. Regarding the trial court's granting summary judgment against Penney's claim that he was involuntarily terminated, did the court commit reversible error in denying Penney a trial by a jury of his peers by ruling that there was no genuine issue as to any material fact where the evidence given to the trial court on the issue included the following:

1. Penney's sworn statement that he was unjustly involuntarily terminated or unjustly constructively terminated;<sup>56</sup>
2. A copy of a memorandum submitted by Penney to defendants which was referenced as "SUBJECT: Letter of Resignation" but which contained NO resignation date, which complained of a "back-

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<sup>56</sup> Verified Complaint, ¶¶ 61 and 62

breaking overtime load" and of recent and proposed changes that would require additional excessive overtime to implement, and which ONLY offered resignation at some unspecified future time if suggested goals could not be met by Penney;<sup>57</sup>

3. Defendants' express admissions that "the termination of plaintiff's employment was discussed by management prior to his [alleged] resignation"<sup>58</sup>, that at said time "Mr. Cocke recommended to [defendant] Mr. Williams that plaintiff be terminated.", that "Mr. Williams concurred with his recommendation [, and that] Mr. Cocke also consulted with [defendant] Mr. Buchanan, who likewise thought that termination would be ... appropriate ...";<sup>59</sup> and,
4. Defendants' expressly admitted, in reference to said memorandum, that "The letter also contained a blank resignation date" which was filled in by defendants.<sup>60</sup>

**Standard of Appellate Review:** Summary judgment by the trial court. Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Because a summary judgment resolves only questions of law, the appellate court is to give no deference to the trial court's determination. In reviewing an entry of summary judgment, the appellate court is to view the facts in the light most favorable to the opposing party and affirm only where it appears no genuine dispute exists as to any material fact, and where the moving party is entitled to judgment as a matter of law. Druffner v. Mrs. Fields, Inc., 828 P.2d 1075 (Utah App.

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<sup>57</sup> Attachment "A" to defendants' Memorandum in Support of Their Motion for Summary Judgment dated 12/31/1992

<sup>58</sup> Defendants' Response No. 54 to Plaintiff's 1st Set of Interrogatories

<sup>59</sup> Defendants' Response No. 54 to Plaintiff's 1st Set of Interrogatories; Affidavit of [defendant] David A. Williams ¶ 7

<sup>60</sup> Defendants' Response No. 58 to Plaintiff's 1st Set of Interrogatories

1992); Johnson v. Morton Thiokol, Inc., 818 P.2d 997, 999-1000 (Utah 1991); New West Fed. Sav. & Loan Ass'n v. Guardian Title Co., 818 P.2d 585, 588 (Utah App. 1991). Where a party opposing a motion for summary judgment timely presents his affidavit stating reasons why he is presently unable to proffer evidentiary affidavits, he directly and forthrightly invokes the trial court's discretion. Unless dilatory or lacking in merit, the motion should be liberally treated. Exercising a sound discretion the trial court then determines whether the stated reasons are adequate. Cox v. Winters, 678 P.2d 311 (Utah 1984); Strand v. Associated Students of University of Utah, 561 P.2d 191 (Utah 1977).

**II. Trial Court's conclusion that Penney was not terminated in violation of Public Policy.**

- A. Regarding the trial court's granting summary judgment against Penney's claim (second cause of action) that his involuntary termination was in violation of clear and substantial PUBLIC POLICY against defrauding the federal government and its contractors, did the court commit reversible error in denying Penney a trial by a jury of his peers by ruling that the defendants were entitled to judgment in their favor as a matter of law, where the record before the court shows, among other things:
1. Penney accused one or more of the defendants of attempting illegally to defraud the federal government and/or one of its contractors ("Hazeltine") out of money directly or indirectly by falsifying contract Price/Cost reports made to said government contractor in order to "justify" forcing Hazeltine into paying more for services than actually incurred by defendants;
  2. Penney refused to participate in the defendants' scheme to defraud the government or government contractor;
  3. Penney fell out of favor with and was fired by defendants because of Penney's accusations and refusal to participate;
  4. Despite defendants' assertion that "[Penney's] allegations make no sense ... [because] the

Hazeltine contract was a firm fixed price contract ... [whose] price cannot be changed ...", defendants filed in the **THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY** on July 20, 1989, the lawsuit of *E-SYSTEMS, INC./MONTEK DIVISION v. HAZELTINE CORPORATION*, Civil No. C-89-890904469, whereby the defendants sought additional monies from Hazeltine alleging, among other things, that the contract with Hazeltine was changed from a "fixed-price" contract to a "cost reimbursement" contract.

- B. Regarding the trial court's granting summary judgment against Penney's claim (second cause of action) that his involuntary termination was in violation of clear and substantial PUBLIC POLICY against defrauding the federal government and its contractors, did the court commit reversible error in ruling that the defendants were entitled to judgment in their favor as a matter of law, where the record before the court shows, among other things:
1. Penney accused one or more of the defendants of attempting illegally to defraud the federal government and/or one of its contractors ("General Electric") out of money directly or indirectly by selling to General Electric and/or other customers property that was already owned by General Electric and which was being held in storage by defendants;
  2. Penney refused to participate in the defendants' scheme to defraud the government or government contractor; and,
  3. Penney fell out of favor with and was fired by defendants because of Penney's accusations and refusal to participate.
- C. Regarding the trial court's granting summary judgment against Penney's claim (second cause of action) that his involuntary termination was in violation of clear and substantial PUBLIC POLICY against defrauding the federal government and its contractors, did the court commit reversible error in denying Penney a trial by a jury of his peers by ruling that the defendants were entitled to judgment in their favor as a matter of law, where the

record before the court shows, among other things:

1. Penney accused one or more of the defendants of attempting illegally to defraud the federal government and/or one of its contractors ("Northrup") out of money directly or indirectly by illegally billing Northrup for tooling and fixtures which had not been built at the time of said billing;
2. Penney refused to participate in the defendants' scheme to defraud the government or government contractor; and,
3. Penney fell out of favor with and was fired by defendants because of Penney's accusations and refusal to participate.

D. Regarding the trial court's granting summary judgment against Penney's claim (second cause of action) that his involuntary termination was in violation of clear and substantial PUBLIC POLICY of the State of Utah and of the United States of America, did the court commit reversible error in denying Penney a trial by a jury of his peers by ruling that the defendants were entitled to judgment in their favor as a matter of law, where the record before the court shows, among other things:

1. In Penney's original Verified Complaint of June 15, 1990, Penney testified under oath at page 11 ¶ 59 that:

"The defendants generally and Williams specifically terminated plaintiff arbitrarily without good cause and in violation of fundamental public policy of the State of Utah and the United States in the following respects, among others." (emphasis added)

In the Verified Complaint Penney proceeded to follow with 11.A--Hazeltine, 11.B--General Electric, and 11.C--Northrup as referred to therein.

2. On August 3, 1992, Judge Noel conducted a pre-trial scheduling hearing/conference in his chambers. Due

to the threat of having the case dismissed if he were not in attendance, Penney rescheduled critical spine surgery and was present representing himself PRO SE. Also present during the hearing was Paul Dame of Parsons, Behle and Latimer. During the hearing, Penney introduced two of the "among others" designated in his original Verified Complaint. One issue covered the KAL007 issue and the other, the Bell Output Structures/ Manifolds/ Actuators, both of which were subsequently included in Penney's Response to Defendants' Motion For Summary Judgment, at Judge Noel's direction. Although Mr. Dame objected, Judge Noel approved the new causes as being covered under Cause Two of Penney's Verified Complaint.

- a. Penney accused one or more of the defendants of knowingly participating in the installing intelligence equipment aboard a CIVILIAN Boeing 747 airliner, thus putting the unknowing passengers, which included many United States citizens and a prominent United States Congressman, in jeopardy of losing their lives. The actions taken by defendants were clearly against Public Policy of the United States and the State of Utah.
- b. Penney refused to participate in the defendants negligently secured programs, as set forth in greater detail in Plaintiff's Response to Defendants Motion For Summary Judgment of Cause Two of the Complaint filed January 14, 1993, reference pages 3, 4, and 14.
- c. Penney also accused one or more of the defendants of participating in the fraudulent activity of shipping defective critical flight hardware to their customer Bell Helicopter. On pages 12, 13, and 14 of Plaintiff's Response to Defendants' Motion for Summary Judgment of Cause Two filed with the trial court January 14, 1993, Penney accuses defendants of purposely disposing of X-

rays/evidence that would have made Defendants liable in the event of a failure of either an output structure and/or manifold manufactured by them.

- d. As a result of Penney's morale, eithics, honesty, and integrity, defendants harrassed, threatened and attempted to intimidate him. Penney refused to participate in the cover ups of both the KAL007 and Bell Output Structures/ Manifolds/ Actuators breach of contract, breach of public policy, and the breaking of State and Federal laws.

**Standard of Appellate Review:** Summary judgment by the trial court. Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Because a summary judgment resolves only questions of law, the appellate court is to give no deference to the trial court's determination. In reviewing an entry of summary judgment, the appellate court is to view the facts in the light most favorable to the opposing party and affirm only where it appears no genuine dispute exists as to any material fact, and where the moving party is entitled to judgment as a matter of law. Druffner v. Mrs. Fields, Inc., 828 P.2d 1075 (Utah App. 1992); Johnson v. Morton Thiokol, Inc., 818 P.2d 997, 999-1000 (Utah 1991); New West Fed. Sav. & Loan Ass'n v. Guardian Title Co., 818 P.2d 585, 588 (Utah App. 1991). Where a party opposing a motion for summary judgment timely presents his affidavit stating reasons why he is presently unable to proffer evidentiary affidavits, he directly and forthrightly invokes the trial court's discretion. Unless dilatory or lacking in merit, the motion should be liberally treated. Exercising a sound discretion the trial court then determines whether the stated reasons are adequate. Cox v. Winters, 678 P.2d 311 (Utah 1984); Strand v. Associated Students of University of Utah, 561 P.2d 191 (Utah 1977).

III. Trial Court's conclusion that Penney was not terminated in violation of laws against discrimination against disabled.

- A. Regarding the trial court's granting summary judgment

against Penney's claim (first cause of action) that one or more of the defendants illegally discriminated against Penney in his employment and advancement with defendant E-Systems, and involuntarily terminated Penney in violation of clear and substantial PUBLIC POLICY against discrimination against the disabled or handicapped, did the court commit reversible error in denying Penney a trial by a jury of his peers by ruling that the defendants were entitled to judgment in their favor as a matter of law, where the record before the court shows, among other things:

1. Defendant E-Systems was, at all relevant times, a Federal contractor under contract with the Federal government both as a prime contractor and as a subcontractor engaged in contract each of which was more than \$2,500;
2. Penney was, at all relevant times, an employee of Federal contractor defendant E-Systems and as such worked on contracts or subcontracts each of which was more than \$2,000;
3. There was in effect at all relevant times a Federal law requiring that all Federal contractors engaged in Federal contracts take affirmative action to employ and advance in employment qualified handicapped individuals having a physical impairment which substantially limits one or more of such person's major life activities, has a record of such impairment or is regarded as having such an impairment;<sup>61</sup>
4. One or more of the defendants discriminated, in violation of Federal law, against Penney in his employment and advancement with defendant E-Systems because Penney was physically handicapped or otherwise disabled;
5. One or more of the defendants discriminated, in violation of Federal law, against Penney by involuntarily terminating him because he was physically handicapped or otherwise disabled; and,

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<sup>61</sup> 29 United States Code Annotated §793

6. The applicable Federal laws implicitly preempted otherwise applicable state law because of the Federal laws' comprehensiveness and pervasiveness of enforcement scheme and implementing regulations, dominance of federal interest in field of federal contracts, and need for uniform, consistent federal approach to discrimination against handicapped persons by Federal contractors, which would be frustrated by varying state law interpretations.<sup>62</sup>

**Standard of Appellate Review:** Summary judgment by the trial court. Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Because a summary judgment resolves only questions of law, the appellate court is to give no deference to the trial court's determination. In reviewing an entry of summary judgment, the appellate court is to view the facts in the light most favorable to the opposing party and affirm only where it appears no genuine dispute exists as to any material fact, and where the moving party is entitled to judgment as a matter of law. Druffner v. Mrs. Fields, Inc., 828 P.2d 1075 (Utah App. 1992); Johnson v. Morton Thiokol, Inc., 818 P.2d 997, 999-1000 (Utah 1991); New West Fed. Sav. & Loan Ass'n v. Guardian Title Co., 818 P.2d 585, 588 (Utah App. 1991). Where a party opposing a motion for summary judgment timely presents his affidavit stating reasons why he is presently unable to proffer evidentiary affidavits, he directly and forthrightly invokes the trial court's discretion. Unless dilatory or lacking in merit, the motion should be liberally treated. Exercising a sound discretion the trial court then determines whether the stated reasons are adequate. Cox v. Winters, 678 P.2d 311 (Utah 1984); Strand v. Associated Students of University of Utah, 561 P.2d 191 (Utah 1977).

IV. Trial Court's conclusion that Penney was not terminated in violation of a covenant of good faith and fair dealing.

- A. Regarding the trial court's granting summary judgment against Penney's claim (third cause of action) that defendants' involuntarily terminating Penney was a breach

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<sup>62</sup>

Howard v. Uniroyal, Inc., 719 F.2d 1552 (C.A. Ala. 1983)

of defendants' covenant of good faith and fair dealing, did the court commit reversible error in denying Penney a trial by a jury of his peers by ruling that the defendants were entitled to judgment in their favor as a matter of law, where the record before the court shows, among other things:

1. Prior to the involuntary termination of Penney, defendant E-Systems issued numerous formal policies in the form of E-Systems/Montek Directives which established a contract for employment between defendant E-Systems and Penney which was not a contract at will;
2. The contract of employment between defendant E-Systems and Penney provided for progressive discipline prior to any involuntary termination and required the defendants not arbitrarily to terminate Penney nor arbitrarily to force him to resign BUT rather required defendants to give Penney adequate notice and warning regarding any actions by Penney that could result in his termination, together with an opportunity to cure any deficiency in Penney's actions or behavior that might result in his termination;
3. Until the very day defendants involuntarily terminated him, Penney had an excellent record with defendant E-Systems including without limitation numerous raises, promotions, and commendations and ABSOLUTELY devoid of any warnings, notices, progressive discipline or other negative or adverse personnel actions; and,
4. Defendants, in violation of the terms and conditions of defendant E-Systems' own express written policies and employment contract with Penney, arbitrarily, capriciously and without any justification involuntarily terminated Penney without any prior notice, warning, progressive discipline or opportunity to cure any alleged deficiency in Penney's actions or behavior that might result in his termination.

**Standard of Appellate Review:** Summary judgment by the trial court. Summary judgment is appropriate only when

no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Because a summary judgment resolves only questions of law, the appellate court is to give no deference to the trial court's determination. In reviewing an entry of summary judgment, the appellate court is to view the facts in the light most favorable to the opposing party and affirm only where it appears no genuine dispute exists as to any material fact, and where the moving party is entitled to judgment as a matter of law. Druffner v. Mrs. Fields, Inc., 828 P.2d 1075 (Utah App. 1992); Johnson v. Morton Thiokol, Inc., 818 P.2d 997, 999-1000 (Utah 1991); New West Fed. Sav. & Loan Ass'n v. Guardian Title Co., 818 P.2d 585, 588 (Utah App. 1991). Where a party opposing a motion for summary judgment timely presents his affidavit stating reasons why he is presently unable to proffer evidentiary affidavits, he directly and forthrightly invokes the trial court's discretion. Unless dilatory or lacking in merit, the motion should be liberally treated. Exercising a sound discretion the trial court then determines whether the stated reasons are adequate. Cox v. Winters, 678 P.2d 311 (Utah 1984); Strand v. Associated Students of University of Utah, 561 P.2d 191 (Utah 1977).

- V. Trial Court's conclusion that defendants did not cause to be breached defendant E-System's contract with Penney regarding his insurance benefits.
- A. Regarding the trial court's granting summary judgment against Penney's claim (fourth cause of action) that the defendants breached its contract obligation to Penney to make available to him at the time of his involuntary termination an opportunity to continue as a private individual the health insurance and other insurance benefits Penney had availed himself of as an employee of defendant E-Systems, did the court commit reversible error in denying Penney a trial by a jury of his peers by ruling that the defendants were entitled to judgment in their favor as a matter of law, where the record before the court shows, among other things:
1. Defendant E-Systems had in place, at all relevant times, one or more formal written company policies requiring that the defendants promptly and timely make available to all employees terminating their

employment with defendant E-Systems an opportunity to continue as a private individuals the health insurance and other insurance benefits each had availed himself of as an employee of defendant E-Systems;

2. Penney had been disabled before his was employed by defendant E-Systems and the facts that defendant E-Systems was self-insured and that Penney would be able to obtain health insurance and other insurance benefits through employment with defendant E-Systems were material inducements for Penney to accept employment with defendant E-Systems;
3. Defendant E-Systems and the other defendants had record of, knew and were thoroughly advised concerning the existence and severity of Penney's disabilities and uninsurability, and of his desperate need and desire to continue as a private individual the health insurance and other insurance benefits he had availed himself of as an employee of defendant E-Systems; and,
4. Defendants, arbitrarily, capriciously and without any justification whatsoever, breached their formal written company policies requiring that the defendants promptly and timely make available to Penney at his time of involuntary termination of his employment with defendant E-Systems an opportunity to continue as a private individual the health insurance and other insurance benefits he had availed himself of as an employee of defendant E-Systems;

**Standard of Appellate Review:** Summary judgment by the trial court. Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Because a summary judgment resolves only questions of law, the appellate court is to give no deference to the trial court's determination. In reviewing an entry of summary judgment, the appellate court is to view the facts in the light most favorable to the opposing party and affirm only where it appears no genuine dispute exists as to any material fact, and where the moving party is entitled to judgment as a matter of law.

Druffner v. Mrs. Fields, Inc., 828 P.2d 1075 (Utah App. 1992); Johnson v. Morton Thiokol, Inc., 818 P.2d 997, 999-1000 (Utah 1991); New West Fed. Sav. & Loan Ass'n v. Guardian Title Co., 818 P.2d 585, 588 (Utah App. 1991). Where a party opposing a motion for summary judgment timely presents his affidavit stating reasons why he is presently unable to proffer evidentiary affidavits, he directly and forthrightly invokes the trial court's discretion. Unless dilatory or lacking in merit, the motion should be liberally treated. Exercising a sound discretion the trial court then determines whether the stated reasons are adequate. Cox v. Winters, 678 P.2d 311 (Utah 1984); Strand v. Associated Students of University of Utah, 561 P.2d 191 (Utah 1977).

VI. Trial Court's conclusion that the alleged actions of the defendants did not state a claim of intentional infliction of emotional distress, pain and suffering.

- A. Regarding the trial court's granting summary judgment against Penney's claim (fifth cause of action) that one or more of the defendants intentionally and/or negligently inflicted emotional distress, pain and suffering on Penney, did the court commit reversible error in denying Penney a trial by a jury of his peers by ruling that the defendants were entitled to judgment in their favor as a matter of law, where the record before the court shows, among other things:
1. Penney was, at all relevant times, a valued, trusted, loyal, dedicated, hardworking, skilled, highly motivated employee of defendant E-Systems, with an excellent personnel record to include without limit numerous raises, advancements, promotions, recognitions and awards;
  2. Penney had been disabled before he was employed by defendant E-Systems and the facts that defendant E-Systems was self-insured and that Penney would be able to obtain health insurance and other insurance benefits through employment with defendant E-Systems were material inducements for Penney to accept employment with defendant E-Systems;
  3. Defendant E-Systems and the other defendants had record of, knew and were thoroughly advised

concerning the existence and severity of Penney's disabilities and uninsurability, and of his desperate need and desire to continue as a private individual the health insurance and other insurance benefits he had availed himself of as an employee of defendant E-Systems; and,

4. One or more of defendants was negatively biased towards and disliked Penney because of his physical disability, and intentionally, wilfully, and maliciously took actions calculated to offend, intimidate, and coerce Penney into resigning employment with defendant E-Systems, including without limit, making fun of and otherwise mocking Penney to his face and to one or more of his co-workers in his absence all because of his physical handicap, threatening immediately to fire Penney for no reason at all or if he failed to accede to a growing list of unreasonable demands arbitrarily imposed upon Penney by one or more of the defendants, refusing to allow Penney, after his severe injury in an automobile accident, to use sick leave he had already accrued and a leave of absence, refusing to allow Penney, after his severe injury in an automobile accident, to use vacation time he had already accrued, imposing upon Penney, after his severe injury in an automobile accident, an illegal, excessive, and unjustified overtime burden, going outside of the organizational structure to make burdensome assignments to Penney and to require constant detailed accountings from Penney, wrongfully terminating Penney in violation of the formal written policies of defendant E-Systems, failing to follow defendant E-System's formal written policies and procedures that required insurance benefits be made available to Penney, resulting in Penney's loss of all opportunity to keep in force the insurance benefits for which he had paid and had kept in force while working for defendant E-Systems.

**Standard of Appellate Review:** Summary judgment by the trial court. Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Because a summary judgment resolves only questions of

law, the appellate court is to give no deference to the trial court's determination. In reviewing an entry of summary judgment, the appellate court is to view the facts in the light most favorable to the opposing party and affirm only where it appears no genuine dispute exists as to any material fact, and where the moving party is entitled to judgment as a matter of law. Druffner v. Mrs. Fields, Inc., 828 P.2d 1075 (Utah App. 1992); Johnson v. Morton Thiokol, Inc., 818 P.2d 997, 999-1000 (Utah 1991); New West Fed. Sav. & Loan Ass'n v. Guardian Title Co., 818 P.2d 585, 588 (Utah App. 1991). Where a party opposing a motion for summary judgment timely presents his affidavit stating reasons why he is presently unable to proffer evidentiary affidavits, he directly and forthrightly invokes the trial court's discretion. Unless dilatory or lacking in merit, the motion should be liberally treated. Exercising a sound discretion the trial court then determines whether the stated reasons are adequate. Cox v. Winters, 678 P.2d 311 (Utah 1984); Strand v. Associated Students of University of Utah, 561 P.2d 191 (Utah 1977).

VII. Trial Court's mandating that all discovery be completed by December 31, 1992.

- A. Was the trial court's Scheduling Order of August 3, 1992, which mandated that "all discovery including responses must be concluded by December 1, 1992" and that "all dispositive motions are to be heard by Jan 4, 1992 [sic.]", and which prevented Penney from completing his discovery and pre-trial motions, an abuse of discretion where, among other things:
1. The trial court had been advised in writing by Penney that he was scheduled for mandatory back surgery on August 19, 1992 as part of an ongoing medical treatment necessitated by the injuries he had sustained in a May 9, 1986 automobile accident, which injuries and defendants' reaction thereto were, at least in part, the cause of Penney's being subjected to weeks of outrageous and offensive treatment by defendants and, ultimately, wrongful termination by defendants;
  2. The trial court had been advised in writing by Penney that his recovery from the August 19, 1992

back surgery would be slow and painful and would, for its duration, greatly impair Penney's ability to complete his discovery and pre-trial motions;

3. The trial court was aware that Penney was greatly disadvantaged in his prosecution of this lawsuit in that he was forced to remove himself from Utah and to reside in Texas in order to receive necessary medical treatment, even though the trial court was in Utah, most of Penney's potential witnesses were in Utah, Penney's causes of action against the defendants had arisen in Utah during Penney's almost 6 years of employment there with defendant E-Systems;
4. Penney was forced to represent himself PRO SE in the above action because of his financial distress and impoverishment caused by the combination of his ongoing medical treatment and the defendants' illegally discharging Penney in a manner that left him devoid of any health or other insurance benefits; and,
5. The trial court's reasonably extending the time for Penney to complete his discovery and his pre-trial motions would not have materially prejudiced any of the defendants, especially where the lawsuit was less than two and one-half (2 1/2) years old, having been commenced on June 15, 1990, the delays were caused in part because the actions of defendants had left Penney without any health, medical or other insurance and forced him to move to Texas where he could receive adequate medical treatment, and the probable witnesses and evidence were and would remain available for the reasonably foreseeable future.

**Standard of Appellate Review:** Abuse of Discretion by the trial court. Terry v. Zions Cooperative Mercantile Institution, 605 P.2d 314, 323-324 (Utah (1977)); Fisher v. Trapp, 748 P.2d 204, 205-207 (Utah Ct. App.), cert. denied, 765 P.2d 1278 (Utah 1988).

VIII. **Trial Court's failure to grant Penney's Motion for extension of time to complete discovery and trial**

preparation.

- A. Was trial court's failure to grant Penney's MOTION FOR CONTINUANCE AND FOR LEAVE TO COMPLETE DISCOVERY of February 16, 1993, for an extension of time to complete discovery, pre-trial motions, and trial preparation, an abuse of discretion where, among other things:
1. Penney promptly commenced his discovery in the above lawsuit shortly after its commencement in 1990 by serving upon the defendants PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS consisting of 87 separate interrogatories and 31 requests for production of documents;
  2. The FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS were prepared in substance and detail sufficient that complete and honest responses to them would have provided Penney with much of the evidence necessary to prove his case or would have provided Penney with information that would have led to the evidence necessary to prove Penney's case, as well as successfully defend Penney against any motion for summary judgment made by defendants;
  3. Defendants' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS were incomplete, misleading, not honest, and were of a nature as to require additional time to complete Penney's discovery by serving upon defendants a second set of interrogatories and requests for production of documents, taking the deposition of certain potential witnesses, and similar discovery related activities;
  4. From the commencement of the lawsuit on June 15, 1990, Penney had kept the trial court advised as to Penney's physical disabilities caused by his May 9, 1986 automobile accident, as to the negative effects of said disabilities on Penney's ability to participate in discovery, and as to Penney's diligent efforts to overcome said negative effects in order effectively and fully to participate in the discovery process;

5. The trial court had been advised in writing by Penney that he was scheduled for mandatory back surgery on August 19, 1992 as part of an ongoing medical treatment necessitated by the injuries he had sustained in a May 9, 1986 automobile accident, which injuries and defendants' reaction thereto were, at least in part, the cause of Penney's being subjected to weeks of outrageous and offensive treatment by defendants and, ultimately, wrongful termination by defendants;
6. The trial court had been advised in writing by Penney that his recovery from the August 19, 1992 back surgery would be slow and painful and would, for its duration, greatly impair Penney's ability to complete his discovery and pre-trial motions;
7. The trial court was aware that Penney was greatly disadvantaged in his prosecution of this lawsuit in that he was forced to remove himself from Utah and to reside in Texas in order to receive necessary medical treatment, even though the trial court was in Utah, most of Penney's potential witnesses were in Utah, Penney's causes of action against the defendants had arisen in Utah during Penney's almost 6 years of employment there with defendant E-Systems;
8. Penney was forced to represent himself PRO SE in the above action because of his financial distress and impoverishment caused by the combination of his ongoing medical treatment and the defendants' illegally discharging Penney in a manner that left him devoid of any health or other insurance benefits; and,
9. The trial court's reasonably extending the time for Penney to complete his discovery and his pre-trial motions would not have materially prejudiced any of the defendants, especially where the lawsuit was less than two and one-half (2 1/2) years old, having been commenced on June 15, 1990, the delays were caused in part because the actions of defendants had left Penney without any health, medical or other insurance and forced him to move to Texas where he could receive adequate medical

treatment, and the probable witnesses and evidence were and would remain available for the reasonably foreseeable future.

**Standard of Appellate Review:** Abuse of Discretion by the trial court. Terry v. Zions Cooperative Mercantile Institution, 605 P.2d 314, 323-324 (Utah (1977)); Fisher v. Trapp, 748 P.2d 204, 205-207 (Utah Ct. App.), cert. denied, 765 P.2d 1278 (Utah 1988).

**IX. Trial court's apparent conclusion that Penney's Verified Complaint failed to state any claim for which relief could be granted.**

A. Regarding the trial court's apparent conclusion that Penney's Verified Complaint failed to state any claim for which relief could be granted, did the court commit reversible error in denying Penney a trial by a jury of his peers by ruling that the defendants were entitled to judgment in their favor as a matter of law, where the record before the court shows, among other things:

1. Penney's uncontroverted sworn testimony evidenced that Penney was forced to work excessive uncompensated "back-breaking" overtime hours;
2. Defendants' actions in forcing Penney to work excessive uncompensated "back-breaking" overtime hours was in violation of the Federal Fair Labor Standards Act ("FLSA") which pre-empts State statutory and case law in its respective area of application; and,
3. Penney resisted being forced to work excessive uncompensated "back-breaking" overtime hours in violation of the Federal Fair Labor Standards Act ("FLSA"), and, consequently, fell out of favor with the defendants and, ultimately, was fired by them because, in part, of Penney's resistance to working the excessive uncompensated "back-breaking" overtime hours.

**Standard of Appellate Review:** Summary judgment by the trial court. Summary judgment is appropriate only when no genuine issue of material fact exists and the moving

party is entitled to judgment as a matter of law. Because a summary judgment resolves only questions of law, the appellate court is to give no deference to the trial court's determination. In reviewing an entry of summary judgment, the appellate court is to view the facts in the light most favorable to the opposing party and affirm only where it appears no genuine dispute exists as to any material fact, and where the moving party is entitled to judgment as a matter of law. Druffner v. Mrs. Fields, Inc., 828 P.2d 1075 (Utah App. 1992); Johnson v. Morton Thiokol, Inc., 818 P.2d 997, 999-1000 (Utah 1991); New West Fed. Sav. & Loan Ass'n v. Guardian Title Co., 818 P.2d 585, 588 (Utah App. 1991). Where a party opposing a motion for summary judgment timely presents his affidavit stating reasons why he is presently unable to proffer evidentiary affidavits, he directly and forthrightly invokes the trial court's discretion. Unless dilatory or lacking in merit, the motion should be liberally treated. Exercising a sound discretion the trial court then determines whether the stated reasons are adequate. Cox v. Winters, 678 P.2d 311 (Utah 1984); Strand v. Associated Students of University of Utah, 561 P.2d 191 (Utah 1977).

X. **Trial court's denial of Penney's Motion to Disqualify Counsel.**

A. Was the trial court's Minute Entry dated March 23, 1992, an abuse of discretion where, the record before the court evidences, among other things, that:

1. Prior to defendants' retaining PARSON BEHLE & LATIMER to represent them in the above action, that an attorney at said law firm had been contact directly by Penney regarding his claims against the defendants, that Penney had asked questions of and received answers from a member of the Parsons, Behle & Latimer firm regarding Penney's rights and cause of action againsted the defendants; and,
2. Parsons, Behle & Latimer admit that conversations took place between a member of their firm and Penney, and that Penney had asked for and received advice from a member of the Parsons, Behle & Latimer firm before said firm was retained to represent the defendants.

**Standard of Appellate Review:** Abuse of Discretion by the trial court. Terry v. Zions Cooperative Mercantile

Institution, 605 P.2d 314, 323-324 (Utah (1977)); Fisher v. Trapp, 748 P.2d 204, 205-207 (Utah Ct. App.), cert. denied, 765 P.2d 1278 (Utah 1988).

6. THIS APPEAL IS SUBJECT TO ASSIGNMENT BY THE SUPREME COURT TO THE COURT OF APPEALS.

7. THE UTAH SUPREME COURT SHOULD DECIDE THIS APPEAL because it presents the Court (i) with sensitive issues regarding Federal pre-emption of state statutory and case law; (ii) with the issue of whether state policies requiring expeditious handling of civil litigation should be used in a manner to deprive a civil plaintiff of his right to receive a full and fair hearing of his claim before a jury of his peers merely because his physical disabilities make his participation in the judicial process slower than perhaps some theoretical ideal but does materially or irreparably harm the defendants in this case; (3) with the issue of whether defendants in civil litigation may obtain summary judgment where the evidence necessary to defeat such summary judgment motion is in the possession and under the control of the defendants and they have failed or refused to provide such evidence to the plaintiff even though he has requested it of the defendants; and, (4) with the issue of whether or not the Utah Supreme Court will and whether the trial court and the appellate court should take judicial notice of the existence and content of other cases pending in the same judicial district where such existence and content may have a

direct and material effect on the outcome of the litigation before the trial court.

**8. STATUTES, RULES, AND CASES DETERMINATIVE OF THIS APPEAL INCLUDE THE FOLLOWING:**

**Rules**

Utah Rules of Civil Procedure, Rule 15.

Utah Rules of Civil Procedure, Rule 56.

29 United States Code Annotated §793.

Federal Fair Labor Standards Act

**Cases**

Ingersoll-Rand v. McClendon, 111 S.Ct. 478 (1990)

Retherford v. AT&T Communications of the Mountain States, (

Heslop v. Bank of Utah, 839 P.2d 828 (Utah 1992)

Peterson v. Browning, 832 P.2d 1280 (Utah 1992)

Druffner v. Mrs. Fields, Inc., 828 P.2d 1025 (Utah Ct. App. 1992)

Johnson v. Morton Thiokol, Inc., 818 P.2d 997 (Utah 1991)

Munteer v. Utah Power & Light Company, 823 P.2d 1055 (Utah 1991)

Cox v. Winters, 678 P.2d 311 (Utah 1984)

Howard v. Uniroyal, Inc., 719 F.2d 1552 (C.A. Ala. 1983)

Strand v. The Associated Students of the University of Utah dba The

Daily Utah Chronicle, et al., 561 P.2d 191 (Utah 1977)

E-SYSTEMS, INC./MONTEK DIVISION v. HAZELTINE CORPORATION,  
filed July 20, 1989 as Civil No. C-89-890904469, in the Third

E-SYSTEMS, INC./MONTEK DIVISION v. HAZELTINE CORPORATION,  
filed July 20, 1989 as Civil No. C-89-890904469, in the Third  
Judicial District Court, Salt Lake County, State of Utah.

9. Prior Appeals Filed in this Case: There are none.

Attachments

Minute Entry dated March 23, 1992  
Order dated July 10, 1992  
Scheduling Order and Trial Notice made about August 3, 1992  
Minute Entry dated February 16, 1993  
Minute Entry dated February 18, 1993  
Order dated March 9, 1993  
Judgment dated March 9, 1993  
Motion for Continuance & for Leave to Complete Discovery, 2/16/1993  
Notice of Appeal dated April 6, 1993

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//  
//

DATED this 10<sup>th</sup> day of May, 1993.

  
WILLIAM V. PENNEY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing  
DOCKETING STATEMENT was mailed by U.S. mail, first class postage  
prepaid, this 10<sup>th</sup> day of May, 1993, to the following:

DAVID A. ANDERSON (0081)  
PAUL E. DAME (5683)  
Attorneys for Defendants  
201 South Main Street, Suite 1800  
P.O. Box 11898  
Salt Lake City, Utah 84147-0898.



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mailed march 25, 1992

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

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WILLIAM V. PENNEY,	:	MINUTE ENTRY
Plaintiff,	:	CASE NO. 900903522 CV
vs.	:	JUDGE FRANK G. NOEL
E-SYSTEMS, INC., a Delaware	:	
corporation, DAVID A. WILLIAMS,	:	
ALFRED B. BUCHANAN,	:	
Defendants.	:	

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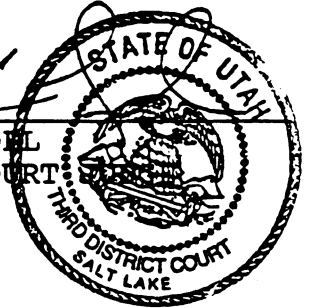
On February 28, 1992 the Court denied plaintiff's Motion to Disqualify Counsel. The Court recalls that it instructed Counsel for defendant to prepare an order reflecting the Court's ruling. In reviewing the file the Court notes that said Order has not yet been submitted for the Court's signature.

In addition the Court has before it a Motion for Withdrawal of Counsel filed by plaintiff's Counsel. The Court has granted said Motion and has signed the Order submitted in connection with the Motion for Withdrawal but hereby instructs Counsel, David K. Isom, to serve upon plaintiff a notice to

appoint Counsel or appear in person consistent with our rules of practice.

DATED this 23 day of March, 1992.

24  
FRANK G. NOEL  
DISTRICT COURT



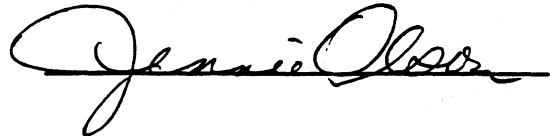
CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, postage prepaid, to the following, this 23 day of March, 1992:

David K. Isom  
J. Preston Stieff  
DAVID K. ISOM & ASSOCIATES  
Attorneys for Plaintiff  
1680 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111

David A. Anderson  
Paul E. Dame  
PARSONS, BEHLE & LATIMER  
Attorneys for Defendants  
P. O. Box 11898  
Salt Lake City, Utah 84147-0898

William V. Penney  
Plaintiff  
709 West Busk, Suite A-101  
Rockwell, Texas 75087

A handwritten signature in cursive script, appearing to read "Jennie Olson", written over a horizontal line.

FILED DISTRICT COURT  
Third Judicial District

JUL 10 1992

DAVID A. ANDERSON (0081)  
PAUL E. DAME (5683)  
of and for  
PARSONS BEHLE & LATIMER  
Attorneys for Defendants  
201 South Main Street, Suite 1800  
P.O. Box 11898  
Salt Lake City, Utah 84147-0898  
Telephone: (801) 532-1234

SALT LAKE COUNTY  
By Pat [Signature] Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

\* \* \* \* \*

WILLIAM V. PENNEY,	)	
	)	ORDER GRANTING
Plaintiff,	)	DEFENDANTS' MOTION FOR
	)	PARTIAL SUMMARY JUDGMENT
vs.	)	
	)	
E-SYSTEMS, INC., a Delaware	)	
corporation, DAVID A. WILLIAMS,	)	Civil No. 900903522CV
ALFRED B. BUCHANAN,	)	
	)	Judge Frank G. Noel
Defendants.	)	

\* \* \* \* \*

Defendants' Motion for Partial Summary Judgment was filed on September 25, 1991. After an order granting plaintiff additional time to conduct discovery, dated February 10, 1992, defendants' Motion came on for hearing before the Court on June 19, 1992, with David A. Anderson and Paul E. Dame appearing for the defendants. On June 18, 1992, the Court received a telecopied letter and Notice of Appearance Pro Se from plaintiff. In his letter, plaintiff requested the Court to postpone the hearing on defendants' Motion. After considering plaintiff's

request, the Court noted that: (1) plaintiff is now representing himself; (2) plaintiff has not requested additional time to retain other counsel; and (3) there is no indication of when, if ever, plaintiff will be ready to attend a hearing on defendant's Motion. Accordingly, the Court elected to proceed with the hearing on defendants' Motion.

Having read defendants' supporting memorandum and affidavits, and now being fully advised in the premises, and the Court having issued its oral ruling granting defendants' Motion for Partial Summary Judgment,

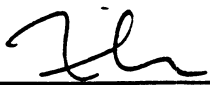
NOW, THEREFORE, IT IS HEREBY ORDERED:

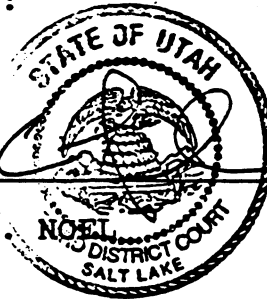
1. Defendants' Motion for Partial Summary Judgment should be and is hereby granted; and

2. Plaintiff's First Cause of Action (breach of public policy against discrimination against disabled), Third Cause of Action (breach of implied covenant of good faith and fair dealing), Fourth Cause of Action (breach of contract), and Fifth Cause of Action (infliction of emotional distress) should be and are hereby dismissed with prejudice.

Entered this 10<sup>th</sup> day of July 1992.

BY THE COURT:

  
HON. FRANK G. NOEL



CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, postage prepaid, a copy of the foregoing ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT to the following on this 22<sup>nd</sup> day of June, 1992.

William V. Penney  
709 West Rusk, Suite A101  
Rockwall, TX 75087

  
PAUL E. DAME

PED/061992A

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

---

PENNEY, WILLIAM V :  
PLAINTIFF, :  
-VS- : SCHEDULING ORDER AND  
E-SYSTEMS, INC : TRIAL NOTICE  
DEFENDANT. : CASE NO. 900903522 CV  
HONORABLE FRANK G NOEL

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PURSUANT TO THE SCHEDULING CONFERENCE HELD ON AUGUST 3, 1992  
THE FOLLOWING DATES WERE SET AND MATTERS DISCUSSED:

1. THIS CASE IS SET FOR TRIAL ON MARCH 1, 1993 AT 10:00 A.M.
2. ANTICIPATED TRIAL TIME IS 03 DAYS.
3. THE CASE IS SET FOR JURY TRIAL. COUNSEL ARE TO  
SUBMIT AN AGREED SET OF JURY INSTRUCTIONS TO THE COURT BY 11/1/92  
. OBJECTED TO INSTRUCTIONS ARE TO BE SUBMITTED  
SEPARATELY.
4. ALL DISCOVERY INCLUDING RESPONSES MUST BE CONCLUDED BY  
DEC 1, 1992
5. ALL DISPOSITIVE MOTIONS ARE TO BE HEARD BY JAN 4, 1992
6. EXHIBIT AND WITNESS LISTS ARE TO BE EXCHANGED BY 11/1/92

7. A FINAL PRETRIAL SETTLEMENT CONFERENCE WILL BE HELD ON  
FEBRUARY 22, 1993 AT 8:30 A.M. TRIAL COUNSEL AND CLIENTS, OR  
AN INDIVIDUAL WITH AUTHORITY TO SETTLE THIS CASE ARE TO BE  
PRESENT. OUT OF STATE PARTIES MUST BE AVAILABLE BY PHONE AT THE  
TIME OF THE PRETRIAL SETTLEMENT CONFERENCE.

8. FAILURE TO APPEAR AT THE PRETRIAL SETTLEMENT CONFERENCE  
MAY RESULT IN A DEFAULT.

9. THE FOREGOING DATES SHOULD BE CONSIDERED FIRM SETTINGS  
AND WILL NOT BE MODIFIED WITHOUT COURT ORDER, AND THEN ONLY  
UPON A SHOWING OF MANIFEST INJUSTICE. COUNSEL ARE INSTRUCTED TO  
STAY IN CONTACT WITH THE CLERK OF THIS COURT AS THE TRIAL DATE  
APPROACHES REGARDING THE TRIAL SETTING.

10. IF PLAINTIFF'S COUNSEL ANTICIPATES THAT EVIDENCE AT TRIAL  
WILL SHOW DAMAGES OF LESS THAN \$20,000, COUNSEL SHOULD PERPARE AN  
ORDER TRANSFERRING THE CASE TO THE CIRCUIT COURT.

DATED THIS 3RD DAY OF AUGUST, 1992.

  
DISTRICT COURT JUDGE

COPIES MAILED TO PARTIES AT THE ADDRESSES INDICATED ON THE  
ATTACHED MAILING CERTIFICATE.

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT I MAILED A TRUE AND CORRECT COPY OF THE  
ATTACHED SCHEDULING ORDER AND TRIAL NOTICE, BY FIRST CLASS MAIL,  
POSTAGE PREPAID, TO THE FOLLOWING:

PENNEY, WILLIAM V.  
ATTORNEY FOR DEFENDANT  
709 W. RUSK, SUITE A101  
P.O. BOX 11898  
ROCKWALL TX 75087

ANDERSON, DAVID A.  
ATTORNEY FOR PLAINTIFF  
50 WEST BROADWAY #400  
SALT LAKE CITY UT 84147

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 19\_\_\_\_

Pat Jones  
DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

William V. Penney,  
Plaintiff,

vs.

E-Systems, Inc., a Delaware corporation,  
David A. Williams and Alfred B. Buchanan,  
Defendants.

MINUTE ENTRY

CASE NO: 900903522 CV

JUDGE FRANK G. NOEL

Now before the Court is defendants' Motion for Summary Judgment on the plaintiff's second cause of action. The Court has reviewed the substantial materials submitted in connection with this Motion including memos, affidavits, news clippings, magazine articles and other matter submitted by the plaintiff and now rules as follows:

The Court is of the opinion that the plaintiff simply has not appropriately established in the record a question of fact on his second cause of action that would allow the Court to submit that matter to the jury. Plaintiff has conducted essentially no discovery and the materials submitted in opposition to the Motion do not appear to the Court to create questions of fact sufficient to overcome a Motion for Summary Judgment.


Much of the information contained in Mr. Penney's rather lengthy response is not information of which he has personal knowledge. The news clippings, magazine article, brochures and seminar advertisements of course are not admissible and do not in any way support Mr. Penney's claim. On the other hand several affidavits have been filed by the defendants which support their position both as to the fraud claims and their position that Mr.

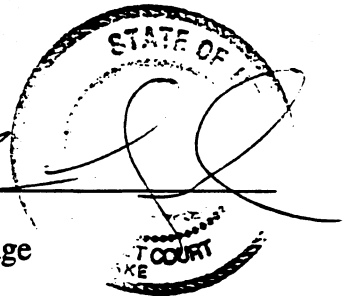
Penney resigned from employment rather than being terminated.

Throughout a large portion of this litigation Mr. Penney has not been represented by Counsel and the Court in recognition of that fact has given Mr. Penney the benefit of the doubt on occasions, has been patient in Mr. Penney's efforts to get his case prepared so that he could go to trial, but the Court feels that it simply must apply the rule of law in the final analysis that is applied to all litigants and must require that Mr. Penney establish in an appropriate manner in accordance with the Rules of Civil Procedure facts on the record that establish a genuine issue of material facts. In the opinion of the Court Mr. Penney's submittals in response to the defendants' Motion for Summary Judgment fails to do so. Accordingly, defendants' Motion is granted.

Counsel for defendants is to prepare an order consistent with this ruling.

Dated this 16<sup>th</sup> day of February, 1993.

  
\_\_\_\_\_  
Frank G. Noel  
District Court Judge



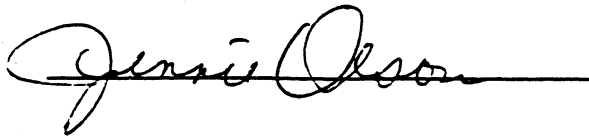
MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry,  
postage prepaid, to the following on this 16 day of February, 1993.

William V. Penney  
Plaintiff Pro Se  
709 West Rusk, Suite A101  
Rockwall, Texas 75087

WILLIAM V. PENNEY  
PLAINTIFF PRO SE  
2333 EAST CLIFT SWALLOW DRIVE  
SANDY, UT 84093

David A. Anderson  
Paul E. Dame  
PARSONS, BEHLE & LATIMER  
Attorney for Defendants  
P. O. Box 11898  
Salt Lake City, Utah 84147-0898

A handwritten signature in cursive script, appearing to read "Jennie Olson", is written over a horizontal line.

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

William V. Penney,  
Plaintiff,

vs.

E-Systems, Inc., a Delaware corporation,  
David A. Williams and Alfred B. Buchanan,  
Defendants.

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MINUTE ENTRY

CASE NO: 900903522 CV

JUDGE FRANK G. NOEL

The Court in this matter has previously ruled granting defendants' Motion for Summary Judgment on plaintiff's second cause of action stating that the plaintiff had not established a triable issue of fact. Mr. Penney had submitted news clippings, magazine articles, etc., but no affidavits or any other admissible evidence creating fact issues to submit to the jury.

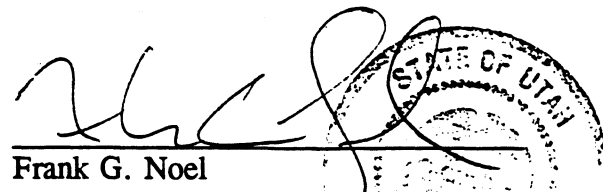
Subsequent to the Court's ruling on that matter and subsequent to it's preparation of it's Minute Entry granting the Motion for Summary Judgment the Court received from Mr. Penney certain other information including a Memorandum in Opposition to Defendants' Reply Memorandum in Support of Motion for Summary Judgment together with William Penney's first Affidavit and an affidavit of Dr. Allen J. Meril. Even though the materials submitted by Mr. Penney are not allowed under our rules inasmuch as the moving parties reply memo (in this case the defendants' reply memo) is the final pleading to be filed in connection with its Motion, nevertheless the Court has reviewed Mr. Penney's materials and will permit their filing in connection with the defendants' Motion for Summary Judgment.

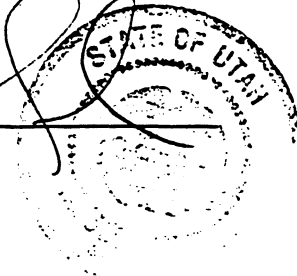
After a review of Mr. Penney's affidavit the Court is still of the opinion that triable issue

of fact has not been raised by Mr. Penney. Mr. Penney's affidavit contains certain paragraphs where Mr. Penney expresses his belief that he was terminated as a result of his refusal to engage in certain questionable activities at the company and as a result of informing management of certain questionable activities by other employees. These statements are purely conclusory and Mr. Penney has offered no admissible evidence to support these conclusions. The Court is still of the opinion that Mr. Penney has not raised a triable issue of fact in this matter and considering all of the admissible evidence that Mr. Penney has established on the record it would still require the jury to purely speculate as to the reason for Mr. Penney's termination.

Accordingly, the Court reaffirms its earlier ruling granting the Motion for Summary Judgment.

Dated this 18<sup>th</sup> day of February, 1993.

  
Frank G. Noel  
District Court Judge



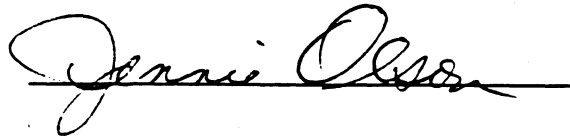
MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, postage prepaid, to the following on this 18 day of February, 1993.

William V. Penney  
Plaintiff Pro Se  
709 West Rusk, Suite A101  
Rockwall, Texas 75087

William V. Penney  
Plaintiff Pro Se  
2333 East Cliff Swallow Drive  
Sandy, Utah 84093

David A. Anderson  
Paul E. Dame  
PARSONS, BEHLE & LATIMER  
Attorney for Defendants  
P. O. Box 11898  
Salt Lake City, Utah 84147-0898

A handwritten signature in cursive script, appearing to read "Jennie Olsen", is written over a horizontal line.

THIRD JUDICIAL DISTRICT COURT  
Third Judicial District

DAVID A. ANDERSON (0081)  
PAUL E. DAME (5683)  
of and for  
PARSONS BEHLE & LATIMER  
Attorneys for Defendants  
201 South Main Street, Suite 1800  
P.O. Box 11898  
Salt Lake City, Utah 84147-0898  
Telephone: (801) 532-1234

MAR 09 1993

SALT LAKE COUNTY  
By Frank G. Noel  
Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

\* \* \* \* \*

WILLIAM V. PENNEY,	)	
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANTS'
	)	MOTION FOR SUMMARY JUDGMENT
vs.	)	
	)	
E-SYSTEMS, INC., a Delaware	)	Civil No. 900903522CV
corporation, DAVID A. WILLIAMS,	)	
ALFRED B. BUCHANAN,	)	
	)	Judge Frank G. Noel
Defendants.	)	

\* \* \* \* \*

On December 31, 1992, defendants, through their attorney David A. Anderson, filed their Motion for Summary Judgment on plaintiff's second cause of action, all previous causes of action having been dismissed by the Court in response to defendants' prior Motion for Partial Summary Judgment. After defendants filed their Motion for Summary Judgment, plaintiff William Penney, acting as attorney pro se, submitted materials, including an affidavit, in opposition to that Motion and defendants submitted a Reply

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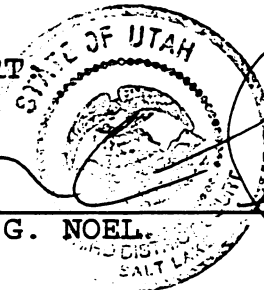
Memorandum. The Court having reviewed the materials submitted by the parties that relate to defendants' Motion, and having issued its ruling on the Motion set forth in its Minute Entry dated February 16, 1993, and having issued its further ruling set forth in the Court's Minute Entry dated February 18, 1993, and being fully advised regarding the parties' positions on the subject Motion, and good cause appear therefor,

IT IS HEREBY ORDERED that defendants' Motion for Summary Judgment should be and is hereby granted and plaintiff's Second Cause of Action ("Violation of Public Policy Against Fraudulent Business Activities") is hereby dismissed with prejudice.

ENTERED this 9<sup>th</sup> day of March, 1993.

BY THE COURT

  
HON. FRANK G. NOEL.



MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT to the following at the two addresses indicated on this 23<sup>rd</sup> day of February, 1993:

William V. Penney  
709 West Rusk, Suite A101  
Rockwall, TX 75087

William V. Penney  
2333 East Cliff Swallow Drive  
Sandy, Utah 84093

David A. Anderson

THIRD JUDICIAL DISTRICT COURT  
Third Judicial District

MAR 09 1993

DAVID A. ANDERSON (0081)  
PAUL E. DAME (5683)  
of and for  
PARSONS BEHLE & LATIMER  
Attorneys for Defendants  
201 South Main Street, Suite 1800  
P.O. Box 11898  
Salt Lake City, Utah 84147-0898  
Telephone: (801) 532-1234

By Pat Jones  
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

\* \* \* \* \*

WILLIAM V. PENNEY,	)	
	)	JUDGMENT
Plaintiff,	)	
	)	
vs.	)	
	)	
E-SYSTEMS, INC., a Delaware	)	Civil No. 900903522CV
corporation, DAVID A. WILLIAMS,	)	
ALFRED B. BUCHANAN,	)	
	)	Judge Frank G. Noel
Defendants.	)	

\* \* \* \* \*


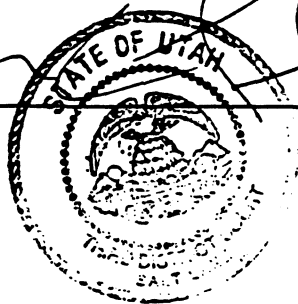
The Court having issued its Order Granting Defendants' Motion for Partial Summary Judgment on July 10, 1992, and having thereafter issued its Order Granting Defendants' Motion for Summary Judgment, which Orders dismissed with prejudice all claims in plaintiff's Complaint herein against defendants,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment in favor of defendants and against plaintiff should be and is hereby entered, dismissing plaintiff's action,

including all claims asserted therein, with prejudice. As prevailing parties, defendants are awarded their costs herein.

ENTERED this 9<sup>th</sup> day of March, 1993.

BY THE COURT:

  
\_\_\_\_\_  


MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing JUDGMENT to the following at the two addresses indicated on this 23<sup>rd</sup> day of February, 1993:

William V. Penney  
709 West Rusk, Suite A101  
Rockwall, TX 75087

William V. Penney  
2333 East Cliff Swallow Drive  
Sandy, Utah 84093

David A. Anderson

39691

WILLIAM V. PENNEY  
Plaintiff, Appearing Pro Se  
2333 East Cliff Swallow Drive  
Sandy, Utah 84093  
Telephone: 801/944-0993

FILED  
DISTRICT COURT  
FEB 16 11 43 AM '93  
CLERK

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

WILLIAM V. PENNEY,

Plaintiff,

vs.

E-SYSTEMS, INC., a Delaware  
corporation, DAVID A.  
WILLIAMS, ALFRED B. BUCHANAN,

Defendants.

PLAINTIFF'S MOTION FOR  
CONTINUANCE & FOR LEAVE  
TO COMPLETE DISCOVERY

Civil No. 900903522CV

Judge Frank G. Noel

Plaintiff, appearing Pro Se, hereby moves the Court for a continuance of the Trial in the above case presently set for March 1, 1993, for a continuance of the Pretrial Settlement Conference presently set for February 22, 1993, and for leave to resume and continue discovery until complete.

Plaintiff's motion is supported by the FIRST AFFIDAVIT OF WILLIAM V. PENNEY and AFFIDAVIT OF ALLEN J. MERIL, M.D., submitted herewith and by the following:

1. Utah Rules of Civil Procedure ("URCP"), Rule 40(b) provides, in part: Upon motion of a party, the court may in its discretion, and upon such terms as may be just, ..., postpone a trial or proceeding upon good cause shown.

2. After meeting with the Court in August 1992, Plaintiff was required to have mandatory back surgery performed by Dr. Allen J. Meril, M.D., on August 19, 1992. See AFFIDAVIT OF ALLEN J. MERIL, M.D., last attachment. See also FIRST AFFIDAVIT OF WILLIAM V. PENNEY, ¶ 24.

3. The August 19, 1992 surgery was necessary because of a complications from severe automobile accident injury sustained by the Plaintiff on May 9, 1986. See FIRST AFFIDAVIT OF WILLIAM V. PENNEY, ¶ 11.

4. The August 19, 1992 surgery left the Plaintiff physically, mentally, and emotionally incapable to completing discovery or otherwise preparing for trial as corroborated by Dr. Allen J. Meril, M.D., in his AFFIDAVIT where he says that

"It is my opinion that Mr. Penney's physical and mental condition would have had a negative affect on his ability to participate in the discovery process of a litigation. The combined affects of his pain, trauma, and medication would have a profound negative affect on his ability to think and function normally.

Id., ¶ 8.


5. Because of Plaintiff's post-operation physical and mental condition up until now, he has been unable, within the time previously allotted by the Court, to complete discovery or otherwise complete trial preparation.

6. If Plaintiff is forced, without the opportunity to complete discovery and other trial preparations, to go to trial or to have his case dismissed, Plaintiff will be irreparably and irreversibly injured.

7. A five month continuance of the Trial date and of the Pretrial Settlement Conference will not cause Defendants' any irreparable harm.

WHEREFORE, based upon the foregoing law and facts, Plaintiff respectfully requests the Court to grant Plaintiff a continuance of the Trial in the above case for five months, for a continuance of the Pretrial Settlement Conference for five months, and for leave to resume and complete discovery within five months.

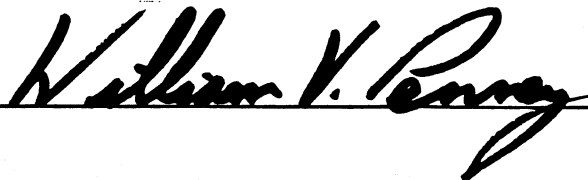
DATED this 16th day of February, 1993.

  
WILLIAM V. PENNEY  
Appearing Pro Se

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 16<sup>TH</sup> day of February, 1993, a true and complete copy of the foregoing was mailed, postage prepaid to the Defendants as follows:

DAVID A. ANDERSON (0081)  
PAUL E. DAME (5683)  
Attorneys for Defendants  
201 South Main Street, Suite 1800  
P.O. Box 11898  
Salt Lake City, Utah 84147-0898.

A handwritten signature in black ink, appearing to read "William V. Perry", is written over a horizontal line.

A:\P\CONTIN.PEN

WILLIAM V. PENNEY  
Plaintiff, Appearing Pro Se

709 West Rusk, Suite "A"  
Rockwall, TX 75087  
Telephone: 214/771-8383

2333 East Cliff Swallow Drive  
Sandy, Utah 84093  
Telephone: 801/944-0993

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

WILLIAM V. PENNEY,  Plaintiff,  vs.  E-SYSTEMS, INC., a Delaware corporation, DAVID A. WILLIAMS, ALFRED B. BUCHANAN,  Defendants.	<b>NOTICE OF APPEAL</b>  Civil No. 900903522CV  Judge Frank G. Noel
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Please take notice that plaintiff William V. Penney, appearing pro se, appeals to the Utah Supreme Court from the following orders of the Honorable Frank G. Noel of the Third Judicial District Court of Utah in the above-styled action:

1. Minute Entry dated March 23, 1992, denying plaintiff's Motion to Disqualify Counsel, i.e. to disqualify DAVID A. ANDERSON (0081), PAUL E. DAME (5683) of and for PARSONS BEHLE & LATIMER as counsel for defendants.

2. Order dated July 10, 1992, granting defendants' Motion for

Partial Summary Judgment filed on September 25, 1991, seeking summary judgment on and dismissal of plaintiff's First Cause of Action, Third Cause of Action, Fourth Cause of Action and Fifth Cause of Action with prejudice.

3. Scheduling Order and Trial Notice made about August 3, 1992, requiring "all discovery including responses must be concluded by Dec 1, 1992" and that "all dispositive motions are to be heard by Jan 4, 1992."

4. Minute Entry dated February 16, 1993, granting defendants' Motion for Summary Judgment on the plaintiff's second cause of action.

5. Minute Entry dated February 18, 1993, reaffirming the trial court's Minute Entry dated February 16, 1993, granting defendants' Motion for Summary Judgment on the plaintiff's second cause of action.

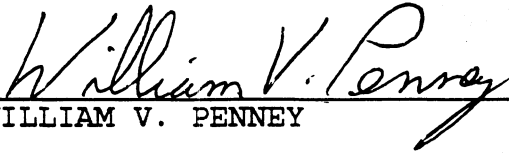
6. Order dated March 9, 1993, granting defendants' Motion for Summary Judgment, dismissing with prejudice plaintiff's second cause of action.

7. Judgment dated March 9, 1993, granting judgment in favor of defendants and against plaintiff, dismissing plaintiff's action, including all claims asserted therein, with prejudice.

8. The trial court's failure to grant plaintiff's Motion for Continuance & for Leave to Complete Discovery dated February 16,

1993.

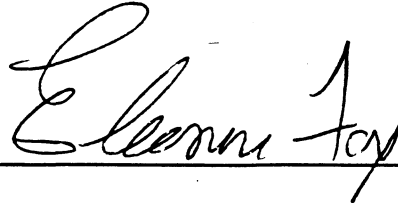
DATED this 6<sup>Th</sup> day of April, 1993.

  
\_\_\_\_\_  
WILLIAM V. PENNEY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing NOTICE OF APPEAL was mailed by U.S. mail, first class postage prepaid, this 7<sup>th</sup> day of April, 1993, to the following:

DAVID A. ANDERSON (0081)  
PAUL E. DAME (5683)  
Attorneys for Defendants  
201 South Main Street, Suite 1800  
P.O. Box 11898  
Salt Lake City, Utah 84147-0898.

A handwritten signature in cursive script, appearing to read "Elenna Fox", is written over a horizontal line.

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