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BEFORE THE ARMED SERVICES
BOARD OF CONTRACT APPEALS
ASBCA No. 53896

APPEAL OF:

WESLEYAN COMPANY, INC.

UNDER CONTRACT NOS:

DAAK 6084M116
DAAK 6084M3573
DAAK 6085M3337
DAAK 6085M2329

* * * * *

DEPOSITION of ROGER W. HUBBARD, called as a
witness by counsel for Department of the Army,
before Norma Flynn Borelli, CSR No. 102793,
Registered Professional Reporter and Notary Public
in and for the Commonwealth of Massachusetts, taken
at the offices of GERALD E. SHUGRUE, 781 Main
Street, Whitinsville, Massachusetts, on Friday,
August 20, 2004, commencing at 10:05 AM.

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CONDENSED
TRANSCRIPT

Hubbard

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Advocate to Buy FIST/FLEX

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Flex

you agree with it. The basic problem was
ment of Need wanted to retain all of the
canteens in the military inventory, and they all had
be compatible and usable with whatever the
drinking system?

A. Yes. But it did not restrict this meeting
held at Natick from buying FIST/FLEX. They could
have bought FIST/FLEX with the existing inventory of
two-quart canteens, and spent the \$600,000 that the
government was going to give them to do that. They
opted not to for reasons unknown to me.

I said to them, from a health perspective,
The Army needs the FIST/FLEX system. But they said,
From a hardware perspective, we can't approve it. I
said, Well, the health and welfare of the troops is
less important than meeting the specifications of
whatever you're looking at? The basic answer was
yes. I said, No, this is not right. It's not
correct. And I disagree heartily with you. There
is nothing keeping you from taking any funds coming
in to research or by FIST/FLEX from buying it and
making it compatible with the existing inventory of
two-quart canteens. Why spend \$600,000 to research
something that I can tell you right now will never

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exist as opposed to buying the equipment that is
compatible with an inventory of canteens that does
exist?

The only thing that came to mind to justify
this idiocy and obstinacy, as I perceived it, was a
definite unwillingness to buy it as a
non-developmental item. It was sitting right there
in front of them. Why not buy it? The Army needed
it.

You have 500,000 collapsible canteens, buy
500,000 units. Why do you want to do research on a
one-line system that can never be compatible? The
physics won't allow it. It can't be done.

In fact, it hasn't been done. It's now
2004 and the qualities existing in the original
FIST/FLEX still don't exist. And they don't exist
because the physics won't allow it. Never has,
never will. It would be an act of God. You
couldn't change it.

Q. Let me direct your attention to Paragraph
18. "Due to this unwritten policy, in my opinion,
there is little doubt that the contents of
Wesleyan's materials were released around the Army
and little efforts, from my point of view, were

undertaken to safeguard the confidential and
proprietary nature of the materials."

Do you have any proof of that or is that
just your opinion?

A. Yeah. There's lots of proof out there.
There were numerous letters that Wes Schneider had
sent to me saying that the Wesleyan system was going
to be a component of a display down at one of the
major commands at the Chem School. It was going to
be a part of a display. It was going to be used in
P square MBC square, which was a program to upgrade
fighting capability in a chemical environment.

This in itself was self-evident proof that
people within the Army knew, or they wouldn't have
asked that Wes Schneider be incorporated into the
test, they knew that the current system was not
appropriate for chemical warfare. So there was
nothing else out there that they could call upon.
So they called upon the Wesleyan system because it
was the only one that existed that did enhance and
further drinking on a chemical battlefield.

So they incorporated it into the P square
MBC square program. They incorporated it into the
test bed program. I don't know whether that came

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out of the State of Washington or whatever. There
was a high tech test bed that wanted the Wesleyan
system as a part of its high tech display. And the
reason they asked for it was because it was the only
thing that existed.

Chem School hadn't done a damn thing since
World War 2 to further use of battlefield drinking
capability or enhancing it or refilling it.

With the current system, the guy went into
a chemical environment with one canteen. He had no
capacity to refill that canteen in a chemical
environment.

Q. What are your specific examples of a
failure to safeguard the proprietary information?

A. Well, I think sending it everywhere in the
Army for thousands of people to look at.

Q. How did that occur?

A. Through all of these tests, all of these
demonstrations. Everybody in the Army was looking
at it, from TRADOC to who knows who. I am sure Wes
Schneider will bring that out in his testimony. It
was widely distributed throughout the testing and
evaluation community as, This is the greatest thing.
We're going to put it in our demo. And they did