UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUNAWAY DEVELOPMENT GROUP, S.A. : Plaintiff, : -against- : : PENTAGEN TECHNOLOGIES INTERNATIONAL LIMITED , JOHN C. BAIRD and MITCHELL R. LEISER : Defendants :	91 Civ. 5643 (JES)

MEMORANDUM IN SUPPORT OF NOTICE OF MOTION OF JUDGMENT CREDITORS TO COMPEL TURNOVER OF PROPERTY AND PRODUCTION OF EVIDENCE UNDER SUBPOENA UNDER Fed. R. Civ. P. 45 (c)(2)(B).

Judgment Creditors', Pentagen Technologies International Ltd ("PTI", or "Pentagen"[1]) by its attorneys, Law Offices Joel Z. Robinson & Co., respectfully submit this further memorandum in support of its Motion for orders, pursuant to C.P.R.L. 5224 and for Turnover Orders and as further set out therein compelling the United States, IBM, CACI and others ("Trustees") to return any MENTIX software they have in their possession, to account for any use of the MENTIX software and to appear and respond to the Subpoenae issued herein, as the case may be.

Judgment Creditors seek the Return of their Software and the Imposition of Constructive Trusts on Proceeds of Unlawful Use

A. UNDISPUTED THAT U.S. LOADED AND TESTED 3090 MENTIX VERSION

It has been previously established that the U.S. tested a version of the stolen MENTIX on one of its 3090 mainframes. Now, pursuant to permission granted by Judge Sprizzo on October

[1] Words and expressions have the same meaning as set out in the Motion, or previous pleadings filed here or filed in aid of enforcement.

30, 2002, Judgment Creditors have obtained further direct evidence, confirming that MENTIX was assigned or otherwise transferred to the each of the identified constructive trustees.

B. CONCEALMENT RESULTS IN SKETCHY STORY OF SOFTWARE TRAIL

Until 2000, the existence of the 3090 version of the stolen MENTIX software had been concealed. Even though the 2000 evidence established the assignment/transfer from RDG Group to the U.S., there is only sketchy, but no less compelling, evidence, of how the software ended up being developed, loaded and tested on the U.S. mainframe 3090 computers in Chambersberg PA. The role played by others has not been fully explained and to an extent remains misty. Now, the long shadowy history of the active concealment of the Secret Test, undertaken by CACI and the United States together with others from 1991 to 2000, has been replaced by silence.

However, reviewing all the evidence so far presented, it is obvious that some or more of the named persons or groups were involved. While the exact nature of each of the parties involvement may be unclear, the evidence presented to date proves their complicity. Simply stated, given the evidence to date , there is no way that the U.S. could have obtained a copy of the necessary source code of MENTIX other than through the parties named below.

C. MENTIX SECRETLY TRANSFERRED/ASSIGNED ONWARDS FROM RDG.

Only one copy, the September 1990, UNIX version of the MENTIX software the subject of the Judgment, has been returned to Judgment Creditor since the seizure of the property by RDG Group in August 1990.

Set out below is a summary of the evidence obtained to date pointing to each person's or group's complicity in the trail. Since the Judgment, evidence obtained has established that MENTIX was transferred and assigned to the following persons and groups:

1. RDG GROUP

RDG Group, the Judgment Debtor in the Judgment, includes Runaway Development Group, S.A., Expert Objective Systems Development Corporation ("EOSD"), Robert O'Brien, ("ROB") President of RDG Group, Nathan Tanuwidjaja ("Nathan"), RDG Group's software developer, Thomas Marshall ("Marshall") and Dr. Sebastian Shaumyan ("Dr. Shaumyan") RDG Statement pp.26-7; Nathan's Statement ¶ c.

a. Dr. Shaumyan

Dr. Shaumyan, who had a Contract for Life for the development of MENTIX with PTI, with confidentiality provisions, (Dr. Shaumyan's Statement Exh. C and D), had initially verbally agreed to work with RDG Group on the CACI AMC Project, (id. Exh. E.) After the seizure, RDG approached Dr. Shaumyan as follows:

> "[RDG Group] has signed a Teaming Agreement with CACI in anticipation of getting a contract with the U.S. Army under which CACI would be the prime contractor and [RDG Group] the subcontractor, to port the MENTIX software to an IBM 3090 computer belonging to the U.S. Army and operating on the M.V.S.-C.I.C.S. system.
> The proposal has not been written, but it is anticipated by the Teaming Agreement that we would provide three full-time and two part-time programmers and/or engineers to work on the project. You have agreed to work on the proposal and we expect that you would be able to work part-time on the actual development contract...."
>
> RDG Group letter to Sebastian Shaumyan September 13, 1990
> Dr. Shaumyan's Statement Exh. E.

However, he seems to have balked at signing a written Contract with RDG Group (id. Exh. G and H). By the time of the CACI/RDG Demonstration at his home in New Haven, RDG Group seems to have lost confidence in Dr. Shaumyan (id. Exh. J at p.2-3) (id. Ex I). On March 4, 2003, Dr Shaumyan was asked if he had ever worked with CACI, but he said he could not

even recall the name "CACI"! id. at p.21[2]

b. RDG Group obtained MENTIX on August 13, 1990.

RDG Group acknowledged in the Judgment that it had possession of MENTIX from August 13, 1990. A copy of the Judgement is attached to the ROB's Statement taken November 26, 2002 ("RDG Statement") at Exhibit JC-1.

c. RDG Group did not give the software to any-one but CACI.

RDG Group stated in the RDG Statement that only CACI had a copy and that RDG did not give the software to any-one else.

> "Q. Did you enter any similar arrangement with anyone else in breach of [the CACI/ RDG Teaming] agreement?
> A. No.
> Q. So you only dealt with CACI for the purposes of the Army?
> A. Yes.
> Q. Did you deal with anybody else, any non-government?
> A. No.
> Q. So as far as you were concerned, it was CACI or nobody?
> A. Right. (at pp. 47-48)
> ....
> Q. And you don't recall ever giving the product to anybody other than CACI if you did or did not give it to them?
> A. That's correct, right.
> Q. And, just to follow that point, if you go on to the statement of work page. Go back to the -- that page there. The one that's marked page 9. It says, "In no event shall either party to this Agreement grant licenses in source code form without the prior written approval of the other party."
> A. Okay.
> Q. Do you recall ever granting a license in source code form to anybody else other than CACI, if you did or did not?
> A. No.
> Q. And do you recall CACI ever coming to you asking you to do the reverse, we

[2] Dr. Shaumyan gave the statement pursuant to a subpoena. He had no recollection of any of the events under discussion. In his Deposition, he as well as admitted that he was not telling the truth (at p. 50.) The CACI/Dr. Shaumyan relationship is one item for any CACI subpoena.

want to give it to somebody else?
A. No.
Q. So as far as you were concerned, the product would only be with CACI, the intellectual property would only be with CACI under this agreement if, in fact, it was transferred?
A. Yes. (at pp. 48-49)
....
Q. And your point is that in your view, given the circumstances and the fact the copy that turned up with the Army would have been an unauthorized version of MENTIX, because there was no other way it could get it --
A. I don't know whether the Army has a copy or they don't have a copy.
Q. I understand that, but if they had a copy which they tested --
A. My position is that basically the only use we authorized, to the best of my recollection, was the [CACI/RDG] teaming agreement. (at pp. 167)

RDG Statement at the pages noted.

d. <u>RDG completed an AT&T version of MENTIX by late 1990.</u>

On February 13, 2003, Nathan Tanuwidjaja, made the following statement under oath:

"2. I confirm the following:

a. During the material period [September-December 1990], I did development work on MENTIX using the AT&T 3B2 computer initially at Tom Marshall's place in New Jersey. The computer was then sent to Dr. Sebastian Shaumyan's home in New Haven, Connecticut, where I worked on it until the Sun Sparc had the software copied on it. At all times that I worked on the 3B2 it contained the Mentix Source Code which I never removed. Thereafter I worked on the Sun Sparc computer. I do not know where the machine went from there.

e. <u>Other RDG personnel (except Sebastian Shaumyan) returned their copies of MENTIX</u>

<u>Nathan Tanuwidjaja,</u>

Nathan stated as follows:

"2. I confirm the following:
...
b. At that time, I was aware that a company named CACI was involved with MENTIX. I was never approached by CACI to work for them in any way, nor did I ever travel to their premises to load any version of MENTIX onto any of their machines. Nor did I transfer possession of any copy of

MENTIX or related software to anyone else outside the group I was working with at any time.

c. The only two people in our group who were involved with the hands-on development work during that period was Sebastian Shaumyan and Thomas Marshall. Mr. O'Brien, who had no programming skills to my knowledge, was not involved with any of the hands-on development work."

Thomas Marshall

Deposition taken April 13, 1994, he made the following statements (at p.236-7)

"Q. You said that you were no longer involved [with RDG Group] from early 1991. Can you put a date on that, an incident or a date?
A. Late January, February."

f. Shaumyan's AT&T machine was never returned to RDG

At the end of 1990, Nathan had delivered the AT&T 3B2 computer to Dr. Shaumyan,, which contained an updated version of MENTIX developed by Nathan, (Nathan Statement ¶ a.) and which was the version of MENTIX used by CACI in its Business Case document produced in July 1991.

RDG now states that it never got back the AT&T 3B2 computer:

Q. And if, for example, the computer, the [AT&T3B2] computer, if that computer had been transferred, you didn't get that back?
A. No.

RDG Statement at p.167

2. CACI

a. One copy of MENTIX was transferred to CACI in September 1990

It is not in dispute that one copy of MENTIX, which included a copy of source code was available to CACI. It had been transferred by RDG in September 1990; Letter CACI to RDG Group September 27, 1990, attached to RDG Statement Exhibit JC-6.

Larry Dean, the CACI employee who handled the MENTIX Project confirmed the transfer in an affidavit dated May 24, 1994, ("CACI-Dean 1994 Affidavit") as follows:

> "8. In September 1990, Robert O'Brien provided CACI with a copy of the MENTIX software. This was the first time that CACI had possession of or access to MENTIX. At O'Brien's direction, CACI made one copy, returned the original to O'Brien, and placed CACI's copy in the company vault for safekeeping. ***CACI took possession of a copy of MENTIX pursuant to the Teaming Agreement which entitled CACI to retain a copy of MENTIX so that CACI would be able to perform any contract which the AMC might award to CACI as prime contractor even if BTI/EOSD/O'Brien were incapable of performing their duties as a subcontractor under the Teaming Agreement."***
>
> Copy attached (emphasis added)

b. RDG agrees to deliver computer with AT&T 3B2 MENTIX version to CACI

CACI and RDG entered into a Memorandum of Understanding dated July 8, 1991. Included in the Memorandum were the following provisions:

> 2. [RDG] will make available to CACI, at no cost, a General license for MENTIX software which will execute on an AT&T 3B2 platform.
>
> ...
>
> 5. It is envisioned that the General Licence issued to CACI will be for a term of one (1) year and will be automatically renewed, at no cost, unless notified in writing by [RDG]. Further, specific terms and appropriate licensing schedules will be provided to CACI which permit CACI to sub-license Mentix Processor licenses.
>
> ...
>
> 7. CACI and [RDG] intend to negotiate, upon mutually acceptable terms, a Lease-with-purchase-option" rental agreement for use by CACI of the 3B2-500 owned by [RDG]. Both parties agree to accommodate a provision in that rental agreement for access to and use by, [RDG] of the computer system once installed on CACI's premises....
>
> RDG Statement Exh. JC-15

On August 19, 1991, RDG advised Q'Nial of CACI's licensing of MENTIX.

> RDG Statement Exh. JC-18

c. Dr. Shaumyan previously stated that a AT&T 3B2 had been transferred to CACI

While presently Dr. Shaumyan has suffered memory loss, he previously made a statement to PTI's Counsel in this case that RDG Group ceased all development work when Mr. O'Brien handed over to CACI an AT&T 3B2 computer that had been used for that purpose. He explained to Counsel that, from that point in time, he was no longer involved. As noted above, an AT&T 3B2 machine was never returned to RDG by CACI.

d. CACI undertook development work from September 1990

> "In order to optimize Mentix product familiarization time of **our four person team,** we'd like to reproduce 3 copies of the documentation which you furnished...." (Emphasis added)
>
> Larry Dean of CACI Memo to RDG. December 12, 1990
>
> "... Please accept this as authority to reproduce '3 copies of the documentation' we furnished under our cover letter dated December 7, 1990, and our authority to use such "to optimize MENTIX familiarization time" by your four person team...."
>
> Permission was given by RDG Group to CACI December 14, 1990

In the CACI-Dean 1994 Affidavit, Larry Dean stated the following:

> 9. I supervised and participated in each presentation by CACI to the [AMC]. CACI presented a "White Paper" to the AMC in October 1990. This White Paper recommended that the AMC fund a MENTIX-based prototype project to modernize an existing AMC application which would execute on the IBM 3090 platform....
>
> 10. ***After presentation of the White Paper to the AMC in October 1990, CACI continued to develop the proposal for a pilot project***. In July 1991, CACI submitted a Business Case paper to the AMC which provided a technical approach to an engineered software conversion.... This presentation proposed the use of CACI's RENovate methodology on a pilot project for reengineering AMC's software. The MENTIX software was identified as one of the tools that CACI proposed to use in connection with its RENovate methodology for the proposed pilot project for AMC. ***To perform***

> ***the pilot project MENTIX would have needed to be ported to the IBM 3090 platform, as MENTIX was unusable for its proposed application unless and until it had been ported to the IBM 3090 platform.***...
>
> ....
>
> 17. CACI, Inc-Federal devoted considerable resources and man hours to marketing the proposed pilot project to the AMC.... [My] best estimate is that in excess of 600 man hours were involved"
>
> (Emphasis added [3]) Copy attached.

e. CACI developed and produced a Business Case by July 1991

In the Business Case entitled "Business Case for the Incremental Re-engineering of AMC's Mission Essential Software Systems", prepared by CACI and submitted to AMC in July 1991, CACI noted, in the first six pages how it had developed the following :

> "This document presents a proposed proof-of-concept which will validate an approach to accomplish incremental, self-financing, re-engineering and modernization .... The Project proposed herein describes a methodology for incrementally achieving the migration of the Army Material Command's (AMC) Mission Essential Application ...."

Relevant portions of the Business Case include as follows:

1. CACI targeted system to be reengineered under the Business Contract was the Design to Cost System (DCS) (Business Case at p. iii.,)

2. DCS consisted of 23 COBOL programs that then executed on an equivalent of a 3090 mainframe computer, (Business Case at p. 2.)

3. CACI estimated that the estimated cost to reengineer the system was $320,000, with the remainder of the project costs "being related to the ***demonstration*** of its portability from the MVS platform to the UNIX platform, and its transformation from a CASE engineering specification to Ada in the Unix environment"

---

[3] One pillar of CACI's concealment plan was to represent that MENTIX had ***not*** been ported i.e. that ***"MENTIX was unusable for its proposed application unless and until it had been ported to the IBM 3090 platform.***. In 1994 Judge Brinkema partly based her judgment on it and the U.S. 1997 Brasseur Statement repeated it. The revelation of the Secret Test in 2000 has reversed the intent of each of these representations. Once there was evidence that MENTIX had been ported to the 3090, all such statements have since become evidence in support of PTI.

(Business Case at p. iii.).

4. References to MENTIX include the following:

   a. "Approximately 60 % of the expected project cost of this program is for COTS software licenses and porting fees. The COTS licenses include a DBMS for both the MVS and Unix platforms, a CASE Toolsuite, ***and an MVS Version of MENTIX.***...."
   b. "Transformation of the DCS Application from COBOL to Mentix in the MVS environment:
   This phase of the reengineering project is roughly equivalent to the Code and Unit Test Phase of a traditional "forward" engineering effort. ***The Mentix application environment will be employed for this prototyping effort as it has an implementation in both a Unix and MVS platform environment***"
   c. Platform to be used for development was to be an ***AT&T 3B2*** multi-user platform (computer) using ***Unix*** platform.: (Business Case at p.17)
   d.. Deliverables Phase II: one licensed copy of ***MENTIX-MVS***, p.21 of the Business
   e. Deliverables Phase III, one 60 day licensed ***3B2 Unix version of MENTIX*** copy
   f. MENTIX to ADA translation would be demonstrated on a ***3B2*** machine. (Emphasis added), copied attached

f. <u>CACI had identified a vehicle for Funding the 3090 Porting Project</u>

> "...[W]e have had our first formal contact with the Tennessee Valley Authority (TVA) regarding their Technology Brokering Program as the contracting vehicle to support the Army funded MENTIX porting project. Upon Senior Army Staff identifying their funding mechanism, AMC procurement personnel will rapidly meet with TVA to finalize the Army-TVA support agreement. My estimate of the time interval between our formal presentation and a fully executed contract vehicle and the beginning of work is 2-3 weeks. I also estimate that the budget for the project will approximate $500,000. ***This project is a major step towards our targeted market of 40,000 IBM mainframes in the world.....***"
>
> Larry Dean, CACI letter to PTI dated July 26, 1990.
> Copy attached (emphasis added)

"..... CACI is in the process of consummating a cooperative arrangement with

> the Tennessee Valley Authority (TVA) to undertake research and development projects under the TVA's charter, which, among other provisions, permits them to work for others in the conduct of prototypical and R&D efforts which contribute to the overall posture or our national defense. The contract work necessary to develop the MENTIX-based prototype application could be accomplished through that relationship, especially since TVA will benefit from having access to the MENTIX derivative for use in their own software modernization efforts."
>
> CACI White Paper to AMC October 1990 at p.5-6.
> RDG Statement Exh. JC-9 p.263-4

3. CACI/RDG Group Teaming Group

a. The CACI/RDG Joint-Development Team

The CACI/RDG Group Teaming Group was created on August 15, 1990, two days after the product had been seized. The Team's Objective was set out in the CACI/RDG Teaming Agreement which is attached to the RDG Statement Exh. JC-5., as follows:

> 1. General Undertaking. The U.S. Army Material Command and the Tennessee Valley Authority ... have expressed an interest in having the parties to jointly prepare and submit a proposal for winning a research and development contract ... in support the parties efforts to port ... MENTIX to the IBM 3090 MVS/CICS platform environment ('MENTIX-MVS') ...
>
> 5. Rights to Work Product Created under Subcontract. It is agreed that the parties shall jointly develop from [MENTIX], a derivative work to be known (for the purposes of this Agreement) as MENTIX-MVS " MENTIX is a trademark of [Judgment Creditor]. ..."

b. The RDG/CACI Team had copies of MENTIX available to it.

Both team members had at least one copy each of the software and the source code and the software. The Teaming Agreement provided as follows:

> "B. Certain Software Licensing Activities....
> In no event shall either party to this agreement grant licenses in source code form [of the MENTIX software] without prior written

approval of the other party. ..."

As noted above, RDG's present evidence is that it observed this provision and that CACI never sought permission to license the product.

c. Description of AMC 3090 MVS Porting Project.

In 1990, the U.S. used 3090 MVS mainframe computers (IBM machines) and AT&T 3B2 Unix computers, each using different operating systems. The U.S. was motivated to have certain of its computer applications available on both the MVS and 3B2 computers. MENTIX was attractive because, if MENTIX could be ported to both the MVS and the 3B2, both systems could interrelate with each other.

The whole objective of the RDG/CACI Teaming Agreement was to port MENTIX to the 3090 MVS computer for the AMC to achieve that goal. The 2000 evidence established that the objective had been achieved, with a then industry-doubled 50 per cent reusability rate, which was the same rate CACI had offered in the 1993 SBIS Contract.

d. CACI and RDG continued the Teaming Agreement even after knowledge of dispute

RDG's evidence is that Dr London and Mr. Elephante and other people from CACI told RDG that the Terming Agreement should proceed based on the warranties that RDG had given that RDG had title to the product and that the team shouldn't be dissuaded by threats from PTI.

> Q. Once again to your recollection, by that time [July 8, 1991] had the 3090 version been developed to your knowledge and ported?
> A. I have no knowledge of the 3090 version being developed. (at pp. 128-129)
> ....
> Q. Did you -- by this stage, to your recollection, did you receive any monies from CACI or anybody for the use of MENTIX?
> A. No.
> Q. And I think your evidence has been that you never received anything, so, even though I'm asking the question -- the reason I'm asking you is, given this information that I'm now showing you, does that change your recollection?

A. No. No.
Q. You never received a dime?
A. That, I think, I would remember. (at pp. 131-132)
...
Q. ... did you discuss with [Jack] London, [Jeff] Elefante or the other people in CACI how the [title] dispute was to be resolved under the teaming agreement?
A. I'm sure that I did, yes.
Q. Can you remember, in general terms, what the terms of the deal to resolve the dispute were?
A. Basically that they should proceed based on the warranties that I had given that we had title to the product and that they shouldn't be dissuaded by threats from Baird and Leiser; if Baird and Leiser wanted to file lawsuit that I would have to defend it.
(at pp. 148-149)
....

Deposition Robert O'Brien November 2002 at respective page ##.

> "With respect to the Teaming Agreement dated August 15, 1990, (the 'Agreement') it has come to out attention that there is an ongoing and escalating dispute between [RDG Group] and [PTI] concerning ownership of proprietary rights to MENTIX....
>
> Section 9(a) of the Agreement ('Warranty of Title') warrants title to MENTIX. The provision also stipulates that if title is challenged, you will perfect title either through litigation or negotiation.
>
> Because we are on notice of alleged facts, that, if true, would constitute a breach of Section 9(a) of the Agreement, we hereby give ten (10) days notice under Section 14 ('Default') and require prompt written verification of ownership of MENTIX.
> ***....[T]he dispute raises an issue so central to the project that we cannot in good conscience proceed until it is resolved.***"
> (Emphasis added)
>
> Letter CACI to RDG Group September 27, 1990.
> Copy attached

By continuing jointly to develop and use MENTIX after having knowledge of the PTI/RDG dispute, CACI had placed itself in an untenable legal position. The only way CACI could "limit" its risk was to conceal its theft and secret use of the property.

Look at CACI's alternatives at the time prior to Judgment. Had RDG been successful in this litigation, CACI would have had title under the RDG/CACI Teaming Agreement. However, in the

event that RDG failed in this law suit, and title in MENTIX was confirmed to PTI, CACI would have had no title. Concealment avoided all problems created by CACI's unlawful possession or use.

e. CACI terminated RDG/CACI Agreement because of AMC's lack of interest in 3090 Port

RDG's present admission that it did not know of the 3090 Port, and that it did not make "a dime" on the RDG/CACI Agreement establishes that CACI's January 1992 Termination Letters to PTI and RDG contained false information, and further establishes that CACI had already taken the "concealment" route. Otherwise, in its Termination Notices, CACI would have informed RDG that the port had been successful or was still in process.

> "Dear Mr. O'Brien:
> Thank you for meeting with us on January 16 to discuss our teaming agreement for marketing MENTIX to the U.S. Army Materiel Command (AMC.)
> This confirms our understanding and agreement that (1) our mutual efforts have not resulted in a contract with AMC; (2) there is no evidence of continuing, active interest in the product on the part of AMC; and (3) the term of the Teaming Agreement has expired. Accordingly, our teaming relationship is terminated without further obligation on the part of CACI, INC. - FEDERAL, Expert Objective Systems Development Corporation, or Baird Technologies, Inc. We are providing notice of this termination to John C. Baird by separate correspondence.
> In light of the foregoing, CACI has discontinued all further efforts or undertakings as expressed in the Memorandum of Understanding relating to MENTIX entered into between CACI, INC. - FEDERAL and Expert Objective Systems Development Corporation on July 8, 1991.
> Enclosed are copies of the MENTIX documentation and source code on diskette. No other copies are in CACI's possession.
> We regret that the opportunity to sell MENTIX did not materialize as we all had hoped. As we discussed, we look forward to exploring other potential business opportunities with you."
>
> Letter CACI to RDG, January 20, 1992
> Copy attached the RDG Group Deposition Exhibit 21

"Dear Mr. Baird:
This letter is in reference to a Teaming Agreement entered into by CACI, INC. - FEDERAL, Baird Technologies, Inc. and Expert Objective System Development Corporation dated August 1S, 1990 (the Teaming Agreement) and serves as CACI's response to your letters, dated September 30, and October 7, 1991, regarding matters associated with the agreement.
Based on my review of the facts, I have made the following findings: The Teaming Agreement was for the purpose of securing a contract with the U.S. Army Material Command (AMC) to port the MENTIX software product to an IBM 3090 MVS/CICS platform environment. Pursuant to the goals of the Teaming Agreement and in recognition of the fact that no formal procurement action for MENTIX" was in execution, CACI marketed MENTIX to AMC and submitted a business case to AMC for its consideration. These actions constituted the best way that CACI knows of to generate with AMC a formal procurement action. Nonetheless no solicitation has been issued from which a contract could result, not has AMC exhibited any active interest in entering into a contractual relationship with CACI for porting MENTIX.
We, therefore, consider that our Teaming Agreement has expired without result, and the teaming relationship is terminated without further obligation on the pan of CACI, INC. - FEDERAL, Expert Objective System Development Corporation, or Baird Technologies. Inc. We regret that the opportunity did not materialize as we all had hoped.
We have provided notice of this termination to Robert A. O'Brien by separate correspondence and have returned all proprietary MENTIX" material in CACI's possession to him".

Letter CACI to PTI dated January 21, 1992
Copy Attached to RDG Group Deposition Exhibit 22

Rather than address its dilemma at the time, the evidence strongly suggests that CACI chose to hide the development and its use of the 3090 version of MENTIX from both RDG and PTI. As a result, while CACI had been given the MENTIX source code , RDG didn't get "a dime" from CACI for the port. (RDG Statement at pp. 131-132). By January 1992, CACI in terminating the RDG/CACI Teaming Agreement, from then on, CACI was able to keep possession of the stolen the property exclusively for its own use. CACI immediately teamed with IBM to offer a similar product to the $474,000,000 SBIS Contract, which required similar

software.

CACI's Termination Letters were issued to ensure that any PTI victory in this case would be empty and that there would be no evidence of any assignment or transfer of the property. For so long as there was no evidence of either CACI's use, or the 3090 Test, neither PTI nor RDG would be any the wiser. So long as neither RDG nor PTI knew nothing of the demonstration (or the port), CACI had successfully stolen the software and had the opportunity to use it on the 40,000 IBM mainframes around the world that it had already targeted.

f. Evidence of joint RDG/CACI development

There has been previously produced an Agenda for a meeting to be held on January 15-16, 1991,between RDG Group and CACI at RDG Group's New Haven Office. (Dr. Shaumyan's house). The Agenda for that meeting is titled "MENTIX-Demonstration of Capabilities" and the following was noted to be demonstrated:

> "I. Mentix Fundamentals
>
> A. Tutorial Run-thru
>
> ...
>
> B. Integration of Mentix and Genotype
>
> ...
>
> C. Demonstration of Capabilities
>
> ...
>
> II. Additional Packages
>
> A. Mentix FASTMATH
>
> B. Mentixdb demonstration
>
> ...
>
> III. Hands on demonstration by CACI personnel"

In a hand written note, faxed to RDG Group on January 15, 1991 from CACI, Larry Dean of CACI, in response to the Agenda, added the following items:

> "Items of Particular Interest (Mentix)

- Mentix Language facility
  - - Interface to DBMS
  - - Assembly/complier (Language Processor)

- DBMS Engine
  - - Data Management technique
  - - Interface(s) with host IOCS
  - - How object orientation is accomodated
  - - Interactivity with data dictionary
  - - Ability to array data across physical devices
  - - Importation/Exportation Facility
  - - Save/Restore recovery features."

Dr. Shaumyan Statement Exh.I

While there is no direct evidence that the demonstration took place, there is no evidence that it did not.

4. IBM/CACI SBIS Teaming Agreement.

a. IBM/CACI and others Team for SBIS Contract.

CACI teamed with IBM for Sustaining Base Information Services ("SBIS") from the beginning in early 1992 at the time CACI issued the Termination Letters to RDG and PTI. The SBIS contract was let in June 1993. Judgement was entered in this case in August 1993.

b. Chance for MENTIX title lost by CACI in August 1993.

By August 1993, CACI had lost any chance for title to MENTIX. PTI obtained Judgment in this action and immediately demanded the return of any property CACI had obtained since the seizure. In response, CACI's failed to return any of the property, and litigation immediately ensued between CACI and PTI. CACI's consistent position has been that they never had a copy of the product (other than the September 1990 version that they returned in January 1992 but which may have been previously copied). Their position has been supported

fully by all the Trustees throughout, and has been repeated thereafter and continuously to the present.

c. In November 1993, IBM directs CACI not to use RENovate in SBIS Contract

On November 8, 1993, within four months after the entry of the judgment in this case, Dale Howell, a Senior Subcontract Administrator of IBM wrote to Debbie Mays, Contracts Manager of CACI, and ordered the following

> "Even though the CACI RENovate (TM) process was described in the SBIS Technical Proposal as a reeingineering approach that could be used within the SBIS solution, *IBM FSC directs that this process NOT be used for any purpose under the SBIS contract unless express written authorization has been first obtained by CACI from IBM."* (italics as in the original).

Copy previously attached

Given the evidence so far obtained, it may be IBM discovered that CACI was using stolen software.

d. Not a single modernized application delivered in SBIS

It is undisputed fact that no modernized software was ever delivered under the SBIS Contract, which was cancelled in 1997 after at least $209,000,000 of taxpayers' money had been paid to the non-performing contractors.

5. United States

a. United States had a 3090 version of MENTIX

The court is already aware that on April 12, 2000, at a Hearing before a Commissioner for that purpose in Alexandria VA., the U.S. disclosed, under oath, that, it had in its possession at least one copy of a derivative version of MENTIX, which it had tested on a 3090 computer at the Army Material Command, SIMA West central design facilities at Chambersberg, PA., that the

product had converted code at the rate of 50 percent, and that Lynn Byers, Jim Hafer and Maurice Johnson knew about the use. (see evidence filed with Petition in this action)

The issue is from whom did the United States obtain its 3090 version of MENTIX

b. RDG Group was incapable of dealing directly with the U.S.

For many reasons, RDG Group was unable to contract directly with the U.S. There is no evidence that it ever had a contract with the U.S. As stated in RDG Statement:

> "Q. Yes, but the whole objective of a teaming agreement was to do the 3090, was to port it?
> A. No. No. No. .... the Army isn't going to pay, and we were very clear on this, the Army isn't going to pay just to port somebody else's software to their computer. There has to be a job of work that the Army wants done and you use this software in that. Now, if part of the job requires porting it to a certain computer, then you can get it paid for by the government. But the government isn't just going to had come out and say, gee, it would be nice if this stuff ran on a 3090, we're going to pay you to do it. I mean, maybe there's some research grant for doing that.
> Q. But you couldn't do that anyway. I mean, that wasn't an issue you could perform anyway; that's why you went, presumably, why you went into the agreement with CACI?
> A. Prior to my becoming actively involved in these decisions, it had been clear that no government agency was going to take on Pentagen or any of the other corporations that got involved as a prime contract. They didn't have the credentials to be a prime contractor, either technical or financial or anything else and the only way --
> Q. And you say they didn't have the 3090 either.
> A. But they didn't have the people, they didn't have the money, they didn't have a history as a government contractor --
> Q. So you relied on CACI for all of that?
> A. So we relied on CACI.
> Q. And you didn't rely on anybody else?
> A. No. "
>
> RDG Statement at pp. 169-170; see also ¶ 2. b. below.
>
> Q. And your point is that in your view, given the circumstances and the fact the copy that turned up with the Army would have been an unauthorized version of MENTIX, because there was no other way it could get it --
> A. I don't know whether the Army has a copy or they don't have a copy.
> Q. I understand that, but if they had a copy which they tested --
> A. My position is that basically the only use we authorized, to the best of my recollection, was the [CACI/RDG] teaming agreement.

Id. at pp. 167

6. United States/CACI/Tennessee Valley Authority Contractual Relationship

a. CACI, as Government contractor, was able to perform 3090 port for the U.S.

> "There are several factors which must be considered regarding the assessment of whether or not a small firm like [RDG] could successfully deliver the prototype project described herein. Chief among these concerns is whether or not they are financially strong enough to sustain the effort. The management of [RDG], is aware of this concern and to overcome it, have established a strategic alliance with CACI, Inc.-Federal. CACI is an established. firm which regularly undertakes software conversion, reengineering, and systems integration projects. CACI possesses sufficient corporate resources to ensure successful completion of project of this nature, when teamed with EOSD. CACI looks for opportunities such as this, where the edge of technology can be advanced. CACI is not only willing to lead the prototype development project, but is also confidant that the project can completed within the 4-6 month project duration estimate."

CACI AMC White Paper presented to AMC October 1990 attached to RDG Statement as Exh. JC-9 p.263

b. U.S. admits in open court CACI was involved in Secret Test.

On March 4, 1999, at a hearing in the Federal Circuit in Washington D.C. the Counsel for the U.S. Mr. Barrett made a statement to the Court referring to the evaluation under dispute at the time:

> " ... I believe CACI if there was this second evaluation or first evaluation I believe it was involved in that one too."

Transcript of Court Hearing filed herewith at page 8 lines 17-22.

c. CACI/AMC/TVA had joint contracts during material period

Most, if not all, government contracts require a proposed contractor to prove the capability to perform and deliver the product or service offered. The SBIS Contract was no different in this regard and, in order to prove their ability and that they had access to the tools

and methodology needed to modernize the U.S. software, IBM and CACI made reference to several contracts that CACI had performed prior to 1993 which were related to the their ability to undertake tasks required to be undertaken, or were similar thereto.

However, at the time of the bidding process, from September 1992 to June 1993, RDG and PTI were heavily involved in the litigation. CACI was fully aware of the litigation, so it would be very unlikely that it would have made any statements implicating its own involvement, for example, in the DCS program. One would not expect to find any direct reference to the DCS Project, referred to in the Business Case.

On the other hand, CACI and IBM had to prove to SBIS their ability to deliver on their undertaking in the SBIS Contract as follows:

> "We will achieve 40 to 50 percent component reuse in the first year, 70 percent in the second year, with a target of 80 to 90 percent by the completion of the first 89 SBIS application systems at the end of year three.
>
> Achieving our reuse objective, as part of our rapid development approach, will allow us to provide the Army with high software engineering productivity rates and low cost of software ownership. The IBM Team has the skill, experience, and technology to develop software with Greater Than 80% Component Content based on our strong demonstrated software reuse performance on previous Army, DoD, and other Federal Contract.
>
> Our historical performance, coupled with our software development approach and methodology... supports a software development cost estimate based on software reuse achievement of 55% at the end of the first year of software development.... It is from these kind of experiences that we derive our expectation for similar results."

SBIS Contract at pp. 4-92 and 4-92a. Copy previously attached

Because of the U.S. statement in 2000 that a 3090 version had been tested, and had CACI previously undertaken the DCS Business Case, there should be indirect references in the SBIS Proposal to the pre-1993 contracts that had similarities to the DCS Project.

For example, any software referred to is such contracts, within the 1991 -1992 time frame that had the same characteristics as MENTIX has, would be a prime target for consideration, contracts which had the TVA as a contractor with the Department of the Army/Defense, contracts which performed development/use of methodology for "rapid development" projects, contracts which worked with 20-odd applications, contracts valued at $320,000, with additional charges for work with the TVA, contracts which, to use the words that CACI used previously used to describe MENTIX in 1990, such as having

> " a capability it brings to developers is the ability to '***sit***' the Mentix environment '***over***' existing databases and to ***extract*** data for ***insertion*** and ***manipulation*** in the Array handler." and products that "can be coupled to numerous CASE environments which will ***generate application code that is a functional clone of the original source code implementation***. This type of integrated CASE ReEngineering tool suite will open up the entire existing applications market for cost-effective modernization, regardless of the motivation to do so. Moreover there is no completing technology available which is independent of both the current and target application systems computing platforms."

CACI Memo dated March 1990, copy previously attached.

However any references would be camouflaged so as not to alert suspicion that the Trustees were not using stolen software.

It would be anticipated that any such references would appear in the section addressing Experience Item Description Identifiers in the SBIS Contract. Because any description included therein would have been incomplete and misleading, they will not be explored here, but CACI should give an explanation of any contracts performed during the 1991-2 period with characteristics similar to the DCS project and establish that none of them mentioned in the SBIS contract incorporate the DCS Business Case.

d. Constructive Trustees used unidentified tools in many contracts since Secret Test.

By August 1991, CACI already began to use RENovate with MENTIX. A copy of a Proposal using MENTIX with RENovation is attached hereto. The August 6, 1991 Briefing paper showed the false relationship they created to conceal their use of MENTIX. CACI's *modus operandi* of concealment was to split the "tool" from the "methodology", rename the "methodology" RENovate, claim the methodology was "tool independent" and, wherever possible, to "fudge" the identity of the software being offered and used. Because CACI used its so-called RENovate methodology with MENTIX, any and all other "RENovate" contracts are potentially tainted, as all could have used a concealed version of MENTIX.

Indeed, since the Secret Test, the constructive trustees named above have all been involved in several mega-project purportedly using "RENovate" and other unidentified tools, awarded to modernize COBOL code including the following;

- **CACI's $66M subcontract with VGS Inc**. to provide information processing support services to the Federal Systems Integration and Management Center (FEDSIM) Federal Information Processing Support Services program. to provide information technology services including reengineering, across all federal agencies, and is the preferred vehicle to fulfill National Performance Review mandates to integrate information technology into the way the government does business. CACI will provide its systems reengineering, and software reuse processes and tools that help organizations "manage technology change by protecting existing technology investments while migrating to powerful new technology environments" and uses CACI's reengineering methodology "to preserve the usable capabilities of current systems while transitioning them to new environments" and its software reuse technology which "implements the systematic reuse of software components and code throughout an organization, reducing the risks and costs of software and systems development." CACI noted that "its ... solution will enable FEDSIM clients to migrate their information systems to new and more advanced technology environments -- without having to start from scratch -- ...." (PR Newswire, January 3, 1996);

- **CACI alliance with PKS Information Services, Inc. (PKS)**, a subsidiary of Peter Kiewit Sons', Inc., one of the largest privately held companies in the U.S., to market legacy application software migration and systems reengineering solutions in the commercial marketplace, focusing on attacking high-end reengineering challenges. CACI licensed it systems reengineering methodology to PKS and partnered with PKS to deliver the systems reengineering methodology solutions to customers in a variety of industries. PKS and CACI

also agreed to jointly invest in expanding other elements of their already extensive reengineering capabilities and agreed to jointly develop a "Reengineering Clinic" with CACI's methodology and associated process and simulation tools, and other legacy software migration toolset and using CACI's extensive workforce trained in its methodology, which when combined with PKS's data center, computer processing, and systems integration resources yields a systems reengineering capability that is "unequaled in the marketplace." (PR Newswire, September 10, 1996);

- **CACI's $110.9 Million Contract for Information Technology Support Services** Contract by Department of Justice referred to as ITSS 2001,which provides for "services that advance the use of existing systems, improve and streamline them, develop new applications, and introduce new technologies. While specific goals focus on enabling DOJ organizations to meet the anticipated demand for systems development and automated data processing, the program is also open to all other federal agencies." The contract provided for the use of reengineering methodology, (PR Newswire September 23, 1996);

- **CACI's (with Lockheed Martin) Contract with the Office of the Secretary of Defense (OSD)** Program Analysis and Evaluation Office to provide support to the Joint Warfare System (JWARS) development including the providing of "reengineering methodology [to] ensure the efficient and cost-effective analysis, capture, and reuse of legacy system code, services, and tools." (PR Newswire, May 19, 1997);

- **CACI's contract to Support Naval Information Systems Management Command,** Washington, D.C. with Lockheed Martin (which "continues [CACI's] long-standing relationship with the Navy and Lockheed Martin") under which CACI will provide information technology support services to the Navy's Space and Naval Warfare Systems (SPAWAR) Command, located in San Diego, California and serving the Navy and Marine Corps. to maintain and enhance SPAWAR's information systems infrastructure applying its reengineering methodology to SPAWAR legacy systems to enhance and expand their capabilities. We look forward to helping modernize the Fleet and its supporting information infrastructure, and are proud to have this opportunity to provide our military with the cutting edge in technology innovation and performance." (PR Newswire August 13, 1997);

- **CACI's $58 million Contract to Support Navy Fleet Material Support Office** Information Technical Support Services of the Fleet and Industrial Supply Center Norfolk Detachment Philadelphia undertaking activities using including "systems reengineering methodology, capable of bringing Navy systems into powerful new environments without incurring the cost and time of totally new development", (PR Newswire, September 11, 1997);

- **CACI's partner's Quality Consulting Services (QCS), MatriDigm** "highly automated factory solution" project on Northrop Grumman's Data Systems and Services Division ("DSSD", who has "established relationships with the military and other federal customers"), "significant mission-critical subsystem applications" containing more than 20 million lines

of COBOL code..(It was reported that "[a]fter successful completion of a benchmark test case, the DSSD witnessed how the ... process verified that the code was modified correctly".) (PR Newswire September 18, 1997) ;

- **CACI's partner's MatriDigm's IBM COBOL Code Renovation Project for Wells Fargo**; (PR Newswire; August 3, 1998)

Additional subpoenae will be necessary to obtain the identity of any additional contracts and information concerning the identity of the product offered in each of the contracts so identified.

D. ACTS UNDERTAKEN TO CONCEAL U.S. SECRET TEST

1. Since the 2000 revelation of the 3090 version of MENTIX, it is now possible to set out below many of the acts of concealment undertaken by CACI and the United States and others to conceal the Secret Test prior thereto. The material referred to herein was attached to the Turnover Motion filed April 17, 2002.

The acts of concealment undertaken include the failing to produce correct evidence, filings of pleadings containing false and/or misleading evidence, acts which have been previously labeled "litigation misconduct" or acts of intimidation, intended to force the opposition to concede a particular point. Because the persons named all knew of the dispute of the title to MENTIX, the purpose of these efforts could only have been to perpetuate the concealment of the existence of the Secret Test, so that the 3090 version of MENTIX would not be the subject of a turnover order, such as presently being sought.

RDG/CACI/U.S. all knew of dispute from prior to seizure

2. In this case, from the time of the inception of the dispute upon which judgement was entered, in March 1990, U.S. would not deal with PTI even before the MENTIX was seized because PTI had been unable to obtain the requested "good standing" certificate that it sought. By October 1991, the U.S. had been fully informed of the dispute. (Varnado's Witness

Statement June 24, 1993, e.g. ¶ 8-10; 12-16)

3. RDG/EOSD seized the property at gunpoint on August 13, 1990. Two days later, on the August 15, 1990 Teaming Agreement, PTI's interest as owner is noted (Teaming Agreement at p.1). Moreover, on September 27, 1990, CACI issued a Notice of Default under the Teaming Agreement specifically making reference to this litigation. (CACI to RDG; September 27, 1990) The letter correctly noted that CACI could not be involved while the dispute existed.

3. Thereafter, the teaming partner and the U.S. secretly undertook the development of the 3090 Version of MENTIX, which they marketed to the U.S. from October 1990. (White Paper attached)

At Judgment, in 1993, only UNIX Version of MENTIX returned

4. Judgment in this case was entered on August 4, 1993, but only the UNIX version of MENTIX it had seized, was returned. Provision in the Judgment was made for the return of any other copies and any derivative versions made (Affidavit at ¶ 8 c.). Until 2000, PTI was unaware of any other version of the software. RDG/ROB/EOSD made no mention of any other version of MENTIX was made. On the contrary, CACI had clearly stated in a letter January 20, 1992, when they "returned" MENTIX, that "[n]o other copies [of MENTIX] are in CACI's possession." (Letter January 20, 1992 CACI to ROB attached.). Thereafter during the subsequent litigation between the parties, CACI consistently represented that all copies had been returned and that they had no other version copies,, and the courts accepting the representations, ruled accordingly (see e.g. *CACI Int'l Inc, et al., v. Pentagen Technologies International Ltd* C.A. No: 93-1631-A; E.D.V.A. Judge Brinkema's Decision dated June 16, 1994 p. 10 previously attached). The representations made to the judge were false and misleading. A 3090 Version

had been developed and tested by the U.S., and that critical fact was concealed from the courts until revealed by the Cross-examination in 2000.

RDG/CACI/U.S. undertook years of concealment of the 3090 use.

5. From the entry of this judgment, the Group undertook a series of steps to conceal the existence of the 3090 Version. Had the 3090 Version been revealed at the time of Judgment, an order would have been included for its immediate return. Not only had various acts of concealment been undertaken, but the Group undertook other acts intended to ensure that PTI would never discover the truth. The U.S. made several false FOIA Responses to requests made by PTI on the very issue; the U.S. filed at least one misleading *amicus curiae* brief to a federal court, and the U.S. placed a ban on any PTI communications with any member of the Executive Branch. In addition, CACI, ROB and the U.S. all filed false and misleading witness statements in the English action to defeat PTI's claims. CACI even admitted to others that it "knew" that the U.S. had "evidence that would defeat PTI in its UK action" when the evidence was obtained, even though it later proved to be false.

6. Throughout the period, in August 1993, (copy previously attached) April 1995, and in March 1997 (twice), PTI made a series of FOIA Requests seeking any information on MENTIX . On each occasion, U.S. failed to disclose the existence of the Secret Test.

7. On March 18, 1994, PTI issued a subpoena to the U.S. requesting (inter alia) similar information as had been previously requested (copy previously attached). Again, no Secret Test was reported. Disclosure of the evidence at that time would have materially affected the result of the litigation before the court at that time.

8. After January 1994, PTI undertook extensive investigations relating to the circumstances

at issue at the time, and met with many members of the Executive Branch. On June 16, 1995, the DoJ, by letter, prohibited PTI from discussing this case with any person within the Executive Branch of the U.S. and threatened action under Professional Disciplinary Rules (copy previously attached) The U.S. reaffirmed its position in subsequent letters to the PTI from June 23, 1995. Banning such communication resulted in PTI being unable to continue investigation efforts to undercover the truth surrounding their property. The prohibition continues in effect to the present. Irrespective of the ban placed on PTI, the U.S. nevertheless meet repeatedly with CACI and others as set out below, without PTI being present, to take steps to "defeat" PTI.

9. On June 26, 1995, in opposition to a motion for a preliminary injunction sought by PTI against the SBIS Contractors, the U.S. filed an *amicus curiae* brief in support of the continuation of the SBIS Contract and opposed to any stoppage of the program but failed to make any reference to the Secret Test referred to herein. (copy previously attached)

10. On or before August 14, 1996, Respondents U.S. and CACI secretly prepared witness statements for use in an action against PTI in a then-unrelated English law suit. (copy of U.S. statement previously attached; statements were also filed by CACI, CACI's attorney and ROB). In January 1997, all Witness Statements were introduced into evidence in the English law suit against PTI.

11. Because of the U.S.'s use of contradictory evidence, PTI referred the matter to the proper authorities within the DoJ. On November 13, 1997, U.S. declined to investigate the matter further (copy previously attached). U.S., once again, suppressed the evidence.

12. PTI sought to depose U.S. in the United States. In response, on October 1, 1998, the U.S. made a certification pursuant to 28 U.S.C. §2679. The certification was another in the series of

unlawful acts undertaken by the U.S. to suppress the evidence of the Secret Test from PTI; (copy previously attached).

13. On September 7, 1999, PTI sought permission to interview the U.S. for the purposes of the English Action and on September 21, 1999, U.S. objected and denied Plaintiff's request. This denial was a further attempt by U.S. to conceal the evidence of the Secret Test.

CACI and U.S. consistently participated jointly in the acts of concealment

14. Since 1990, RDG, EOSD, ROB and the Respondents CACI and the U.S. have secretly met and colluded to ensure the development of the 3090 Version of the Product and the continuation of the secrecy surrounding its development and test. There is evidence of this communication from 1990 through 1991,(development period); 1993-4, (Judgment period); 1995 (Injunction seeking period); 1996 (witness statement period); and in 1997, (defense of witness statements). From the beginning, the U.S. had an opportunity to discuss the content of any response with CACI and to seek their counsel thereon. Prior to 1994, CACI had made numerous marketing presentations to the U.S. stating how it could develop a 3090 version of the MENTIX (White Paper for YE 92, October 1990; copy attached). From the first FOIA Request in August 1993, whenever PTI contacted the U.S., CACI was, invariably, immediately informed. Whenever PTI undertook any investigative/remedial action, the U.S./CACI "hotline" rang. Thereafter, PTI's efforts were then either hindered and, in most cases, completely thwarted.

1993-1994

16. In August 1993, when PTI filed a FOIA Request (copy previously attached) and the test was not revealed, CACI and the U.S. subsequently discussed the matter of communications with PTI. (copy of December 1993 CACI time sheet previously attached). Then again, in April 1994,

prior to the U.S. making a false response to a subpoena issued by PTI, CACI and the U.S. discussed U.S.'s response. (copy of March 1994 PTI subpoena and CACI time sheet previously attached)

17. Thereafter, on or about April 5-6, 1994, PTI contacted the F.B.I. to discuss the fraud claims. PTI did not discuss the intended meeting with others. Nevertheless, two days prior to the F.B.I. meeting with PTI on April 14, PTI received a faxed letter from CACI on April 12, (copy previously attached) stating as follows:

> "Our information indicates that you have turned over documents to the [F.B.I.] that were produced subject to the Protective Order entered by the Court in the [Virginia Action]"

Even though a PTI/F.B.I. meeting had not even taken place, persons unknown in the Government actively took the trouble to secretly "hotline" CACI, ***two days*** prior to the meeting, advising CACI of the intended F.B.I./ PTI contact. True to form, CACI stepped in, prior to the U.S. meeting and, in this instance, CACI issued a strongly-written threat, intended to cajole PTI from meeting with the F.B.I. CACI once again took active steps to hinder the investigation of the F.B.I., by threatening PTI in writing. (Copy of material previously attached)

18. Moreover, even though CACI's allegation was baseless, its goal had been fulfilled. PTI and the F.B.I. did meet and did discuss relevant issues, and the F.B.I. made a report suggesting items to be investigated, (Report dated April 14, 1994 at p.3 previously attached). Moreover, on April 21, 1994, upon the filing of the False Claims action, the DoJ was placed under an obligation to perform a diligent investigation by the terms of the False Claims Act. (Copy of front page previously attached) However, clearly, no investigation was ever undertaken, because, we know that Mr. Varnado (the AMC employee most familiar with the circumstances) was never

questioned on the matter. Just as in every other known instance, once CACI appeared on the scene, the enquiry went nowhere. By May 24, 1994, the F.B.I.'s investigation was formally put on hold. Once again, after CACI's involvement, PTI's efforts were thwarted. The Secret Test remained secret.

1995 -1997

19. Further examples of joint U.S./CACI involvement were noted as the four allegations of litigation misconduct referred to in the June 29, 2000 Order issued in *Pentagen Tech Int'l Ltd et al v. U.S.A. et al.*, No 98-1090 (JES).

20. In addition, other examples of such involvement include: (a copy of all relevant material referred to herein perviously attached).

a. PTI telephoned the Office of the Secretary of Defense on June 9, 1995 to arrange a meeting to discuss the matter. Within five hours of the request, **CACI** had been "hotlined" by someone in that Office of the intended meeting and had acted on the information, this time by issuing a warning to PTI about the consequences of the meeting. (copy previously attached) Subsequent thereto, the Secretary decided against the meeting;

b. CACI was actively involved in obtaining the 1996 false witness statement from Mr. Brasseur for use in the English litigation. CACI met with the solicitor to the English defendants and they agreed that Mr. Brasseur had evidence that would have been of assistance to the English case. (Pleadings describing events previously attached) Subsequent thereto, the Brasseur Witness Statement containing false evidence damaging to PTI's English claim was presented. It took PTI three years to obtain the corrective cross-examination testimony that revealed the existence of the Secret Test; and

c. The U.S. actively sought and CACI provided material directly to the U.S. which was used to oppose PTI's putative claim against the U.S. in the Federal Circuit when PTI sought to depose Mr. Brasseur in 1997.

21. On each occasion, CACI was there, secretly communicating with either the U.S. or the other members of the Group. (see e.g. letter April 24, 1997, CACI to PTI previously attached). On each occasion, PTI's efforts were subsequently thwarted. Each occasion presented an

opportunity when PTI could have obtained evidence of the then-secret Secret Test. On one occasion, the U.S. even tendered false evidence in England to conceal the Secret Test to defeat PTI's claims. But on each occasion, after CACI's presence, the Secret Test was never revealed. It was only in 2000, when the English High Court forced the revelation of the Secret Test, that the truth was revealed.

22. CACI had a primary role in the MENTIX matter. While the U.S. has not yet explained how it obtained possession of the 3090 ported-version of MENTIX which was so successfully tested, CACI was the only other member of the Group that is known to have had possession of a copy of the product after its seizure (including the all-important source code). CACI was also the only member of the Group that had presented the 1990 AMC White Paper to the U.S. (Mr. Brasseur) after the seizure explaining that they could complete the port by mid-1991. CACI was involved from the beginning, having entered into a Teaming Agreement with the gunmen who had stolen the product within two days of its seizure in 1990. CACI then undertook to jointly develop a 3090 version of product. CACI had previously reviewed the product and had described its possibilities as "mind-boggling", looking to license it for the 40,000 IBM machines worldwide.

RDG may also have been duped.

23. RDG Group testified in November 2002, that, to this day, apart from PTI's disclosures, it was completely unaware of the 3090 Secret Test. Further, RDG was adamant that it had never received "a dime" from the CACI/RDG relationship (see above) and no reference was made to the 3090 Port in the Termination Letters. Because CACI had an exclusive joint-development relationship with RDG for the software (which RDG states RDG observed), any development of

the 3090 version, using a AT&T 3B2-Unix computer, without RDG's knowledge, must mean that CACI concealed the success of the port and demonstration from RDG.

While it is obvious, given the exclusivity of the RDG/CACI relationship, and the U.S. evidence of the 3090 Secret Test, that the fully developed AT&T 3B2 version of MENTIX was available for CACI's use, (there is additional evidence of the method of transfer, including, for example, evidence that CACI had received copies of the source code and the written materials in September/December 1990, RDG and CACI also entered into a Memorandum of Understanding to deliver the computer and the source code to CACI), RDG's November 2002 evidence proves that CACI concealed the 3090 MENTIX port from RDG. CACI's motive to conceal the success of the very objective of the CACI/RDG Teaming Agreement, was to ensure that CACI retained the software whoever won the Judgment in this case, PTI or RDG.

E. THE CONSTRUCTIVE TRUSTS ORDER MUST BE ENFORCED.

PTI's business has been devastated by the Trustees misconduct. Neither of the 3090 or the AT&T 3B2 versions of MENTIX have ever been returned by CACI. Having established evidence of assignment, transfer and theft of the software the subject of the Judgment, this post-judgment action now seeks turnover orders returning ***all*** versions (including all 3090/AT&T/ or others) of the software in whatever form and ever derivative versions thereof, and any proceeds made from any unauthorized use together with the enforcement of the constructive trusts, accounting and other orders sought, against all Trustees together with such damages arising from the acts of concealment referred to herein.

Either this court should issue a turnover order, or permit the subpoenae previously issued to be reissued and responded to enforce the constructive trusts in place in this Judgment.

F. APPLICABLE LAW

The special procedure provided under which this procedure is brought under this intended Motion/Petition is not a new action but is ancillary to the earlier action and may be brought in U.S. Courts under the existing action. *Dulce v. Dulce,* 233 F.3d 143 (2d Cir. 2000).

In addition, under New York law,

> "A constructive trust, ... is a trust which arises ... against a person who by fraud, actual or constructive, ... by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property, which in equity and good conscience he ought not to hold or enjoy. The court in such a case will declare the wrongdoer to be a trustee de son tort or trustee ex maleficio and through the medium of an assumed trust it will make his legal title subservient to the circumvention of fraud and the attainment of justice." 106 NY Jur 2d (Trusts) § 152 (Citations ommitted)

Moreover, under the New York Trust Pursuit rule, property capable of identification can be traced by the true owner, even if transferred to third parties. Under New York law, the true owner of property can also trace property under the equitable lien upon the property. *Id* § 224. While it does not run to a bona fide purchaser for value without notice, the trust is extended to any person who acquires the property with notice of the breach of trust or who for any other reason is not a purchaser in good faith. *Id* § 231. Generally notice of a dispute is sufficient to make a purchaser not in good faith. *id*.

In addition, a successor in interest to property with knowledge of the dispute and the litigation is in privity of a decision made in relation to title and the judgment as to title has preclusive effect on such successors. As stated in *Golden State Bottling Co., v. NLRB* 414 U.S. 168, 179, 94 S.Ct. 414, 38 L.Ed. 2d 388 (1973):

> "Persons acquiring an interest in property that is subject to litigation are bound by or entitled to the benefit of, a subsequent judgment despite lack of knowledge"

see generally Moore's Federal Practice §131.40[3][b] (3d. 2001).

Res judicata/issue preclusion has only limited application in such cases. . *Res judicata*/issue preclusion only applies to ***subsequent*** cases between the same parties or their privies respecting the same cause of action. *G. & C. Merriam Co., v. Saalfield* 241 U.S. 22, 29, 36 S.Ct. 477, 6 L.Ed. 868 (1916). In addition, the multiple inconsistent prior judgments rule cannot apply where later courts distinguish the earlier judgment. *see* Moore's Federal Practice §131.31[3] (3d. 2001).

Here, this court has held that in this enforcement proceeding, PTI need only establish that to whom MENTIX was assigned or otherwise transferred.

G. APPLICATION

Much of the factual foundation for the Orders now sought is based on evidence filed with the Turnover Motion previously presented to the court on April 17, 2002 and in previous litigation. The foundation has now been supplemented by additional statements made by Robert O'Brien, President of RDG Group, Nathan Tanuwidjaja, RDG Group's software developer, and Dr. Shaumyan, who originally had been with PTI, was sought by RDG, but whom it appears joined with CACI, made on November 26, 2002, February 13, 2003 and March 4, 2003 respectively. All evidence presented in previous pleadings is also incorporated herein by reference thereto as if fully set out herein

H. SUBPOENAE, AND TURNOVER ORDERS ARE NOW APPROPRIATE

The evidence now presented and summarized in compelling. Simply stated, the U.S. has admitted it secretly tested the 3090 version. While it is arguable that the pre-November 2002 evidence may have merely implicated CACI's involvement in the test (even though the U.S. had

publicly admitted that CACI had been involved in the test), the post-November 2002 evidence establishes conclusively that only CACI, and CACI alone, could have been the conduit through which the U.S. obtained its test version of the 3090 Version of MENTIX. In addition, the evidence now establishes that RDG Group believes it was deceived by its joint developer teaming partner CACI (who itself had stolen the product from PTI at gunpoint in August 1990 and also had no title). CACI continued to use the product thereafter without informing RDG Group of the use. There is even evidence that the product is still being used.

CACI duped its teaming partner, RDG, CACI duped PTI, and CACI duped the courts. CACI was also a teaming partner with IBM, the U.S. and the others referred to herein. CACI itself even stated that it should never have continued with its development of the Business Case once it had became aware of the PTI/RDG dispute. In a word, the combined effect of the evidence is that CACI stole the property and the U.S. was a willing partner to the theft by using the software on its 3090 machines, and then took all steps necessary to conceal their use. Now the property must be ordered to be returned, and a proper accounting be permitted against the constructive trustees to establish the amount of proceeds received by the Trustees to be paid to PTI.

CACI's despicable conduct, as set above, speaks for itself. CACI obtained a copy, and accepted it even though it knew of the dispute. The evidence presented establishes that CACI stole the software for itself and "sneaked away" with it while RDG and PTI fought out as to who was the rightful owner. There is evidence that CACI had access to a copy of an AT&T 3B2 version of the software which had been completed. CACI failed to return either of the AT&T 3B2 or 3090 MVS software upon the "termination" of the RDG Teaming Agreement. Instead,

CACI "returned" the version it had received as if it were the only copy it possessed. CACI concealed its possession of the 3090 version and other versions it had developed, from its developer-partner RDG Group. It even went so far as to offer a "methodology" on other contracts even though IBM had directed it not to be used.

Accordingly, under the law set out in the original Petition papers filed in these proceedings and as set out above, any copies of the software should be turned over immediately to PTI and any moneys due under the constructive trusts should also be turned over immediately.

In addition, unless the Trustees including U.S., IBM/Lockheed Martin and/or CACI, and any other users of the property, can provide an explanation as to the so-called CACI-developed "RENovate" methodology, subpoenae should also issue to permit PTI to seek out the information required to make specific orders relating thereto and against anyone else who has PTI's assets and property due to them.

CONCLUSION

For the reasons set out in the Petition, the Oppositions and Motions separately filed herein by PTI, which are hereby incorporated herein as if fully set out, and pursuant to C.P.R.L. 5225, Fed. R. Civ. P. 45 (c)(2)(B) and C.P.R.L. 5224 and otherwise as further set out in the Pleadings previously filed and incorporated herein, PTI now moves this Court to issue Turnover Orders, and/or to compel each of the Trustees to appear and respond to the Subpoenae issued herein, and/or to permit PTI to have an accounting, as the case may be, and for such other order as the court thinks fit and proper.

Dated: New York, New York
March 30, 2003

Respectfully submitted

LAW OFFICES
JOEL Z. ROBINSON & CO.

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Joel Z. Robinson (JR-9802)
Attorney for Judgment Creditors
116 John Street, Suite 320
New York, New York 10038
(212) 791-7360