

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MIESHA WILDER,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
WHITE CASTLE SYSTEM, INC.,	)	
and WESTEC INTERACTIVE	)	
SECURITY, INC.,	)	
	)	
Defendants.	)	
_____	)	
	)	
WHITE CASTLE SYSTEM, INC.,	)	
	)	
Counter-Plaintiff,	)	
v.	)	
	)	
WESTEC INTERACTIVE SECURITY, INC.,	)	
	)	No.: 07-cv-4491
Counter-Defendant.	)	
_____	)	Judge William J. Hibbler
	)	
WESTEC INTERACTIVE SECURITY, INC.,	)	
	)	
Counter-Plaintiff,	)	
v.	)	
	)	
WHITE CASTLE SYSTEM, INC.,	)	
	)	
Counter-Defendant.	)	

**WESTEC’S LOCAL RULE 56.1 STATEMENT IN SUPPORT OF WESTEC’S F.R.C.P. 56(b) MOTION  
FOR SUMMARY JUDGMENT AGAINST PLAINTIFF, MIESHA WILDER**

Defendant, WESTEC INTERACTIVE SECURITY, INC., (hereafter, “WESTEC”) through it’s attorney, LAW OFFICES OF LOWELL D. SNORF, III, pursuant to Local Rule 56.1(a)(3), hereby submits this statement of uncontested material facts against Plaintiff, MIESHA WILDER, which when read with WESTEC’S memorandum and exhibits, supports WESTEC’S request for summary judgment against MIESHA WILDER.

**Parties**

1. The Plaintiff is MIESHA WILDER.
2. The defendant is WHITE CASTLE SYSTEM, INC.

3. The defendant is WESTEC INTERACTIVE SECURITY, INC.

*Jurisdiction*

1. By WHITE CASTLE'S August 9, 2007 notice of removal petition (Doc., 1) jurisdiction was conferred on this court pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1332.

*Fact Statements*

1. WHITE CASTLE Store No.: 67 is a 24-hour hamburger restaurant located at 1400 East Sibley Boulevard in Dolton, Illinois, where after 2:08 a.m. on August 5, 2005 MIESHA WILDER was shot.

2. On August 5, 2005 WESTEC was an off-premise video surveillance monitoring company that was performing periodic restaurant video monitoring of Store No.: 67 out of its Irvine, California command center (Deposition of Michael Kardash, First session, p. 84, Lines 19-20).

3. The business of WESTEC was to perform periodic video monitoring services and video surveillance with its basic business being interactive monitoring (September 4, 2008 Deposition of Tyson Johns p. 36, Lines 18-22, Exhibit 'A' and August 13, 2008 Deposition of Mark Schmit p. 19, Lines 11-15, Exhibit 'B').

4. For Store No.: 67, WESTEC provided interactive services which were to respond to any alarm activation that was initiated by WHITE CASTLE Store No.: 67 and WESTEC also provided contracted tours which were initiated by WESTEC where WESTEC dials into the customer site and then WESTEC reviews and makes sure everything is ok (August 13, 2008 Deposition of Joseph Ochoa p. 18, Lines 13-19 and p. 19, Lines 7-11, Exhibit 'C').

5. The purpose of video surveillance and monitoring is to respond to alarms and do video tours (July 25, 2008 Deposition of Michael Kardash, Second session, p. 41, Lines 1-5, Exhibit 'D').

6. To conduct a tour, the customer service specialist pulls up the tour, connects to the video unit, waits for all cameras to pop-up and then listens to the audio and looks at cameras; if safe to voice down, the specialist broadcasts down over all the speakers at the site (August, 13, 2008 Deposition of Joseph Ochoa, p. 59, Lines 19-24; p. 60, Lines 1-7, Exhibit 'C'). A tour lasts 90 to 120 seconds (August, 13, 2008 Deposition of Joseph Ochoa, p. 61, Lines 1-6, Exhibit 'C').

7. To contact WESTEC in an emergency, personnel at WHITE CASTLE Store No.: 67 could use wireless pendants, panic buttons and the (red) WESTEC phone (August, 13, 2008 Deposition of Joseph Ochoa, p. 99,

Lines 22-24; p. 100, Lines 1-14, Exhibit 'C', August, 13, 2008 Deposition of Mark Schmit, p. 41, Lines 16-20; p. 44, Lines 4-8, Exhibit 'B' and June 25, 2008, Deposition of Drew Dannis, p. 35, Lines 13-24; p. 36, Lines 1-8, Exhibit 'N').

8. In order for WESTEC to respond to an emergency at Store No.: 67, WESTEC would have to be notified by WHITE CASTLE of the emergency (July 25, 2008, Deposition of Michael Kardash, Second session, p. 48, Lines 10-13; p. 49, Lines 1-6, Exhibit 'D').

9. If WESTEC receives a signal from the WHITE CASTLE, WESTEC can either telephone the proper authority or other emergency personnel and the first available person on the Customer Notification List or in a non-emergency situation WESTEC can telephone the location (July 25, 2008 Deposition of Michael Kardash, Second session, p. 46, Lines 13-19, sub-deposition exhibit 1, Section 3. Monitoring, Exhibit 'D').

10. In February, 2004, WESTEC sold video equipment to the WHITE CASTLE for the set-up of Store No.: 67 (August, 13, 2008 Deposition of Mark Schmit, p. 41, lines 9-10 and p. 46, lines 4-7, Exhibit 'B') and WHITE CASTLE installed the equipment (August, 13, 2008 Deposition of Mark Schmit p. 44, Lines 1-3, Exhibit 'B' and exhibit 1 to Deposition of Mark Schmit) and (July 21, 2008 Deposition of Don Dessender p. 15, Lines 17-19, Exhibit 'E').

11. On August 5, 2005 the 1998 WESTEC INTERACTIVE SECURITY CONTRACT FOR PURCHASE AND/OR LEASE OF SECURITY SERVICES AND PRODUCTS covered Store No.: 67 (WHITE CASTLE'S answer to request to admit facts, Doc., 115, answer 2 (c), Exhibit 'F', Deposition of Michael Kardash, First session p. 41, Lines 11-16, Deposition of Michael Kardash, Second session p. 44, Lines 18-25 and p. 45, Lines 1-10, Exhibit 'D' and Deposition of Don Dessender p. 17, Lines 15-18, Exhibit 'E').

12. Under the 1998 contract, WESTEC was to perform monitoring services in accordance with **Section 3. MONITORING SERVICE** ¶ 3.1 Performance (WHITE CASTLE'S answer to request to admit facts, Doc., 115, subdocument 1.a, Exhibit 'F').

13. **Section 3. MONITORING SERVICE** required WESTEC to respond when a signal is transmitted from a location identifying an emergency condition exists (WHITE CASTLE'S answer to request to admit, Document 1.a, Exhibit 'F' and July 21, 2008 Deposition of Michael Kardash, First session, sub-deposition exhibit 3, Exhibit 'D').

14. The 1998 contract also had an Addendum 'B' to the CONTRACT FOR PURCHASE AND/OR LEASE OF SECURITY SERVICES AND PRODUCTS **Visual Command Center Guidelines and Procedures**

(WHITE CASTLE'S answer to request to admit, Document 1.b, Exhibit 'F' and July 21, 2008 Deposition Michael Kardash, First session, p. 41, Lines 17-20 and p. 50, Lines 4-7, also *See*, sub-deposition, Exhibit 3, Exhibit 'D').

15. The **Visual Command Center Guidelines and Procedures**, Scope of Services, among other things required WESTEC to perform two scheduled video/audio tours per day (WHITE CASTLE'S answer to request to admit, Document 1.b, Exhibit 'F' and July 21, 2008 Deposition of Michael Kardash, Second session, p. 48, Lines 14-16, also *See*, sub-deposition exhibit 3, Exhibit 'D').

16. In 2003, the contract was extended from May 1, 2003 to May 1, 2006. Three video tours per day were to be conducted (WHITE CASTLE'S answer to request to admit, Document 1.d, Exhibit 'F' and July 21, 2008 Deposition of Michael Kardash, sub-deposition, Exhibit 4, Exhibit 'D').

17. On August 5, 2005 for WHITE CASTLE Store No.: 67, WESTEC performed three video tours/welfare checks per day at Store No. : 67 during the hours of 12:00 a.m., 4:00 a.m. and 5:00 p.m., C.S.T. (WHITE CASTLE'S answer to request to admit, Doc., 115, answer 2(f), Exhibit 'F', September 4, 2008, August, 13, 2008 Deposition of Joseph Ochoa p. 25, Lines 14-16, Exhibit 'C' and September 4, 2008 Deposition of Tyson Johns, p. 55, Lines 2-18, Exhibit 'A')<sup>1</sup>.

18. Under the terms of the 1998 WESTEC INTERACTIVE SECURITY CONTRACT FOR PURCHASE AND/OR LEASE OF SECURITY SERVICES AND PRODUCTS WESTEC was to perform video tours and respond to alarms received from Store No.: 67 (July 25, 2008 Deposition of Michael Kardash, Second session, p. 46, Lines 10-19, Exhibit 'D' and July, 21, 2008 Deposition of Don Dessender p.12, Lines 4-22, Exhibit 'E').

19. WESTEC'S obligation to respond to an alarm arises when WESTEC receives a signal from the site (July 25, 2008, Deposition of Michael Kardash, Second session, p. 46, Lines 20-23, Exhibit 'D').

20. Under the 1998 contract WHITE CASTLE was responsible for all third-party claims arising out of or related to operation of, or acts or events occurring on or with respect to, each site where a WESTEC system is located except that WESTEC was to be responsible for any such claims to the extent they were directly related to WESTEC'S

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<sup>1</sup> Starting on April 23, 2003, three tours were to be conducted on all new WHITE CASTLE locations with the agreement applying to all new locations added during the extension (See, WHITE CASTLE'S answer to request to admit facts, April 23, 2003 letter from Nicholas Zuk, REQUEST TO ADMIT DOCUMENT 1.d, Exhibit 'F').

operation of the system or provision of services (July 21, 2008 Deposition of Michael Kardash, First session, p. 37, Lines 17-20; sub-deposition exhibit 1, Exhibit 'D', WHITE CASTLE'S answer to request to admit, 2(j), Exhibit 'F' and July 21, 2008 Deposition of Michael Kardash, First session, p. 37, Lines 12-20, deponent exhibit 1, Exhibit 'D').

21. WESTEC was not required to have security personnel at Store No.: 67 (July, 21, 2008, Deposition of Don Dessender p. 25, Lines 1-4, Exhibit 'E').

22. MIESHA WILDER does not claim to be a party to the contract between WHITE CASTLE and WESTEC (May 21, 2008 Deposition of MIESHA WILDER, Second Session, p. 202, Lines 12-13, Exhibit 'G').

23. MIESHA WILDER entered the Dolton WHITE CASTLE between 2:08 a.m. and 2:13:38 a.m. (April 30, 2008 Deposition of MIESHA WILDER, First session, p. 33, lines 9, Exhibit 'G' and May 21, 2008 Deposition of MIESHA WILDER, Second session, p. 206, lines 18-22 and p. 207, Line 6, Exhibit 'G').

24. When MIESHA WILDER joined her friends, she observed an unidentified male insulting her friend 'Darius'. (April 30, 2008 Deposition of MIESHA WILDER, First session, p. 36, Lines 18-19 and 22, Exhibit 'G').

25. 'Darius' and the unidentified male engaged in a verbal exchange of words (April 30, 2008 Deposition of MIESHA WILDER, First session, p. 38, Lines 6-8, Exhibit 'G').

26. MIESHA WILDER'S friend Crystal Robinson asked the WHITE CASTLE person to do something, but the cashier said nothing (April 30, 2008 Deposition of MIESHA WILDER, First session, p. 43, Line 5, Exhibit 'G'). He did not pick-up a phone and he did not contact the manager (April 30, 2008 Deposition of MIESHA WILDER, First session, p. 44, Lines 11-15, Exhibit 'G').

27. At 2:19:52 a.m. MIESHA WILDER observed the unidentified male push 'Darius' (May 21, 2008 Deposition of MIESHA WILDER, Second session, p. 173-174, Lines 21-11, Exhibit 'G').

28. MIESHA WILDER next observed 'Darius' turn around and walk away in response to the gentleman at 2:20:53 a.m. (May 21, 2008 Deposition of MIESHA WILDER, Second session, p.177, Lines 5-7, Exhibit 'G').

29. When 'Darius' left, the gentlemen were no longer engaged in any type of altercation (May 21, 2008 Deposition of MIESHA WILDER, Second session, p. 181-182, Lines 22-3, Exhibit 'G').

30. During that time, the unidentified male did not have any verbal exchanges and he did not push any other individuals inside the WHITE CASTLE restaurant (May 21, 2008 Deposition of MIESHA WILDER, Second

session, p. 183, Lines 11-24, Exhibit 'G').

31. At 2:21:02 a.m., the unidentified male exited the WHITE CASTLE (May 21, 2008 Deposition of MIESHA WILDER, Second session, p. 179, Lines 5-7, Exhibit 'G').

32. At 2:21:02 a.m., MIESHA WILDER'S friend Crystal Robinson, then exited the WHITE CASTLE restaurant, and MIESHA WILDER followed her friend (May 21, 2008 Deposition of MIESHA WILDER, Second session, p. 179, Lines 8-17; p. 715, Lines 16-19, Exhibit 'G').

33. At no time did MIESHA WILDER see anyone with a weapon (April 30, 2008 Deposition of MIESHA WILDER, First session, p. 54, Lines 7-9, Exhibit 'G').

34. MIESHA WILDER testified that when she exited the WHITE CASTLE, she anticipated a fight (April 30, 2008 Deposition of MIESHA WILDER, First session, p. 53, Lines 14-16, Exhibit 'G').

35. Approximately 45 seconds to 1 minute after the Plaintiff exited the WHITE CASTLE, she heard shots ring out (April 30, 2008 Deposition of MIESHA WILDER, First session, p. 49, Lines 6-8, Exhibit 'G').

36. The police had already been contacted before the shots were fired (July 21, 2008 Deposition of Donald Dessender, p. 69, Lines 23-25, Exhibit 'E').

37. The call came into the Dolton Police Department at 2:19 a.m (June 13, 2008 Deposition of Charles Hampton, p. 18 line 19; p. 41, Line 24 and p. 43, Line 21, Exhibit 'H').

38. MIESHA WILDER does not dispute the call came into the Dolton Police Department at 2:19 a.m. (May 21, 2008 Deposition of MIESHA WILDER, Second session, p. 218, Lines 8-17, Exhibit 'G') and the police dispatch time on the police report matches the log report (May 21, 2008 Deposition of MIESHA WILDER, Second session, p. 220, Lines 15-20, Exhibit 'G').

39. The call came in as a '10-10, fight in progress' (June 13, 2008 Deposition of Charles Hampton, p. 19, Lines 19-20 and p. 49, Lines 4-5, Exhibit 'H'; *see also*, sub-deposition exhibits of Hampton's deposition- police report and 911 log marked at page 5, Exhibit 'I').

40. The police arrived at the Dolton WHITE CASTLE at 2:22 a.m. (June 13, 2008 Deposition of Charles Hampton, p. 45, Lines 8-9 and p. 57, Lines 14-15, Exhibit 'H').

41. Either from police log or the Rapid Eye Clip, at the time the call came into the Dolton Police Department MIESHA WILDER was still inside the WHITE CASTLE (June 13, 2008 Deposition of Charles Hampton

p. 53, Lines 1-6, sub-deposition exhibit 3, Exhibit 'H', sub-deposition exhibit 3- CD kept by WHITE CASTLE recording the August 5, 2005 visual activity at Store No.: 67).

42. On September 18, 2007 MIESHA WILDER filed a two count amended complaint with WESTEC named in Count II, alleging WESTEC was responsible for managing and performing security; that MIESHA WILDER was shot by an unidentified male present at the WHITE CASTLE and that WESTEC should have known of the potential danger to MIESHA WILDER (Amended Complaint, Doc., 23, Exhibit 'J').

43. Plaintiff does not allege she notified WESTEC of the threats or that WHITE CASTLE notified WESTEC of the threats and WESTEC failed to respond.

44. WESTEC filed an amended complaint answer with affirmative defenses (Answer to amended complaint by WESTEC, Doc. 38, Exhibit 'K').

45. On February 9, 2008 MIESHA WILDER provided supplemental answers to WESTEC'S F.R.C.P. 33 interrogatories. Mostly in answers 2-4 "*plaintiff reserved the right to supplement this response once it becomes clear when all signals were transmitted on the day of the incident*" (February 9, 2008 MIESHA WILDER'S supplemental answers to WESTEC'S interrogatories, Exhibit 'L'). No amended answers were filed.

46. On February 28, 2008, witness Crystal Robinson said during her deposition that while she complained to the front counter employee, she did not see WHITE CASTLE'S employee pick-up a phone and call anybody; she did not have any knowledge a security company was notified and did not respond (Deposition of Crystal Robinson, p. 130, lines 13-24 and p.131, lines 1-4, Exhibit 'M' for complete deposition transcript of Crystal Robinson see, Attachments # 8-14 to WHITE CASTLE'S motion for summary judgment, Doc. 119).

47. On April 30, 2008 and May 21, 2008 MIESHA WILDER gave her deposition. MIESHA WILDER testified she did not know anything about WESTEC or what their services were, or what services WESTEC was to provide to WHITE CASTLE; she also stipulated she was not claiming party status between the services agreement between WESTEC and WHITE CASTLE (May 21, 2008, Deposition of MIESHA WILDER, Second session, p. 202, lines 16-24, Exhibit 'G').

48. MIESHA WILDER further said she had no knowledge whether WESTEC performed the services it was required to provide to WHITE CASTLE (May 21, 2008, Deposition of MIESHA WILDER, Second session p. 202, lines 16-24, Exhibit 'G').

49. MIESHA WILDER had no knowledge whether WHITE CASTLE notified WESTEC of the disturbance, or whether complaints were made and WESTEC failed to respond (May 21, 2008, Deposition of MIESHA WILDER, Second session, p. 203, lines 1-4, Exhibit 'G').

50. WHITE CASTLE manager Drew Dannis testified he was not aware of the events preceding the shooting being reported to WESTEC; and that all the WESTEC equipment on the premises worked fine; and had he no knowledge of WESTEC failing to contact the police after being notified (June 25, 2008 Deposition of Drew Dannis p. 17, Lines 6-23, Exhibit 'N').

51. WHITE CASTLE general manager, Drew Dannis did not notify WESTEC or use any pendant to call WESTEC, but instead called the police directly with his cell phone; he elected to report the incident directly to the Dolton Police, not to WESTEC (June 25, 2008 Deposition of Drew Dannis, p. 13, Lines 22-24; p. 16, Lines 7-10; p. 38, Lines 18-21; p. 60, Lines 8-23; p. 71, Lines 9-17; p. 82, Lines 3-5, Exhibit 'N').

52. WHITE CASTLE district supervisor Bettina Kasper testified she had no knowledge (i) that the events preceding the shooting were reported to WESTEC (June 25, 2008 Deposition of Bettina Kasper, p. 11, lines 15-24; p. 12, lines 1-11, Exhibit 'O'); (ii) that the monitoring equipment was broken (June 25, 2008 Deposition of Bettina Kasper, p. 12 lines 12-16, Exhibit 'O'); (iii) that WESTEC did not perform the services it was required to perform under the contract with WHITE CASTLE (June 25, 2008 Deposition of Bettina Kasper, p. 13, lines 1-4, Exhibit 'O'); or (iv) that WESTEC did anything that contributed to the shooting of MIESHA WILDER (June 25, 2008 Deposition of Bettina Kasper, p.14, lines 21-24, Exhibit 'O').

53. Catherine Shearer also testified she had no knowledge of (i) any notice by WHITE CASTLE to WESTEC; (ii) that WESTEC'S tours were not conducted as required; (iii) that any of the security equipment was broken; (iv) that WESTEC was notified of the incident and did not respond (June 25, 2008 Deposition of Catherine Shearer p. 17, Lines 1-9; p. 20, Lines 4-10 and Lines 16-19, Exhibit 'P').

54. Don Dessender, WHITE CASTLE assistant director of risk management had no knowledge that the shooting was in any way related to WESTEC'S monitoring system; nor that the shooting was in any way related to the services WESTEC provided under the services contract for Store No.: 67 (July 21, 2008 Deposition of Don Dessender p. 28, lines 17-21; p. 29, lines 3-11, Exhibit 'E').

55. Don Dessender had no knowledge that any WHITE CASTLE employee notified WESTEC of this



incident (July 21, 2008 Deposition of Don Dessender p. 64, Lines 20-21, Exhibit 'E'); he had no knowledge the monitoring procedures performed by WESTEC were not in accordance with the services contract (July 21, 2008 Deposition of Don Dessender p. 25, Lines 13-16, Exhibit 'E').

56. The police had already been contacted before the shots were fired (Deposition of Don Dessender, p. 69, Lines 20-25, Exhibit 'E')

57. On August 5, 2005, WHITE CASTLE did not notify WESTEC of the events preceding the shooting of MIESHA WILDER (WHITE CASTLE'S answer to request to admit, Doc., 115, answer 2(e), Exhibit 'F', Deposition of Michael Kardash, Second session, p. 67 Lines 24-25 and p. 47, Lines 1, Exhibit 'D').

58. The shooting of MIESHA WILDER at WHITE CASTLE SYSTEM, INC. Store No.: 67 did not occur during the video tour hours of 12:00 a.m., 4:00 a.m. and 5:00 p.m., C.S.T. (WHITE CASTLE'S answer to request to admit, Doc., 115, answer 2(g), Exhibit 'F').

59. On August 5, 2005 the monitoring system installed at Store No.: 67 was working properly (August 13, 2008 Deposition of Mark Schmit, p. 21, lines 10-14; p. 35, lines 1-2, Exhibit 'B').

60. During the hour of 2:00 a.m., C.S.T. on the day of MIESHA WILDER'S occurrence, WESTEC was not performing a video tour of Store No.: 67 (July 21, 2008 Deposition of Michael Kardash, First session, p. 79, Lines 13-19, Exhibit 'D').

61. On August 5, 2005 the lines of communication between WHITE CASTLE Store No.: 67 and WESTEC were functioning (August 13, 2008 Deposition of Joseph Ochoa, p. 104, Lines 8-9, Exhibit 'C').

62. WESTEC took no action in regards to the incident preceding MIESHA WILDER'S shooting at Store No.: 67 because WHITE CASTLE did not notify WESTEC of the disturbance (August 13, 2008 Deposition of Joseph Ochoa, p. 107, Lines 2-4, Exhibit 'C', September 4, 2008 Deposition of Tyson Johns, p. 53, Lines 16-20, Exhibit 'C' and July 21, 2008 Deposition of Michael Kardash, First session, p. 15, Lines 21-25, Exhibit 'D').

63. WESTEC did not prepare an incident report for the August 5, 2005 shooting of MIESHA WILDER, because WESTEC did not receive notice of the event (August 13, 2008 Deposition of Joseph Ochoa, p. 106, Lines 19-24; p. 107, Lines 2-4, Exhibit 'C', July 21, 2008 Deposition of Michael Kardash, First session, p. 15, Lines 23-25 and p. 16, Lines 1-2, Exhibit 'D' and July 21, 2008 Deposition of Michael Kardash, First session, p. 78, Lines 21-24, Exhibit 'D').

64. WESTEC had an alarm processing software which is called 'DICE' (Deposition of Joseph Ochoa, p. 46, Lines 19-20, Exhibit 'C').

65. WESTEC kept an all activity DICE report for Store No.: 67 for August 5, 2005 (August 13, 2008 Deposition of Joseph Ochoa, p. 92, Lines 11-24, sub-deposition exhibit 2, Exhibit 'C').

66. The DICE report records show all activity that came from Store No.: 67 to the command center and includes tours and alarm activation (August 13, 2008 Deposition of Joseph Ochoa p. 92, Lines 22-24; p. 93, Lines 1-4, Exhibit 'C').

67. There was no event reported or recorded in the DICE report around 2:00 a.m. (August 13, 2008 Deposition of Joseph Ochoa p. 93, Lines 5-8 and sub-deposition exhibit 2, Exhibit 'C').

68. Joseph Ochoa was not aware of WHITE CASTLE ever making complaints that WESTEC was not properly performing its responsibilities (Deposition of Joseph Ochoa, p. 58, Lines 8-11, Exhibit 'C').

69. There is no record of a voice-down with respect to MIESHA WILDER'S occurrence, because WESTEC was not contacted with respect to the incident (July 21, 2008 Deposition of Michael Kardash, First session, p. 79, Lines 3-6, Exhibit 'D').

70. Witnesses Donald Dessender, Drew Dannis, Bettina Kasper and Catherine Shearer never stated WESTEC command personnel were not trained or did not know how to use their equipment (July 21, 2008 Deposition of Donald Dessender, p. 25, Lines 13-17, Exhibit 'E', June 25, 2008 Deposition of Drew Dannis, p. 17, Lines 21-24; p. 18, Lines 1-7, Exhibit 'N', June 25, 2008 Deposition of Bettina Kasper, p. 14, Lines 1-3, Exhibit 'O' and June 25, 2008 Deposition of Catherine Shearer, p. 21, Lines 13-19, Exhibit 'P').

71. WESTEC never received any notification of the incident either at the time it occurred or subsequent to it; the first WESTEC learned of the incident is when the complaint was filed (Deposition of Michael Kardash, First session, p. 15, Lines 23-25 and p. 16, Lines 1-2, Exhibit 'D').

Respectfully Submitted,  
By: /s/Lowell D. Snorf, III  
Attorney for  
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