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1 informed Mr. Boylan “several times” that he intended to refurbish the aircraft and turn them into
2 fire suppression tankers. (TR at 22-23.)

3 79. Western made these efforts in reliance not only upon the contracts, but also upon the
4 release (Findings ¶¶ 60, 61) of the two aircraft. Mr. Stilwell stated that Western spent funds “in
5 contemplation of *delivery* of the aircraft” (Ex. 73, emphasis added), that if release of the remaining
6 three aircraft were unreasonably delayed, he could at least pick up these two (TR at 146), and that
7 even after contract termination he spend funds in part because he “never even at that point [] felt
8 [Western] wouldn’t get the two aircraft.” (TR at 154; Ex. 64).

9 80. Despite the professed concern about possible dioxin contamination, neither Mr.
10 Stilwell nor the others who accompanied him to take measurements were ever required to wear
11 personal protective equipment. (TR at 103-04.) Mr. Schoneman testified that the personal
12 protective equipment requirement applied not just to demilitarization personnel but to “anybody that
13 was working in and around the aircraft.” (TR at 67.)

14 81. With the measurements, Western then began engineering work on the design of the
15 tank and door system to hold and release the retardant. (TR at 133, 123-25.)

16 82. Although precise dates for the engineering work are not given, significant engineering
17 work was performed by subcontract from mid-July 1996 through August 1996. (Ex. 134, last and
18 third-to-last pages.)

19 83. About this same time, Western engaged Marsh to prepare advance promotional
20 material concerning the fire fighting modifications and the conversion of the C-123's engines to
21 turbo-prop engines. (TR at 130; Ex. 110.)

22 **IV. DIOXIN AND AGENT ORANGE TESTING**

23 During the months of August and September 1996, two different contractors tested and
24 issued reports concerning the samples taken from the 18 aircraft identified by AMARC. (Ex. 30,
25 31.) Dr. Ron Porter drafted a December 6, 1996 letter explaining dioxin and the herbicides for
26 which tests were conducted, the significance of the test results, and the recommended remedial

1 measures. (Ex. 47; TR at 82-83.) These reports and Dr. Porter’s testimony at the hearing are the
2 subject of this section of the findings.

3 84. The samples collected from the one aircraft (*see infra* Finding 147) selected for an
4 actual dioxin test contained some of the congeners (specific molecule formations) of dioxin. (TR
5 at 194, 189.)

6 85. Samples were also taken from the remaining suspect aircraft for a cheaper test for the
7 presence of 2,4-D and 2,4,5-T, the two components of Agent Orange. (*See infra* Aircraft Inventory
8 and Findings, part VII. D. for details on the sampling and test results.)

9 86. The laboratory reported that either 2,4-D or 2,4,5-T was present in at least one of the
10 two sample locations for all but three of the aircraft. (Ex. 30, p. 8.0.)

11 87. However, neither 2,4-D nor 2,4,5-T was found in the interior of any of the Sold
12 Aircraft, despite sampling near the tank, at the location where spillage was most likely. (Ex. 30 p.
13 8.0; TR at 78-79, 197; *see infra* Aircraft Inventory and Findings, part VII, D.)

14 88. The laboratory noted that its tests “did not identify dioxin,” that dioxin “may be
15 present in mixtures of 2,4-D and 2,4,5-T,” and that the presence of either 2,4-D or 2,4,5-T “may
16 suggest, but, do not prove the presence of dioxin.” (Ex. 30, p. 8.1., grammar and punctuation
17 preserved.)

18 89. On the basis of this report, Dr. Porter testified at one point: “My professional opinion
19 is that there is *some dioxin* in those planes.” (TR at 198, emphasis added.) Dr. Porter’s testimony,
20 however, revealed several qualifications to this statement.

21 a. First, Dr. Porter’s reference to “those planes” was to the group; he expressed
22 no opinion as to individual aircraft because he did not perform a separate analysis as to each
23 aircraft. (TR at 203-05.)

24 b. Second, Dr. Porter’s conclusion rested on the assumption that dioxin is always
25 present in Agent Orange “[a]s far as I know.” (At 198.) This assumption contradicts that
26 of the laboratory, which indicated that dioxin “*may be* present in mixtures of 2,4-D and