

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



\_\_\_\_\_)  
In the Matter of )  
 )  
MSC.SOFTWARE CORPORATION, )  
a corporation. )  
\_\_\_\_\_ )  
 )

PUBLIC VERSION  
Docket No. 9299

To: The Honorable D. Michael Chappell  
Administrative Law Judge

**COMPLAINT COUNSEL'S MOTION TO COMPEL RESPONDENT  
TO RESPOND ON AN EXPEDITED BASIS TO THIS MOTION AND TO  
COMPLETE ITS RESPONSE TO COMPLAINT COUNSEL'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Complaint Counsel respectfully seeks an Order that Respondent complete its response to Complaint Counsel's First Request for Production of Documents and Things ("the Document Request"). (Exhibit 1). Respondent has failed and refused to supply responsive electronic documents and e-mails to Complaint Counsel in usable form. Because the trial of this matter begins on July 9, 2002, Complaint Counsel requests that Respondent be ordered to respond to this Motion to Compel on an expedited basis. Complaint Counsel further requests an opportunity to discuss this Motion, and provide a demonstration, at our next appearance before Your Honor. This motion is ripe because Complaint Counsel and Respondent have reached an impasse both on these issues, and on the question of whether Respondent will respond on an expedited basis to this motion.

Respondent MSC stands in violation of Your Honor's May 22, 2002, Order granting Complaint Counsel's third Motion to Compel Respondent to produce documents responsive to the Document Request of November 21, 2001. On May 22, Your Honor ordered Respondent to

produce responsive documents as soon as practicable and on a rolling basis, but in no case later than May 28, 2002. (Exhibit 2). Respondent submitted responsive documents to Complaint Counsel after the date ordered to do so, and in a form unusable to Complaint Counsel and in violation of the Instructions contained in the Document Request.

Although Respondent previously had represented both to Complaint Counsel and to Your Honor that it would be producing responsive electronic and e-mail documents in printed form, from May 28, 2002 to May 31, 2002, and without advance notice to or negotiation with complaint counsel, Respondent delivered 98 CDs containing images of documents to Complaint Counsel. The 98 CDs Respondent has delivered to Complaint Counsel contain what Respondent represents to be the equivalent of approximately 360 boxes of documents in the form of photographic images of documents contained in thousands of individual "tif" files containing the image of one page each. Most of these images are said by Respondent's Counsel to be responsive documents from the files of senior executives, key account representatives, and managers of service and product development of Respondent. In addition to these CDs, Respondent produced a total of 59 boxes of printed copies of documents, in deliveries of 15 boxes on May 28, 2002, 34 boxes on May 30, 2002, and 10 boxes on May 31, 2002.

Complaint Counsel had no advance notice that Respondent planned to submit responsive documents electronically. Respondent did not consult with Complaint Counsel in advance, as required by Instruction 4 of the Document Request, to obtain a determination from Complaint Counsel what form of electronic production would be usable for Complaint Counsel. At 6:40 p.m. on May 28, 2002, Counsel for Respondent telephoned Complaint Counsel to declare unilaterally that Respondent had decided to produce remaining responsive documents on CDs,

with imaged documents burned on to them. At 6:48 p.m. on May 28, 2002, Respondent's Counsel delivered 49 CDs, containing a portion of the responsive documents. Respondent produced an additional 15 CDs on May 29, 2002, and an additional 34 CDs on May 30, 2002. The CDs contain no bibliographic information or load files that would be necessary to make use of them. In the May 28, 2002 conversation with Respondent's Counsel, Complaint Counsel expressed concern about the usability of an electronic production, given that there had been no prior consultation, and after reviewing the first CDs submitted with the assistance of Federal Trade Commission technical personnel, followed up with a letter confirming these concerns the next day, May 29, 2002. (Exhibit 3).

Respondent's production is unusable in its present form. In the imaged form, rather than the optical character recognition ("OCR") form, the documents on the CDs cannot be searched electronically using search terms for potentially responsive documents. Furthermore, the imaged files cannot even be linked to software that would allow them to be organized for review, albeit a more time consuming review than review of OCR documents, because Respondent did not supply the necessary bibliographic information and load files. (By contrast, Complaint Counsel supplied Respondent on June 4, 2002, with bibliographic information and load files to make the electronic versions of Complaint Counsel's Exhibits usable for Respondent).

In part, Respondent's production is unusable due to Respondent's failure to follow Instructions 4 and 5 of the Document Request, which describe the conditions under which and the form in which Respondent is entitled to submit computerized records in response to the Document Request. Instruction 4 provides, *inter alia*,

Computer files shall be printed and produced in hard copy or produced in machine-

readable form (provided that Complaint Counsel determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data. (Emphasis added)

Respondent did not seek or obtain Complaint Counsel's determination, prior to the submission of CDs, that submission in that form would allow the agency to use the computer files, and Respondent has not submitted instructions and all other materials necessary to use or interpret the data. Absent prior approval, production in electronic form in lieu of hard copy is unacceptable. Respondent never objected to, nor sought relief from these Instructions—it simply ignored them.

Instructions 4 and 5 are entirely consistent with standard Federal Trade Commission and Federal court discovery practices. (See, e.g., Daewoo Elec. Co. v. United States, 650 F. Supp. 1003, 1006 (C.I.T. 1986) "The normal and reasonable translation of electronic data into a form usable by the discovering party should be the ordinary and foreseeable burden of a respondent in the absence of a showing of extraordinary hardship.") Instructions 4 and 5 are standard in Federal Trade Commission document requests, and Respondent itself has used the same instructions in its own subpoenas to third parties in this matter. (See, e.g., Respondent's *Subpoena Duces Tecum* to [ ], attached hereto as Exhibit 4). Both Complaint Counsel and law firms such as the ones representing Respondent in this matter are quite accustomed to complying with these instructions, and when they do, even much larger productions of responsive documents are usable. However, due to the form in which it was submitted, the lack of accompanying documentation, the lack of advance notice and its tardiness in view of the closeness of the beginning date of the trial in this matter, Respondent's production is unusable to Complaint Counsel, Complaint Counsel's experts, and as a consequence,

ultimately, to this court.

Although Respondent failed to confer in advance with Complaint Counsel about the electronic production, and submitted an unusable production, Complaint Counsel attempted to give Respondent an opportunity to cure the deficiency before filing this Motion to Compel. Respondent has access to OCR versions of the documents, since Respondent used an electronic document production company to conduct two electronic searches on OCR versions of the documents – once to identify potentially responsive documents using electronic search terms, and once to screen out potentially privileged documents using electronic search terms. Complaint Counsel requested OCR versions of the documents, along with load files and bibliographic information that are necessary to make the electronic imaged files usable. On Monday morning, June 3, 2002, Respondent declared that it would not supply Complaint Counsel with any additional information or documentation, or supply the documents in any other form than the 98 CDs of single-page image files. Respondent took the position that the imaged documents on the 98 CDs, even without bibliographic information or load files, are “usable;” Complaint Counsel takes the position that they are not. The parties are at an impasse. Respondent is in possession of a physical copy of approximately 360 boxes of responsive documents, which it can easily use and review, that Complaint Counsel does not have. Respondent also has access, via the document production company it has hired and controls, to bibliographic information, load files, and OCR versions of the responsive documents. Complaint Counsel has possession of 98 unusable CDs.

If it would be helpful to Your Honor to appreciate the issues presented in this motion, Complaint Counsel offer to present a demonstration of the usability problems associated with the

documents imaged on CDs, with the assistance of the FTC technical personnel who assisted us in assessing their usability. The CDs must be loaded onto hardware, and each page must be accessed by opening a "tif" file, waiting for the image to appear, and reading each document. Files must be sequentially opened and closed. There is no systematic way to approach review. Apart from physically labeling the CDs with the name of the person whose files they represent, Respondent has provided no electronic indexing or bibliographical information of the type that would be necessary to make the documents usable using the hardware, software, and personnel available to Complaint Counsel.

Complaint Counsel would not be making this motion were it not vital to the prosecution of this case to gain access to the responsive electronic documents and e-mails in usable form. Complaint Counsel has reason to believe that the CDs contain vitally important documents because the documents come from the files of senior executives, key account sales personnel, and product development and service managers, because the e-mails and electronic documents are likely to be non-duplicative and address the post-merger and recent time periods, and because e-mail and electronic documents previously produced in printed form from these same individuals address the major elements in this case. (*See, e.g.*, [

], attached hereto as Exhibit 5).

Because Respondent delivered responsive documents after required to do so by Your Honor's Order, and too late for Complaint Counsel to review for purposes of inclusion on the Exhibit list that was due June 4, 2002, Complaint Counsel may, in a future Motion, seek leave to submit a supplementary Exhibit list. Complaint Counsel also reserves the right to seek sanctions

for Respondent's violation of the May 22, 2002, Order. For now, however, Complaint Counsel merely seek to obtain the responsive documents in a form that permits the documents to be reviewed effectively prior to the beginning of trial, which is only weeks away.

For all the reasons discussed above, Complaint Counsel respectfully Request that Respondent be ordered to complete its response to the Document Request by immediately producing OCR versions of the responsive documents submitted on CDs, along with bibliographic information and load files necessary to make them usable. Complaint Counsel have offered to supply Respondent with a SNAP server to expedite the transfer of the electronic documents, load files, and bibliographic information. A draft Order to Compel is attached as Exhibit 6. Complaint Counsel further request that Respondent be ordered to respond to this Motion on an expedited basis, given that the deadline for production of these documents has passed, that the Respondent is in violation of the May 22, 2002, Order, and that the trial of this matter is scheduled to begin in little more than a month. A draft Order to Compel Respondent to respond to this Motion on an expedited basis is attached as Exhibit 7.

June 7, 2002

Respectfully Submitted,



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# **EXHIBIT 1**



representatives of the foregoing. The terms "subsidiary", "affiliate" and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by CSAR. When "company" is used in any specification, it includes CSAR for purposes of producing documents, information, and things separately for CSAR.

- D. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the company. The term "documents" includes electronic correspondence and drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody or control of the company. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Unless otherwise specified, the term "documents" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans and engineering blueprints.
- E. The term "person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- F. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
- G. The term "documents sufficient to show" means documents that are necessary and sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information, these may be provided in lieu of the underlying documents.
- H. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- I. The terms "each," "any," and "all" mean "each and every."
- J. The term "including" means including but not limited to.
- K. The singular form of a noun or pronoun includes its plural form, and vice versa; and the present tense of any word includes the past tense, and vice versa.
- L. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
- M. The term "agreement" or "contract" means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.

- N. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
- O. The term "relevant product" and "relevant service" as used herein means Nastran and FEA software and any services provided in connection with or relating to either Nastran or FEA software, including maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, customer-funded development, training, and hot line and 1-800 consultation.
- P. The term "Nastran" means all software products, regardless of platform on which the software operates, based in whole or in part on the Nastran code or Nastran kernel developed originally either by the National Aeronautical and Space Administration ("NASA") or by any person acting pursuant to a development contract with NASA, and includes any program released into the public domain by NASA or the University of Georgia; all value-added enhancements, features, modules, applications, applications programming interfaces, programming languages, and Direct Matrix Abstraction Programming ("DMAP") for any Nastran product; all products that integrate or combine Nastran with any other product; and all services relating to Nastran, including maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, customer-funded development, training, and hot line and 1-800 consultation for Nastran products. The term also includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, Working Model, Elfini, GPS, Cosmos, or any other solver licensed or sold by MSC.
- Q. The term "FEA software" means all software products offering finite element analysis, including Nastran, regardless of platform on which the software operates, and includes all value-added enhancements, features, modules, applications, applications programming interfaces, and programming languages for the software, all products that integrate or combine the FEA software with any other product, and all services relating to maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, training, and hot line and 1-800 consultation for FEA products.
- R. The term "minimum viable scale" means the smallest amount of production at which average costs equal the price currently charged for the relevant product. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.
- S. The term "non-recoverable costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the relevant product that cannot be recovered through the redeployment of these assets for other uses.

## INSTRUCTIONS

1. Except for privileged material, the company shall produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Except for privileged material, the company shall not mask, cut, expunge, edit or delete any responsive document or portion thereof in any manner.
2. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and information dated, generated, received, or in effect after January 1, 1995. The company shall supplement, amend, or correct the disclosure and responses to these requests on a continuing basis, within 20 days of ascertaining that it possesses any additional responsive information. This request shall be deemed continuing in nature.
3. The geographic scope of search is the world.
4. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, the company must submit legible copies. However, if the coloring of any document communicates substantive information, the company must submit the original document or a like-colored photocopy. Electronic documents shall be produced, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. Electronic mail messages shall also be provided, even if only available on backup or archive tapes or disks. Computer files shall be printed and produced in hard copy or produced in machine-readable form (provided that Complaint Counsel determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
5. Magnetic media shall be submitted in the following forms and formats:
  - a. Magnetic storage media. The FTC will accept: (1) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (2) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity); (3) Iomega ZIP disks formatted for IBM compatible PCs (100 or 250 MB capacity); (4) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity); (5) Iomega DITTO mini data cartridges (2000 MB capacity). The FTC will accept 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs. Where data is to be transferred from a UNIX system the FTC will accept data provided

on 8mm DAT created using TAR or DD.

b. File and record structures.

- (i) Magnetically-recorded information from centralized non-microcomputer-based systems:
  - (a) File structures. The FTC will accept sequential files only. All other file structures must be converted into sequential format.
  - (b) Record structures. The FTC will accept fixed length records only. All data in the record is to be provided as it would appear in printed format: *i.e.*, numbers unpacked, decimal points and signs printed.
- (ii) Magnetically-recorded information from microcomputers. Microcomputer-based data: word-processing documents should be in DOS-text (ASCII), WordPerfect 8 or earlier version, or Microsoft Word 2000 or earlier version format. Spreadsheets should be in Microsoft Excel 2000 (.xls) or earlier version, or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access 2000 (.mdb) or earlier version, or dBase-compatible (.dbf), version 4 or earlier, format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated format, with field names as the first record, or to or fixed length fields accompanied by a record layout. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing documents, spreadsheets, databases, graphics and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a compressed ZIP format.

c. Documentation.

- (i) Data must be accompanied by the following information:
  - (a) full path name of the file; and
  - (b) the identity of the media on which on which it resides, e.g. the identity of the cd, zip disk or floppy that holds the file. In the case of complex files or directories of files, all component files that are part of a given directory must be specified with their full path names. Where necessary, the subdirectories that must be created in order to successfully read these submitted files must be provided.

- (ii) Files must be accompanied by the following information: (a) filename; (b) the identity of the particular storage media on which the file resides; (c) the position of the file on the media.
- (iii) For all sequential files, the documentation also must include:
  - (a) the number of records contained in the file;
  - (b) the record length and block size ; and
  - (c) the record layout, including the name of each element, the element's size in bytes, and the element's data type.

The documentation should be included in the same package as the storage media, along with a printout of the first 100 records in report format.

- d. Shipping. Magnetic media should be carefully packed to avoid damage, and must be shipped clearly marked: **MAGNETIC MEDIA DO NOT X-RAY.**
  - e. Virus Checks: Media will be scanned for computer viruses. Infected media will be returned for replacement.
6. As to Specification No. 22, submit all data from MSC's Oracle or other data bases in machine readable form in Excel (.xls) 2000 or prior version, or Lotus-compatible (.wk1) format, or in ASCII delimited, comma separated or fixed length field format, with field names as the first record. Additionally, Complaint Counsel wishes to consult prior to submission of responses to Specification Nos. 3 and 22 to assure that the machine readable data are in a format that allows use of the computer files.
7. Except where otherwise indicated, MSC shall respond to each specification separately for MSC, UAI, and CSAR by producing documents, information, and things based upon their original source. For example, when "company" is used in the specifications it means producing documents, information, and things separately for MSC, UAI, and CSAR.
8. The company shall mark each submitted page or sheet with its corporate identification, *i.e.*, MSC, and with consecutive document control numbers. Where documents are from the former files of UAI or CSAR, the company shall either mark each submitted page with the further corporate identification, *i.e.*, "MSC-UAI," and "MSC-CSAR" or supply a log identifying such files or documents.
9. Responsive documents from each person's files shall be produced together in file folders that segregate the person's files. Documents responsive to Specification No. 16 shall be produced in file folders segregated by customer and in chronological order within each

customer file.

10. For each box containing responsive documents the company shall:
  - a. number each box; and
  - b. mark each box with the name(s) of the person(s) whose files are contained in that box, with the name of the company originally creating the files, *i.e.*, MSC, UAI, or CSAR, and the corresponding consecutive document control numbers for each such person's documents.
11. Where identical copies are found in more than one person's files, the company must produce one copy from each person's files, or otherwise identify the person from whom identical copies of the document are found.
12. If the company has produced documents responsive to this request in the course of the pre-complaint investigation of this matter, FTC File No. 001-0077, those documents need not be produced again, unless identical copies are found in more than one person's files. In such a case, the company must produce or identify from each person's files all identical copies of documents previously produced in the pre-complaint investigation.
13. If it is claimed that any document, or portion thereof, is responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:
  - a. the reason for withholding it or other information relating to it;
  - b. the author and date of the document;
  - c. each individual to whom the original or a copy of the document was sent;
  - d. each individual who received the original or a copy of the document;
  - e. the date of the document or oral communication;
  - f. the general subject matter of the document;
  - g. the relevant document request the document is responsive to;
  - h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names

of parties, case number, and the date of the complaint filing; and

- i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer of firm, and denote all attorneys with an asterisk. The description of the subject matter shall include the number of the pages of each document and shall describe the nature of each document in a manner that, without revealing information itself privileged or protected, will enable Complaint Counsel to assess the applicability of the privileged or protection claimed. Any part of a document to which you do not claim privilege or work product should be produced in full.

14. If there are no documents responsive to any particular request, the company shall state so in its answer to the document request.
15. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business, but the company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
16. In lieu of original documents, the company may submit legible copies of documents so long as the company verifies with the attached form that they fully and accurately represent the originals.
17. To furnish a complete response, the person supervising compliance with this request must submit a signed and notarized copy of the attached verification form along with the responsive materials.

#### SPECIFICATIONS

1. One copy of each organization chart and personnel directory in effect since January 1, 1995, for the company as a whole, and for each of the company's facilities or divisions involved in any activity relating to any relevant product or service.
2. Documents sufficient to show all document retention and destruction systems, policies, procedures, capabilities, and personnel of the company:
  - a. the persons responsible for managing such systems, policies, procedures, or capabilities;
  - b. any special policies or procedures put into place by MSC as a result of the Federal

Trade Commission's investigation of the company's acquisitions of UAI and CSAR;

- c. all electronic data and document management information systems of the company;
  - d. all network-accessible documents, information and financial data systems;
  - e. all backup procedures; and
  - f. the process and cost of recovery of backup files including documents sufficient to show:
    - (i) the cost of recovery of backup files generally,
    - (ii) the cost of recovery of backup files containing documents responsive to the Federal Trade Commission's June 28, 2000, Subpoena Duces Tecum to MSC Software, and
    - (iii) the cost of recovery of backup files containing documents responsive to this document request.
3. All budget and financial statements, including financial projections, income statements, balance sheets, general ledgers, capital investment plans, operating reports, budget and operating results for individual business groups and product lines, and board or management financial performance summaries, presentations or other management reporting packages, together with all documents relied upon to compile such documents, including documents sufficient to show and all computerized data containing detailed income statement and balance sheet line items; and all documents analyzing, interpreting, or otherwise discussing the information, figures, or trends found or identified in such budget or financial statements.
4. All stock analysts' or other investment community analyses, recommendations, or research reports relating to the company, to any relevant product or service, or to computer aided engineering products and services in general, including all Daratech tables, analyses, and research reports.
5. All documents recording or relating to any communications between or among the company and any individual stock analyst or other person engaged associated with the investment community, including correspondence, press releases, notes, agendas, scripts, transcripts and recordings.

6. All documents relating to any meeting of or decision making by the board of directors or of any board, executive, or management committee, including:
  - a. all announcements of, agendas for, and minutes of any meeting;
  - b. all memoranda, reports, presentations, or other documents distributed to or presented to such board or committees, including all documents relied upon to prepare the memorandum, report, or presentation; and
  - c. all documents relating to the deliberations and decision making of the board or committee, including notes taken by any persons participating in any such meeting or decision making.
  
7. All documents relating to MSC's acquisitions of UAI or CSAR and the post-acquisition integration of UAI or CSAR into MSC, including:
  - a. all pre-acquisition communications between the parties relating to the transaction or its effects, including any plans, proposals, agreements, contracts, executive and employee agreements, distribution agreements, covenants not to compete, licenses, patents, copyrights, trade secrets, and trademarks;
  - b. all documents relating to changes and plans for changes in MSC's, UAI's, or CSAR's operations, structure, policies, pricing, strategies, corporate goals, financing, business, officers, employees, product lines, product features, development, or enhancements, any other area of corporate activity as a result of either acquisition, including whether to honor existing UAI or CSAR contracts;
  - c. all documents relating to former UAI and CSAR customers' continued use of UAI Nastran, CSAR Nastran, Astros, Gensa and to switching to or substitution of other products after the discontinuation of such UAI and CSAR products, including all contracts and pricing documents for such products;
  - d. all documents relating to changes or threatened changes in usage of Nastran for any customer or potential customer or changes in the company's revenue attributable to Nastran following the acquisitions;
  - e. all documents relating to the reasons for each acquisition;
  - f. all board and management committee documents relating to UAI and CSAR or to the proposed acquisitions or their effects, including memoranda, reports, correspondence, minutes, notes, presentations and agendas, as well as all documents used to prepare such memoranda, correspondence, minutes, notes,

- presentations, and agendas, Excel worksheets, and communications from regional executives or other sales representatives;
- g. all documents relating to any person's valuation of UAI and of CSAR;
  - h. all documents relating to all statements or actions by any person in support of, in opposition to, or otherwise expressing opinions about either acquisition or its effects;
  - i. all documents relating to MSC's accounting or tax treatment of each acquisition, including any writeoff of goodwill from each acquisition;
  - j. all documents relating to any efficiencies, cost savings, economies, synergies, or consumer or other benefits from each acquisition and whether such efficiencies, cost savings, economies, synergies, or other benefits could be achieved without acquiring UAI or CSAR;
  - k. documents sufficient to show the name, address, and job responsibilities of all persons employed by or acting as a consultant or agent to either UAI or CSAR at any time since January 1, 1998, and whether MSC hired or retained the person as an employee, consultant, or agent for any period since making each acquisition; all employment or consulting contracts with each such person; and all documents relating to salaries, compensation, bonuses, stock options, or other financial incentives paid or provided to the person by any person; and
  - l. all documents relating to each job, program, or project assigned or given by MSC to each former UAI or CSAR employee, consultant, or agent employed or retained by MSC, including documents sufficient to show (i) the contribution and performance of each such person to the job, program, or project, (ii) the goal or objective of the job, program, or project, (iii) the dates the job, program, or project began and concluded, (iv) the personnel requirements for the job, program, or project, (v) the name, address, and job responsibilities of other persons working on job, program, or project, (vi) the job's, program's, or project's budget, including personnel costs, and (vii) the recruiting efforts undertaken to staff the program or project.
8. All documents relating to the competitive significance, actual or projected financial status or condition, and long term viability of UAI or CSAR prior to their acquisitions by MSC, including UAI's or CSAR's intentions or attempts to sell UAI or CSAR, UAI's or CSAR's plans to exit the market or to cease supplying any relevant product or service, and ability to engage in the continuing sales, licensing, marketing, development, programming, and customer support of any relevant product or service.

9. All documents relating to any person's plans relating to any relevant product or service or to any product or service compatible with any relevant product or service, including business plans; short term and long range strategic plans and objectives; joint venture, partnering, strategic alliance, and acquisition strategies and plans; budgets, financial statements, and financial projections; personnel recruitment or reassignment plans; plans for new products or product enhancements, features, modules, applications, or services; research or development plans; strategies for product integration; distribution plans and agreements; sales or marketing plans; plans regarding shifting from product pricing that includes service to pricing products and services separately or shifting from commodity pricing of any relevant product toward greater revenue realization from any relevant service whereby customers pay directly for such services, plans and strategies for use of unlimited usage agreements and paid-up licenses; customer support services and customer-funded development plans; analyses of customer satisfaction; and plans for participation in or adoption of the AP209 exchange format standard.
10. All documents relating in any person's prices, pricing decisions, pricing proposals, licensing fees, or cost of services relating to any relevant product or service generally or with respect to any particular customer or groups of customers, including standard and non-standard price lists, discount schedules and practices, pricing formulae for CMV, GLV, and BLV factors, campus and token pricing systems, pricing commitments, pricing for features, modules, and enhancements, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, cost analyses, supply and demand analyses, analyses regarding shifting from product pricing that includes service to pricing products and services separately or shifting from commodity pricing of any relevant product toward greater revenue realization from any relevant service whereby customers pay directly for such services, pricing negotiations, pricing for unlimited usage contracts, paid-up licence pricing, guidance to marketing or sales personnel regarding prices, presentations to customers relating to prices, pricing for development contracts, on-site and off-site service contracts, price for web sales and licensing, and all documents considered by or emanating from person, committee, or group making a pricing decision, recommendation, or proposal, including pricing packaging group and global pricing package committee.
11. All documents relating to competition in the design, development, enhancement, research, manufacturing, distribution, licensing, marketing, sale, support or service of any relevant product or service, including all documents relating to:
  - a. the market share or competitive position of the company or any of its competitors;
  - b. the relative strengths or weaknesses of any person producing or selling any product or service competing with any relevant product or service;

- c. the relative strengths and weaknesses and differences in capabilities, features, enhancements, and modules between or among any relevant products or services;
  - d. any actual or potential conditions affecting the supply, demand, entry, cost, price, quality, features, enhancements, modules, or applications relating to any relevant product or service;
  - e. efforts to win customers or sales from other companies, or the loss of customers or revenues due to competition or sales by other companies;
  - f. the effects of competition from any supplier of any relevant products or services, including MSC, UAI and CSAR, on sales, pricing, revenues, customers, development, features, enhancements, modules, or applications;
  - g. customers' use of in-house codes, traditional methods of product testing, or prototyping; and
  - h. lock-in effects or switching costs, including the use of unlimited usage agreements and paid-up licenses.
12. All documents relating to switching, including shifts in utilization, between or among any relevant product or service and any other product or service, including the relative ease or difficulty of switching; the estimated, projected or actual costs incurred by users to switch; the time required to switch; the degree of switching possible; the effect on a user's price from switching or shifting utilization or threatening to switch or shift or the availability of the opportunity to switch or shift; the cost of switching attributable to lost productivity while gaining proficiency in the new product or service or from use of a less than optimum product or service; the cost of and time required for training; the cost of and time required for translating or converting existing files, models, routines, commands, DMAP alters, or other legacy materials to the new product or service; the effect of switching on customer or collaborator relationships; the effect of unlimited usage contracts or paid up licenses on switching; the possible loss or cost of complementary software used with the product or service; the use, availability, and the availability and effect of translators and AP209 exchange format standards; and governmental, customer, contractual, or industry or collaborator requirements, preferences, or practices requiring use of or production of analyses or results in any particular software format.
13. All documents relating to actual, attempted, or potential entry into the market for any relevant product or service, including all documents relating to:
- a. the timeliness, conditions, costs, attractiveness, likelihood, or competitive significance of any such entry,

- b. the effects of unlimited usage contracts, paid up licenses, or any existing contracts by existing firms upon such entry;
  - c. the requirements for such entry including research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, trademarks, sales and marketing activities, securing a sufficient customer base to achieve minimum viable scale, personnel and staffing, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;
  - d. the effects of open or closed software architecture and applications programming interfaces and the availability of translators, AP209 exchange format standards, trademarks, copyrights, patents, or other technology upon such entry;
  - e. the total costs required for such entry, including:
    - (i) the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the licensing or sale of the product or service; and
    - (ii) the methods and amount of time necessary to recover such costs; and the total non-recoverable costs entailed in satisfying the requirements for entry; and
  - f. the minimum viable scale, the minimum and optimum number of products or services, requirements for multi-product, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete successfully in the licensing or sale of such relevant products or services.
14. All documents relating to the development or acquisition, including licensing, of any features, enhancements, modules, or applications for any Nastran product since January 1, 1995, including any such development or acquisition considered but not undertaken during that period, including:
- a. documents sufficient to show the feature, enhancement, module, or application, the price or charge to the customer for each such feature, enhancement, module, or application, the date each such feature, enhancement, module, or application was added, and the function and benefits of such feature, enhancement, module, or application;
  - b. for all features, enhancements, modules, and applications developed in-house or considered for in-house development, all documents relating to the in-house

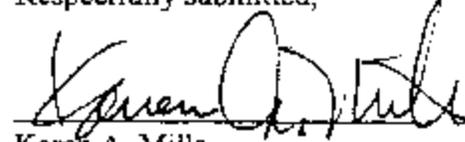
- development, development plans and strategies, time lines for development, budget and projected revenue for the development, personnel requirements, and the identity of customers likely to license the developed product; and any analyses whether to develop in-house or to acquire or license such feature, enhancement, module, or application;
- c. for all features, enhancements, modules, and applications co-developed with a customer or considered for such co-development, all documents relating to the development, development plans and strategies, the co-developer customer's identity, time lines for development, budget and projected revenue for the development, personnel requirements, and the identify of other customers likely to license the developed product;
  - d. for all features, enhancements, modules, and applications co-developed with another supplier of FEA software or considered for such co-development, all documents relating to the development, development plans and strategies, the co-developer supplier's identity, time lines for development, budget and projected revenue for the development, personnel requirements, and the identify of customers likely to license the developed product; and
  - e. for all features, enhancements, modules, and applications acquired, including licensing, by the company or considered for acquisition, all documents relating to the acquisition or licensing of such feature, enhancement, module, or application, the projected revenue for the feature, enhancement, module, and application, the identity of customers likely to license the developed product, and any analyses whether to develop in-house or to acquire or license such feature, enhancement, module, or application.
15. All documents relating to any change and modification to any MSC software product, proposed, implemented, or considered by MSC, that affected or could affect the compatibility of any MSC product to work or interface with any other software products; including any customer's pre- and post-processors or input or output file formats or models, the customer's ability to switch among Nastran products, or the cost, time required, ease, or difficulty of switching from any Nastran product supplied by MSC to any other product.
  16. All documents relating to the licensing or sale of any relevant product or service to all customers, including customer-funded development, including
    - a. all contracts, license agreements, offers, bids, bid solicitations, or proposals for contracts and licensing agreements and all documents interpreting, modifying, or amending such contracts, license agreements, offers, bids, or proposals;

- b. strategic, sales, and marketing plans for licensing and serving the customer, including sales call reports and sales presentations and pitches;
  - c. price lists, negotiation correspondence, price escalation calculations, documents relied upon to formulate or calculate prices, projections of prices offered by other suppliers of relevant products or services;
  - d. field and headquarters sales and contract files;
  - e. reports of prior or existing usage; and
  - f. invoices for products and services; and record of payment for products or services.
17. All documents relating to personnel and staffing for the development and technical support of any relevant product and service, including:
- a. all practices, policies, plans, agreements, and proposals relating to hiring and retention of employees, including recruiting efforts, employment incentives and bonuses, wage, salary, bonus, and stock option offers and agreements, incentives and restrictions on employee mobility, covenants not to compete, job advertisements, and the use of recruiting firms;
  - b. all documents relating to the use of off-shore developers and the use of contractors and consultants; and
  - c. all documents relating to the personnel and staffing needs for any general or specific job, program, or project, including customer-funded development projects.
18. All documents relating to any plans of, interest in, or efforts undertaken by the company or any other person for any acquisition, divestiture, joint venture, alliance, or merger of any kind involving the licensing or sale of any relevant product or service, including:
- a. any acquisition, joint venture, alliance, or merger of any kind with UAI or CSAR by any person;
  - b. the divestiture or sale by MSC of any former UAI or CSAR assets, intellectual property, employees, contracts, customer relations, or UAI's or CSAR's former businesses as going concerns;
  - c. any strategic business relationship between MSC and Dassault Systemes or any Dassault affiliated person or between MSC and IBM or any IBM affiliated person; and

- d. any acquisition of an interest in MSC by Dassault Systemes or any Dassault affiliated person.
19. All documents relating to financial or economic methodologies, formulae, or performance models or criteria used by the company or any person for valuing or determining the purchase prices for any actual, attempted, or potential acquisitions, divestitures, joint ventures, alliances, or mergers of any kind involving the licensing or sale of any relevant product or service.
20. All license agreements for any intellectual property, including patents, copyrights, trademarks, or trade secrets, owned by any person other than the company and included in or furnished with any Nastran product or service, including all documents modifying, amending, or interpreting such agreements, all documents relating to payment of any licensing fees, and all documents relating to the company's plans, actions, or efforts to enforce such agreements against any person.
21. All documents relating to any governmental, customer, contractual, industry, network, or collaborator requirements, preferences, custom, or practices requiring, recommending, suggesting, dictating, or promoting the use of any particular relevant product, including Nastran.
22. Documents sufficient to show and all computerized data containing each transaction for the licensing or sale of any Nastran product or service for the period January 1, 1995, to the present, including:
  - a. the date of transaction,
  - b. the amount of the transaction,
  - c. the quantity,
  - d. the type and duration of the contract or license,
  - e. a description of each product or service licensed or sold (including product number or code),
  - f. the contract number,
  - g. the location, including physical address and serial number, of the computer where the software is located or service rendered,
  - h. the SIC code, trade or industry category, and business group of the customer, and

- i. the price paid for each item, including the beginning price, discount, net price, quantity, and units of usage, and as may be applicable.
23. For each relevant product or service offered for sale or licensing, all selling aids and promotional materials and all manuals, including instructional and installation manuals.

Respectfully submitted,



Karen A. Mills  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2052  
Facsimile (202) 326-3496

Dated: November 21, 2001

## VERIFICATION

I personally supervised the preparation and assembly of this response in accordance with the Definitions and Instructions set forth in Complaint Counsel's First Request for Production of Documents and Things Issued to Respondent MSC Software Corporation in Docket No. 9299. All copies submitted in lieu of originals are true, correct and complete copies of the original documents. This response is complete and correct to the best of my knowledge and belief.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of

Notary Public

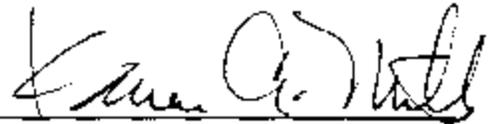
My Commission expires

**CERTIFICATE OF SERVICE**

This is to certify that on November 21, 2001, I caused a copy of the attached Complaint Counsel's First Request for Production of Documents and Things Issued to MSC Software Corporation to be served upon the following person by facsimile transmission and by hand-delivery:

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Fax (202) 879-5200

Counsel for MSC Software Corporation



Karen A. Mills  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2052  
Facsimile (202) 326-3496

## **EXHIBIT 2**

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



In the Matter of )  
 )  
MSC.SFTWARE CORPORATION, )  
a corporation. )

Docket No. 9299

**ORDER ON COMPLAINT COUNSEL'S MOTION TO COMPEL AN EXPEDITED  
ANSWER AND COMPLIANCE WITH COMPLAINT COUNSEL'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

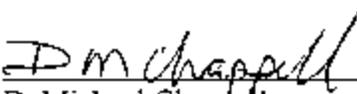
On May 10, 2002, Complaint Counsel filed its Motion to Compel an Expedited Answer and Compliance with Complaint Counsel's First Request for Production of Documents and Things. The motion requested Respondent MSC.Software Corporation ("MSC") to file a reply to Complaint Counsel's motion by May 13, 2002. Complaint Counsel's motion to compel asserts that Respondent has not produced the responsive documents, including electronic documents and e-mails, that MSC had promised to produce by May 10, 2002.

On May 21, 2002, MSC filed its opposition to Complaint Counsel's motion to compel. MSC asserts that it has already produced 322 boxes of documents, has already spent over \$1.5 million to comply with Complaint Counsel's document request, and is working on compliance with Complaint Counsel's remaining requests. MSC states that it has collected 306 additional boxes of electronic documents, 32 of which have been produced to Complaint Counsel. MSC asserts that it intends to continue its review of the 274 boxes; however, MSC cannot afford to hire an army of people to review them on an expedited basis. Pursuant to Rule 3.31(d)(1) which provides that the Administrative Law Judge may deny discovery or make any order which justice requires to protect a party from undue burden or expense, MSC seeks an order denying Complaint Counsel's insistence of an expedited review of the remaining documents.

In the certificate of conference attached to the motion, there is no indication that Complaint Counsel attempted to reach an agreement with MSC regarding an expedited response to the motion. Accordingly, Complaint Counsel's request for an expedited answer to its motion is DENIED.

MSC has demonstrated, with reasonable particularity, that it was unable to comply with Complaint Counsel's demands by May 10, 2002. Complaint Counsel's motion to compel is GRANTED in part and DENIED in part. MSC is hereby ordered to produce the responsive documents as soon as practicable and on a rolling basis, but no later than May 28, 2002.

ORDERED:

  
\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Date: May 22, 2002

# **EXHIBIT 3**



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Marimichael O. Skubel, Esq.  
Kirkland & Ellis  
655 15<sup>th</sup> Street, N.W.  
Washington, DC 20005

May 29, 2002

Re: FTC Docket No. 9299

VIA FAX

Dear Ms. Skubel:

Respondent MSC now stands in violation of Judge Chappell's May 22, 2002, Order granting Complaint Counsel's Motion to Compel MSC to produce the responsive documents responsive to Complaint Counsel's First Request for Production of Documents and Things ("the Document Request") as soon as practicable and on a rolling basis, but in no case later than May 28, 2002. Respondent did not submit the responsive e-mail and electronic documents by May 28, 2002. Instead, you telephoned me at 6:40 p.m. on May 28, 2002, to declare unilaterally and without any advance negotiation with Complaint Counsel that Respondent had decided unilaterally to produce responsive documents on CDs, with imaged documents burned on to them. Respondent then delivered to Complaint Counsel at 6:48 p.m. on May 28, 2002, 49 CDs, containing a portion of the responsive documents, promising to produce additional responsive documents on CDs on May 29 and May 30, 2002. This submission does not comply with Judge Chappell's Order, or the Document Request.

The Document Request contains instructions for production. Instructions 4 and 5 describe the conditions under which and the form in which Respondent is entitled to submit computerized records in response to the Document Request. Respondent has not followed these instructions. Instruction 4 provides, inter alia, "Computer files shall be printed and produced in hard copy or produced in machine-readable form (provided that Complaint Counsel determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data." Respondent did not obtain Complaint Counsel's determination, prior to the submission of CDs, that submission in that form would allow the agency to use the computer files, and Respondent has not submitted instructions and all other materials necessary to use or interpret the data. Absent prior approval, production in electronic form in lieu of hard copy is unacceptable. In addition to failing to satisfy the requirements of Instruction 4, Respondent has failed to satisfy the requirements of Instruction 5. You sought no relief from these Instructions from Judge Chappell, and his Order that Respondent comply with the Document Request therefore incorporates them.

Early this year, Complaint Counsel engaged Respondent in a discussion of whether it might speed identification of responsive documents and production if you reviewed electronic documents electronically and/or produced them to us electronically. In your letter of January 29,

May 29, 2002

2002, you explained that you planned to print out all electronic documents for review and production. After receiving your letter, and as previously attested to in my sworn statement, Attachment C to Complaint Counsel's February 28, 2002, Opposition to Respondent's Motion for Protective Order, I telephoned you to determine why you were printing out the electronic documents, and explore with you whether it might be more economical and quicker to produce electronically, as Instructions 4 and 5 permitted. You represented that you would not be reviewing the documents electronically for reasons of cost, timing, and convenience to Respondent, and that your firm will not even have access to the documents in electronic form, so that reviewing or producing them to us in electronic form would not be an option. At your election then, the implications of electronic production never were explored. At no time since January, or subsequent to Judge Chappell's May 22, 2002, Order have you re-engaged Complaint Counsel in a discussion of whether electronic production would be acceptable, and in what form. Absent consent of Complaint Counsel, your production is unacceptable and in violation of the Document Request and Judge Chappell's Order of May 22, 2002.

As I informed you yesterday, we are available to discuss with you whether and what electronic production might be acceptable in lieu of copies of the hard copy printouts of the responsive electronic documents which you have represented are currently in Respondent's possession. I suggested that we schedule a time for this discussion, when each of us can have the appropriate technical people available, and we have been available to you all day today. Given that the deadline for production of these documents has passed, your current status of being in violation of Judge Chappell's Order, and the immediacy of the trial of this matter, we urge you to give this matter your immediate attention. If you continue to refuse to discuss these issues with us, it would appear that we have reached an impasse.

Very truly yours,

  
Karen A. Mills

cc: Larissa Paule-Carres

# **EXHIBIT 6**

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
MSC.SOFTWARE CORPORATION,	)	Docket No. 9299
a corporation.	)	
	)	

**ORDER GRANTING COMPLAINT COUNSEL'S MOTION TO  
COMPEL RESPONDENT COMPLETE ITS RESPONSE TO COMPLAINT COUNSEL'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

IT IS HEREBY ORDERED that Complaint Counsel's Motion to Compel Respondent to Complete its Response to Complaint Counsel's First Request for Production of Documents and Things, as modified by Complaint Counsel's letter of December 26, 2001, is GRANTED.

Respondent shall produce to Complaint Counsel, via a SNAP server that Complaint Counsel will provide, optical character recognition versions of documents submitted electronically responsive to Complaint Counsel's First Request for Production of Documents and Things, as modified by Complaint Counsel's letter of December 26, 2001, along with all bibliographic information and load files needed by Complaint Counsel, by or before 5 p.m. on June 14, 2002.

Dated: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

# **EXHIBIT 7**



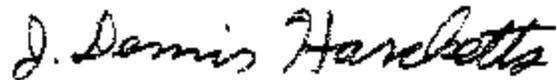
**CERTIFICATE OF SERVICE**

This is to certify that on June 7, 2002, I caused a copy of Complaint Counsel's Motion to Compel Compliance with Complaint Counsel's First Request for Production of Documents and Things to be served via hand-delivery upon the following persons:

The Honorable D. Michael Chappell  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Marimichael O. Skubel, Esquire  
KIRKLAND & ELLIS  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 879-5034  
Fax (202) 879-5200

Counsel for MSC Software Corporation



J. Dennis Hacketts  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2783  
Facsimile (202) 326-3496



8. On behalf of Complaint Counsel, I notified Respondent of the non-compliance of its electronic production with Instructions 4 and 5 of the Document Request and the unusability of the electronic production by letter to Marimichael Skubel of May 29, 2002, and sought to confer with Respondent about how it could cure the non-compliance at Respondent's earliest opportunity.

9. On behalf of Complaint Counsel, and accompanied by Gregory Brown of the FTC, I conferred with Larissa Paule-Carres and Lisa Horton of Kirkland and Ellis, about Instructions 4 and 5 of the Document Request, and the unusability of the electronic production on Friday, May 31, 2002. Greg Brown and I outlined what information would be needed to make an electronic production usable, including OCR, bibliographic information, and load files, and in what form that production should be submitted to make it usable. Complaint Counsel offered to supply Respondent with a SNAP server to facilitate and expedite electronic document transfer. Respondent represented that it had a conference call scheduled with the electronic document production company it was using that afternoon, to explore what additional information and in what form Respondent could obtain to make the electronic production usable. Larissa Paule-Carres promised to call Complaint Counsel to report back after that meeting.

10. On Monday morning, June 3, 2002, since Complaint Counsel had heard nothing from Respondent, I called Larissa Paule-Carres. Ms. Paule-Carres said that she had not had a chance to talk to Lisa Horton yet about what Ms. Horton had learned from the conference call with the electronic document production company, but Respondent had decided that it would not be supplying Complaint Counsel with any additional information because Respondent considered the CDs to be "usable" to Complaint Counsel. I confirmed to Respondent that Complaint Counsel still consider the electronic production "usable," and Ms. Paule-Carres and I confirmed that we had reached an impasse.

11. On Wednesday, June 5, 2002, I telephoned Ms. Paule-Carres to confirm whether we were indeed, still at an impasse on the electronic production issue. She confirmed that we were. I told Ms. Paule-Carres that Complaint Counsel intended to move to compel a useful electronic production, and that we would like Respondent to agree to reply to that motion on an expedited basis. She refused to commit Respondent to replying on an expedited basis without seeing the motion, and we therefore reached an impasse on that issue as well.

June 7, 2002



Karen A. Mills