

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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

Docket No. 9299

TO: The Honorable D. Michael Chappell  
Administrative Law Judge

**MOTION FOR INTERIM RELIEF  
ON ADVANCE NOTICE OF WITNESS ORDER**

Your Honor directed Complaint Counsel and MSC to file motions if an agreement could not be reached on the advance notice of witnesses. An agreement was not reached. On June 17, 2002, MSC filed a motion seeking seven day's advance notice and Complaint Counsel filed its motion on June 19, 2002, arguing that two days would be sufficient, citing § 22.23 of the *Manual for Complex Litigation*, Third (1995). MSC replied pointing out that the *Manual* said that some courts require *a week or more* advance notice.

MSC expected that this issue would be addressed no later than the pretrial conference scheduled for July 2, 2002. Now that the pre-trial conference has been moved to July 8, 2002, MSC's motion for advance notice will effectively be moot, unless an earlier ruling is rendered. Because there is *no agreement* between MSC and Complaint Counsel, MSC will not get *any* notice of any witnesses for July 9, and one day's notice for July 10. This means that MSC will be forced to prepare for all 27 witnesses on Complaint Counsel's "final witness list" before July 8. Requiring MSC to undergo this burden is unfair and unnecessary.

MSC respectfully submits that if Your Honor wants to hear argument on this issue on July 8, that an interim order be issued giving MSC notice by July 2 of Complaint Counsel's

expected witnesses for July 9 through July 12. Complaint Counsel will not be prejudiced by this interim order as it must provide the identity of its witnesses for security purposes on July 3. (See Attachment A).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marimichael O. Skubel". The signature is fluid and cursive, with the first name being the most prominent.

---

Tefft W. Smith (Bar No. 458441)  
Marimichael O. Skubel (Bar No. 294934)  
Bradford E. Biegon (Bar No. 453766)  
Larissa Paule-Carres (Bar No. 467907)  
KIRKLAND & ELLIS  
655 15th Street, N.W.  
Washington, DC 20005  
(202) 879-5000 (tel)  
(202) 879-5200 (fax)

Dated: June 28, 2002

**Counsel for Respondents,  
MSC Software Corporation**

# **ATTACHMENT A**



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

June 10, 2002

Victoria Arthaud  
Attorney-Advisor

Direct Dial  
202 326 2321

*Via facsimile*

P. Abbott McCartney, Esq.  
FEDERAL TRADE COMMISSION  
601 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Tefft W. Smith, Esq.  
Marimichael Skubel, Esq.  
KIRKLAND & ELLIS  
655 Fifteenth St., N.W.  
Washington, D.C. 20005

Re: *In re MSC Software, Corp., Docket No. 9299*

Dear Counsel,

Enclosed please find a memorandum addressing trial logistics. If you have further questions, please feel free to direct them to me. You may submit any questions to me in e-mail, with a 'CC to the opposing party. My e-mail address is varthaud@ftc.gov.

Judge Chappell does not intend at this time to hold a hearing to address trial mechanics or Complaint Counsel's June 7, 2002 motion to compel.

Very truly yours,

A handwritten signature in cursive script that reads "Victoria C. Arthaud".

Victoria C. Arthaud



# Federal Trade Commission

## Administrative Services

600 Pennsylvania Avenue, NW Washington, DC 20580

FAX Number: 202/326-2427

### Facsimile Transmittal Sheet

<b>To:</b>	P. Abbott McCartney, Esq. -- 3496 Tefft W. Smith -- 879-5200 David L. Roll, Esq. -- 429-3902 Benjamin S. Sharp, Esq. -- 434-1690 Stefan M. Meisner, Esq. -- 756-8087	Total number of pages sent (including this cover sheet):
<b>From:</b>	Judge D. Michael Chappell  Telephone: 202/326-3634	Sending Org Code: 1366
		Date: 6/10/02
		Time: 4:45
<b>Subject:</b>	MSC.Software Corporation -- Docket No. 9299	
<b>Note:</b>		

In case of transmission errors, call 202/326-3634

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

Administrative Law Judges

*MSC.SOFTWARE CORP.*, No. 9299 – LOGISTICS FOR TRIAL

Refer to provisions in scheduling order regarding presentation of exhibits. If counsel utilize the ELMO projector for displaying exhibits, counsel need not provide copies of single page exhibits to the ALJ or attorney-advisor.

The expected hours of the hearing are 9:30 a.m. to 5:30 p.m. with a one hour lunch breakaround 12:30 p.m. and with a 10 minute break in both the morning and afternoon, as appropriate. If counsel need to go late in order to finish the testimony of a witness from out of town, the hours may be extended, with prior approval, until 6:00 p.m., and in rare circumstances, until 7:00 p.m.

Respondent's counsel must provide Shirley Jones (202-326-3634) with a written list of the attorneys and assistants, with their dates of birth, that they anticipate being at the hearing on a consistent basis and a written list of witnesses (and their counsel, if any), with their dates of birth, that they anticipate calling the next three days, so that Shirley may make arrangements with security for clearance into the building.

Counsel may remain in the courtroom when it is cleared for lunch and may remain in the courtroom for up to one half hour at the end of each day.

Counsel must not present *in camera* material until the courtroom is cleared of all people who are not authorized to see or hear *in camera* material. Counsel must notify the court before any reference is made to *in camera* material.

Counsel may store documents in the courtroom. It is recommended that counsel bring into the courtroom a filing cabinet that can be locked for storing *in camera* materials.

Parties may request the court reporter to provide Real Time service.

All electronic devices, such as phones, beepers, watch alarms, and laptops must not be audible. All electronic equipment is the responsibility of the owner. If left in the courtroom unattended, the FTC will not be responsible for any losses or damage.

The following equipment is available. Please contact Shirley Jones to make requests for use of equipment.

- Eight-foot screen (if requested)
- Flip charts (if requested)
- For projecting computer generated output an NEC LCD projector
- For opaque exhibit projection, one Elmo projector (no backup)
- For display of computer generated output and video - five 17" flat-screen monitors: locations judge's bench, FTC counsel, respondent counsel, witness stand, and recorder's stand
- VCR with backup
- 35" monitor used for audience display

06/11/02



## CERTIFICATE OF SERVICE

This is to certify that on June 28, 2002, I caused a copy of MSC Software Corporation's Motion for Interim Relief on Advance Notice of Witness Order to be served upon the following persons by:

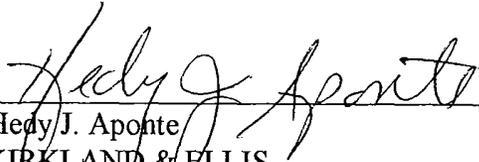
### Hand Delivery

Honorable D. Michael Chappell  
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