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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

RESPONDENT MSC.SOFTWARE'S MOTION IN LIMINE TO EXCLUDE USE OF INADMISSIBLE PART II INVESTIGATORY HEARING TRANSCRIPTS BY COMPLAINT COUNSEL AND ITS EXPERT WITNESSES

As Your Honor has previously recognized, Part II investigatory hearing transcripts are nothing more than "half-baked" depositions.[1] Your Honor's reaction to the unreliability of those materials is consistent with FTC case law. It is well-settled that Part II transcripts are "unreliable" and, thus, "inadmissible." *In re Resort Car Rental Sys.*, 83 F.T.C. 234 (FTC 1973). As a result, Complaint Counsel may not use them at trial for any purpose other than impeachment of the person involved.

Despite the inadmissibility of the Part II transcripts, Complaint Counsel appears to continue to rely on these "half-baked" materials for every aspect of their purported "case." Thus, Complaint Counsel has designated portions of Part II transcripts for admission into evidence at trial and seeks to backdoor virtually all of the "unreliable" Part II evidence by offering as a Trial Exhibit the "expert report" of Complaint Counsel's "economic" expert, FTC employee Dr. Hilke. Dr. Hilke's anecdotal "opinions" are almost exclusively premised on

[1] April 25, 2002 Hearing Transcript at 43.

isolated, unrelated – and, in key instances, outdated – "snippets" from inadmissible Part II transcripts.[2]

Indeed, Hilke cites to twenty-five (25) inadmissible Part II transcripts, relying on them for some 285 citations throughout his expert report. Accordingly, MSC respectfully requests an order from Your Honor precluding Complaint Counsel from using Part II investigatory transcripts at trial other than for purposes of impeachment of the Part II person

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[2] Dr. Hilke may not rely upon, much less attempt to backdoor into the record in this case, snippets from Part II transcripts and outdated documents. Instead, he must "base his or her opinion on sufficient factual data, not rely on hearsay deemed unreliable by other experts in the field." *Agent Orange Prod.Liab. Litig.*, 611 F. Supp. 1223, 1244 (E.D.N.Y 1985).

Just last week, Dr. David Scheffman, the Director of the Bureau of Economics – the FTC's Chief Economist – discussed the drawbacks of Dr. Hilke's approach of relying just upon document snippets and deposition outtakes as opposed to actual economic analysis. As Dr. Scheffman stated:

> Information gleaned from customer, competitor, and third party opinions, documents, and depositions are often used as a basis of conclusions of important factual issues. ***In my experience, these sources of evidence are not always a reliable basis of factual conclusions.***
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> * * *
>
> In my experience, ***business people sometimes do not have the facts right*** and say or write documents indicating something that is not quite right or ***sometimes is totally wrong***.

(Scheffman, David, SOURCES OF INFORMATION AND EVIDENCE IN MERGER INVESTIGATIONS at 6 (June 14, 2002).)

Indeed, Courts routinely discount expert analysis derived primarily from snippets and excerpts of documentary evidence. In *Liggett Group Inc., v. Brown & Williamson Tobacco Corp.*, , the court explicitly rejected an expert's reliance on "***documentary evidence alone***" to establish competitive injury. 748 F. Supp. 344, 357 (M.D.N.C 1990). A similar result was reached in *American Key Corp. v. Cole National Corp.*, 762 F.2d 1569 (11th Cir. 1985), where the plaintiff's expert attempted to define the relevant product market based on affidavits, extracts and statements of fact provided to him by the plaintiff. The Eleventh Circuit affirmed summary judgment for the defendants, holding that "an expert's opinion that lacks credible support does not create an issue of fact." *Id.* at 1580.

Other courts similarly discounted expert analysis derived solely from snippets and excerpts of documentary evidence. *See, e.g., Energex Lighting Indus., Inc. v. North Am. Phillips Lighting Corp.*, 765 F. Supp. 93, 103 (E.D.N.Y. 1991) (Court rejected expert's finding of market power where the expert failed to complete an independent analysis of the evidence regarding market share and relied exclusively on a figure pulled out of a document); *SMS Sys. Maint. Servs., Inc. v. Digital Equip.Corp.*, 188 F.3d 11, 25 (1st Cir. 1999) (First Circuit rejected expert opinion based on interpretation of defendant's internal documents concluding that an expert "must vouchsafe the reliability of the data on which he relies and explain how the cumulation of that data was consistent with standards of the expert's profession"); *Advo Inc. v. Philadelphia Newspapers Inc.*, 51 F.3d 1191 (3rd Cir. 1995) (Antitrust plaintiff Advo "attempted to cut and paste unrelated and innocent clauses together to produce guilty declarations"); *United States v. First Nat'l Bank of Jackson*, 301 F. Supp 1161 (S.D.

involved. Complaint Counsel should not be allowed to introduce those transcripts into evidence directly, nor should Complaint Counsel be able to use its experts as a back-door through which to introduce the substance of these unreliable and inadmissible statements.

I. Part II Investigatory Hearing Transcripts Are Unreliable And Inadmissible.

It is settled FTC law that Part II investigatory transcripts are unreliable and, therefore, inadmissible at trial. *See, e.g., In re Resort Car Rental Sys.*, 83 F.T.C. 234 (FTC 1973) ("Complaint Counsel made a request ... to introduce into evidence excerpts of testimony attained at an investigational hearing ... [t]he administrative law judge rejected this evidence"); *accord Hannah v. Larche*, 363 U.S. 420 (1960) (recognizing that Commission Rules "draw a clear distinction between adjudicative proceedings and investigative proceedings").

The reasons for this are numerous and have been previously discussed with and by Your Honor – including the absence of the basic protections afforded a witness in a deposition and the lack of notice afforded the target of the investigation, as well as significant procedural deficiencies such as multiple FTC lawyers asking questions simultaneously and the tactic of questioning groups of witnesses at a time.

Consistent with prior FTC treatment, Your Honor recently rejected Complaint Counsel's efforts to offer Part II investigatory transcripts as evidence in the *Schering-Plough* case. In analyzing this issue, this Court ruled that Part II investigatory hearing transcripts are not depositions under FTC Rule 3.3, and therefore, are generally inadmissible at trial. *In the Matter of Schering-Plough Corp.*, No. DO-9297, Hearing Transcript at 296-97 (Jan. 18, 2002). While those Part II transcripts may be used for impeachment or as admissions against the specific

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Ms. 1969) (Court found expert market analysis unreliable where experts had "no real personal familiarity with the [relevant] product market other than having examined the documents prepared by Plaintiff").

individual who made the statements, they are for all other purposes inadmissible and must be excluded.

Despite this, Complaint Counsel has designated various portions of Part II investigatory hearing statements for use at trial and cites to it throughout its Proposed Findings of Fact – not simply for impeachment of witnesses, but to be affirmatively offered into evidence during its case-in-chief. Complaint Counsel does not limit its attempted use of Part II statements to MSC witnesses either – Complaint Counsel seeks to introduce Part II statements from individuals who not only do not work for MSC now, but did not work for MSC at the time of their Part II investigatory interviews.

For example, Complaint Counsel attempts to designate Part II investigatory statements from Rakesh Allahabadi – an individual who hasn't worked at MSC for more than three years and, long before he ever gave a Part II investigatory interview, unsuccessfully filed a lawsuit against MSC after he was ***fired*** for faulty job performance. As a non-executive, Mr. Allahabadi could not bind MSC while he was employed there, much less through an inadmissible Part II statement given years after he was fired by MSC and of which MSC was not given notice or allowed to attend. Similarly, Complaint Counsel seeks to introduce Part II testimony from Swami Narayanaswami, who also was ***not*** employed by MSC at the time of his Part II statement., and relies on that testimony heavily in its Proposed Findings of Fact. Indeed, Dr. Narayanaswami has not been an MSC employee in the past twenty years.

Statements of former employees are not binding on their former employers, and therefore ***are not party admissions***. *See Essco Geometric v. Harvard Indus., Inc.*, 46 F.3d 718, 729-30 (8th Cir. 1995) (statement of a former employee is ***not an admission*** as against his former employer); *See also In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 1990 WL 657537, at *4

(S.D.N.Y. May 2, 1990) (testimony of former employee is ***not binding*** on former employer). Therefore, Complaint Counsel may not offer into evidence inadmissible Part II hearing statements of these former MSC personnel, who could not bind MSC and were questioned without MSC present to protect its interests through cross-examination.

As Your Honor and other ALJs have found, Part II investigatory hearing statements are not depositions -- they are hearsay. And the inherent unreliability of these Part II transcripts renders them inadmissible and precludes them from being admitted into evidence.

2. Complaint Counsel May Not Use Its Expert Witnesses As A Back-Door to Offer Inadmissible Part II Transcripts At Trial.

Just as Complaint Counsel may not introduce Part II investigatory hearing statements into evidence, it may not use its experts as a "back-door" in order to get these unreliable materials before the Court for consideration. Yet that appears to be a large part of Complaint Counsel's trial strategy, especially with Dr. Hilke -- the FTC-employee economist -- who performs no economic analysis and instead serves as nothing more than a human-hi-liter to point out some 285 isolated and unrelated snippets of testimony from twenty-five (25) inadmissible, third-party Part II hearing statements. Dr. Hilke and Complaint Counsel's other expert witnesses should not be permitted to discuss these materials at trial and thereby try an end run around this Court's prior recognition that such materials are unreliable and inadmissible.

Under Federal Rules of Evidence 703, in reaching their opinions, expert witnesses may rely on data of "the type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." In doing so, however, those expert witnesses may not then come into trial and offer the underlying data into evidence where that data is inadmissible. This point is made clear from the language of Federal Rules of Evidence 703, which talks about

the "opinion or inference being admitted" and contrasts that with the cautioning limitation that "facts or data that are otherwise inadmissible shall not be disclosed":

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. ***Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference*** unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.
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> Fed. R. Evid. 703.

This distinction between an expert's opinion being admissible and the underlying data not being admissible is further addressed in the Advisory Committee Notes for the 2000 amendment to Rule 703 which state that "Rule 703 has been amended to emphasize that when an expert reasonably relies on inadmissible information to form an opinion or inference, ***the underlying information is not admissible simply because the opinion or inference is admitted***." (Advisory Committee Notes on Fed. R. Evid. 703 (2000)).

Therefore, in forming his opinions and drafting his report, while Dr. Hilke was free to rely on Part II investigatory hearing transcripts, Complaint Counsel may not offer those materials as evidence at trial through Dr. Hilke. *See, e.g., Black v. M&W Gear*, 269 F.3d 1220, 1228 n.3 (10th Cir. 2001) (holding that amended Rule 703 contradicts previous Tenth Circuit case law, which had formerly allowed an expert to testify regarding inadmissible documents).

Other courts have been faced with this same issue – namely, the potential use of an expert witness as a back-door to dump hearsay or otherwise inadmissible evidence into the trial record. Among these cases is *In re Industrial Silicon Antitrust Litig.*, 1998 WL 1031508 (W.D. Pa. Oct. 20, 1998), a case also brought under the Sherman Act. While predating the

specific amendment to Federal Rules of Evidence 703 on this issue, the court addressed concern over the very tactic being attempted by Complaint Counsel:

> The court is cognizant that Rule 705 is not an exception to the hearsay rule and there is a danger that Rule 705 can be used as a "back-door' hearsay exception. Further, the court is aware that ***a litigant could abuse the rule and provide hearsay evidence to its expert for the purpose of having its expert refer to that evidence as the basis for his opinion.*** Accordingly, there is a legitimate concern whether a jury should be presented with evidence that forms the basis of an expert's opinion when that evidence is not independently admissible.
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> *Id.*, at *1 (citing *Bryan v. John Bean Div. of FMC Corp.*, 566 F.2d 541, 545 (5th Cir. 1978)).

Though the court in *Industrial Silicon* did not find that Rule 705[3] was being abused, the risk of such abuse in the present case is very real. As has been discussed several times throughout discovery in this case, Dr. Hilke is an FTC employee and his "expert analysis" is little more than acting as a ***human-hi-liter*** for Complaint Counsel's repeated and knowing distortions, misrepresentations, and out-of-context "snippets" from documents and Part II testimony.

Your Honor will remember Dr. Hilke's reliance on a document from an Internet chat room as the basis for his claim that Caterpillar's prices would rise after the acquisition. *See* Expert Report of John C. Hilke ¶ 196. That is simply one tree in a forest of misleading and incorrect references. Dr. Hilke acknowledges he did not cite check his reports, and it shows. *See* Hilke Dep. at 11-12, & 324. For example, Dr. Hilke claims General Motors was "actively considering" switching from MSC Nastran to UAI Nastran and cites the Part II transcript of Mr. Tecco with GM to support that claim. *See* Supplemental Expert Report of John C. Hilke ¶ 42.

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[3] Federal Rule of Evidence 705 states: "The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination."

However, on the transcript page cited, Mr. Tecco simply says he considered CSA and UAI to be alternatives "as much as any of other ones" – including Ansys (who Hilke dismisses as not being a competitor) and then Tecco went on to specifically state that he attached no "special significance" to UAI Nastran. Tecco Dep. at 270.

Similarly, Dr. Hilke relies extensively on the Part II investigative statement of Rakesh Allahabadi to support his report. As mentioned above, Mr. Allahabadi did not work for MSC at the time of his investigative statement and, indeed, had previously sued MSC contesting his dismissal from MSC for faulty job performance. Further undercutting Dr. Hilke's decision to rely upon Mr. Allahabadi's Part II investigative statement is the fact that Mr. Allahabadi had no basis or understanding of many of the issues for which Dr. Hilke seeks support from Mr. Allahabadi. For example, Dr. Hilke cites to Mr. Allahabadi for the following proposition:

> So it was very easy for people to switch from MSC/NASTRAN from UAI/NASTRAN to, say CSA[R]. But it is extremely difficult, extremely difficult if you have a model in NASTRAN and then switch it to say ABAQUS or MARC or any other FEA program.
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> (Hilke Supp. Report ¶ 65 (citing Allahabadi Part II Investigative Hearing Statement).)

However, as Mr. Allahabadi made clear in his Declaration in this case, he had no experience with either UAI or CSA Nastran, had never attempted to evaluate the ease with which switching could be done between MSC.Nastran and UAI or CSA Nastran, and indeed had switched models from both ANSYS and ABAQUS to MSC.Nastran.

> As a Nastran product manager, I did not personally conduct any benchmark studies or tests to determine whether it would be easier to switch between MSC.Nastran and codes like Ansys or Abaqus than it would be to switch from MSC.Nastran to either CSAR/Nastran or UAI/Nastran. However, on at least two occasions, I was involved in converting real-life models from either Abaqus or Ansys to MSC.Nastran.

> I did not personally conduct any benchmark studies of the relative switching costs associated with a switch from MSC.Nastran to CSAR/Nastran or UAI/Nastran.
>
> While employed at MSC I did not personally use CSAR/Nastran or UAI/Nastran to conduct a finite element analysis of models representative of real-life problems. I have never attempted to run a finite element model representative of a real-life problem that was developed in MSC.Nastran in either UAI/Nastran or in CSAR/Nastran.

(Declaration of Rakesh Allahabadi ¶¶ 9- 11, attached as Exhibit A.)

Perhaps even more so than the other unreliable and inadmissible materials, Dr. Hilke's reliance upon the Part II transcript of former employee Mr. Allahabadi underscores the need for an order precluding Dr. Hilke or any other Complaint Counsel expert from introducing or offering inadmissible Part II investigatory hearing statements during their testimony at trial.

Dr. Hilke's willingness to "rely" on obviously "inadmissible" and "unreliable" materials in an attempt to get them in front of this Court is exactly what the court in *In re Industrial Silicon* was concerned with, and precisely why such behavior cannot be tolerated.[4]

In *Engebretsen v. Fairchild Aircraft Corp.*, the Sixth Circuit found that the lower court had "***erroneously*** concluded that Federal Rules of Evidence 702 and 703 permit the admission, on direct examination, of testifying experts' opinions contained in written documents." 21 F.3d 721, 728-29 (6th Cir. 1994). Instead of allowing an expert's report containing inadmissible material into evidence – the same sort of end run attempted by Complaint Counsel here – the Sixth Circuit held that an expert witness' testimony should be limited to only his opinions ***excluding any underlying inadmissible evidence***. *See Id.*

[4] Indeed, whether inadmissible Part II transcripts are even the type of information "reasonably relied upon by experts in the particular field" is questionable – considering that Dr. Hilke purports to be an expert on economic analysis and not FTC legal argument. During his deposition, MSC's economist Dr. Kearl discussed how reliance on the Part II transcripts is improper as those transcripts reflect a biased sample and are the result of asking the wrong questions. *See* Kearl Dep. at 108-110.

The Sixth Circuit in *Engebretsen* went on to express its concern over inadmissible materials relied upon by an expert being considered by the finder of fact in evaluating the claims. In a situation where the underlying inadmissible data was necessary to understand the opinion being offered, the court made clear that the jury was to be instructed that the data "may be considered 'solely as a basis for the expert opinion and not as substantive evidence.'" *Id.* (quoting *Paddack v. Dave Christensen, Inc.*, 745 F.2d 1254, 1262 (9th Cir. 1984)). *See also Kladis v. Brezek*, 823 F.2d 1014, 1019 (7th Cir. 1987) (finding that "expert testimony is inadmissible if it lacks 'the necessary indicia of reliability'"); *United States v. Lundy*, 809 F.2d 392, 394 (7th Cir. 1987) (limiting expert testimony to ensure that no unduly prejudicial evidence is admitted).

The Part II hearing transcripts relied upon by Dr. Hilke are the result of one-sided questioning by Complaint Counsel, outside of MSC's presence, with no opportunity for MSC to object or cross-examine. As this Court found in *Schering-Plough*, Part II transcripts are unreliable hearsay and are admissible. Any use of these third-party Part II transcripts at trial is unduly prejudicial to MSC, who had no opportunity to address the content of the transcript. Complaint Counsel should not be allowed to use its expert witnesses to offer testimony on inadmissible Part II transcripts at trial – ***especially*** where Complaint Counsel has made a decision ***not*** to call those witnesses at trial to afford MSC any opportunity for cross examination

CONCLUSION

Accordingly, MSC respectfully asks for an Order precluding Complaint Counsel from using third-party Part II investigatory hearing statements for any purposes other than impeachment of the specific person involved and precluding Dr. Hilke or other experts from referring to any such Part II testimony as part of his direct or redirect examination by Complaint Counsel.

Moreover, MSC requests an Order precluding Complaint Counsel from seeking to use Part II investigatory hearing statements as admissions against MSC from personnel who were not MSC.Software employees at the time of their Part II investigatory hearing statement.

Respectfully submitted,

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Counsel for Respondents,
MSC.Software Corporation

Dated: June 17, 2002

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF	)	
MSC.SOFTWARE CORPORATION,	)	Docket No. 9299
a corporation.	)	

DECLARATION OF RAKESH ALLAHABADI

I, Rakesh Allahabadi, am a citizen of the United States, a resident of Glendora, California, and do hereby declare the following:

1. I am at least 18 years of age and competent to testify as to the matters set forth below.

2. My education includes a bachelor's degree in Civil Engineering from the Indian Institute of Technology in New Delhi, India. I received my Masters of Science degree and Ph.D. in Civil Structural Engineering from the University of California at Berkeley.

3. My formal education focused on engineering analysis. I have had no formal training in marketing or sales, beyond two classes in negotiations and people skills and one class on performance-based pricing taken in 1999.

4. I was employed by MSC.Software Corporation ("MSC," formerly known as MacNeal Schwendler Corporation) from February 1990 until November 1999.

5. For approximately the first three years, I was employed by MSC as a senior engineer. My principal responsibilities involved working with others to write software source

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code to perform nonlinear finite element analysis related to MSC.Nastran. I was then assigned the job of overseeing software code development work being done by engineers working in India and Taiwan.

6. In that capacity, I provided software source code development requirements to the engineers at MSC and in India and Taiwan; made sure that the software design specifications conformed to MSC standards; made sure that the code was tested in accordance with MSC's quality standards; and then got the code integrated into MSC.Nastran. I had no responsibility for setting or negotiating MSC.Nastran pricing.

7. Approximately, in mid-1996, I became one of the MSC.Nastran product managers. My responsibilities included writing MSC.Nastran product release plans that would reflect the enhancements or modifications that would be developed in the following year or in the next commercial release of MSC.Nastran; specifying product functionality requirements; and ensuring that functionalities were properly integrated into MSC.Nastran. I also provided and supported training to sales support staff and to customers regarding new features and functionalities added to MSC.Nastran.

8. Prior to approximately mid-1997, I was not responsible for establishing the details of pricing for MSC.Nastran. After that, I provided input on pricing related to computer performance, set the pricing for the distributed parallel computing module, was involved in setting prices for web-based data recovery (which was not released until after I left MSC), and was involved in the pricing for DMAP in the European market. My discussions with customers

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regarding pricing were limited only to a few occasions and related only to the distributed parallel computing module and web-based data recovery. I was not responsible for negotiating the price for MSC.Nastran with customers. The negotiated price for MSC.Nastran was handled by MSC's account representatives.

9. As a Nastran product manager, I did not personally conduct any benchmark studies or tests to determine whether it would be easier to switch between MSC.Nastran and codes like Ansys or Abaqus than it would be to switch from MSC.Nastran to either CSAR/Nastran or UAI/Nastran. However, on at least two occasions, I was involved in converting real-life models from either Abaqus or Ansys to MSC.Nastran.

10. I did not personally conduct any benchmark studies of the relative switching costs associated with a switch from MSC.Nastran to CSAR/Nastran or UAI/Nastran.

11. While employed at MSC I did not personally use CSAR/Nastran or UAI/Nastran to conduct a finite element analysis of models representative of real-life problems. I have never attempted to run a finite element model representative of a real-life problem that was developed in MSC.Nastran in either UAI/Nastran or in CSAR/Nastran.

12. While employed at MSC, I did not conduct any tests or any studies to determine whether new releases of CSAR/Nastran or UAI/Nastran would be able to run existing finite element analysis models representative of real-life problems that had been prepared using earlier releases of MSC.Nastran. It is worth noting that, at times, legacy models prepared in earlier

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versions of MSC.Nastran may not run the same way in later versions of MSC.Nastran without changes.

13. I have no knowledge regarding whether there have been any changes in MSC.Nastran pricing since I left MSC in November 1999, nor do I have any knowledge regarding whether any such changes (if they occurred) affected customer choices.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Executed, May 27, 2002

Rakesh Allahabadi

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CERTIFICATE OF SERVICE

This is to certify that on June 17, 2002, I caused a copy of the Respondent MSC.Software's Motion in Limine to Exclude Use of Inadmissible Part II Investigatory Hearing Transcripts by Complaint Counsel and its Expert Witnesses to be served upon the following persons by hand delivery:

Honorable D. Michael Chappell
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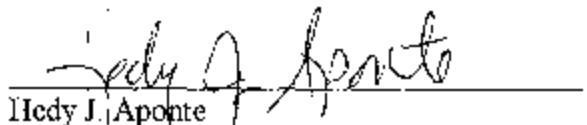

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

PROPOSED ORDER

IT IS HEREBY ORDERED that Respondent MSC.Software Corporation's Motion in Limine to Exclude Use of Inadmissible Part II Investigatory Hearing Transcripts by Complaint Counsel and Its Expert Witnesses is GRANTED.

Specifically, it is hereby ORDERED that Part II Investigatory Hearing Transcripts, or parts thereof, may not be introduced into evidence by either party, and may instead only be used for impeachment of the witness whose Part II transcript was taken. In addition, it is further ORDERED than Complaint Counsel is precluded from eliciting testimony regarding the substance of these Part II Investigatory Hearing Transcripts from their expert witnesses on direct or redirect examination.

Moreover, it is further ORDERED that Part II Investigatory Hearing Transcripts from persons not employed by Respondent MSC.Software at the time the transcript was taken may not be used as admissions against Respondent.

June ___, 2002 _____