

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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

Docket No. 9299

**RESPONDENT MSC SOFTWARE CORPORATION'S  
MOTION FOR PROTECTIVE ORDER**

Pursuant to Section 3.31 (c)(1) and (d) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.31 (c)(1)(d),<sup>1</sup> MSC Software ("MSC") hereby moves for a protective order precluding Complaint Counsel from taking the depositions of six MSC senior executives.<sup>2</sup> These depositions

<sup>1</sup> Commission's Rules of Practice § 3.31(c)(1) states:

The frequency or extent of the use of the discovery methods otherwise permitted under these rules shall be limited by the Administrative Law Judge if he determines that: (i) [the] discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) [t]he party seeking the discovery has had ample opportunity by discovery in the action to obtain the information sought, or (iii) [t]he burden and expense of the proposed discovery outweigh its likely benefit.

Rule of Practice § 3.31(d) further states:

The Administrative Law Judge may deny discovery or make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding.

<sup>2</sup> Lou Greco, Chief Financial Officer, May 2, 2002  
Rick Murphy, Senior Vice President, World Sales, May 7, 2002

(continued...)

are duplicative, burdensome, oppressive, and expensive, and Complaint Counsel has had ample opportunity to schedule them at an earlier time.

On April 26, 2002, MSC noticed, with the exception of Lou Greco, multiple day depositions of six people, four of whom have already been questioned by Complaint Counsel under oath, and two executives who are not on MSC's witness list. At the hearing Your Honor noted that "no one's resources are infinite." For the reasons described below, these depositions, under the conditions imposed by Complaint Counsel, would tax MSC's resources in both executive time and money.

Complaint Counsel has already taken 14 depositions and six investigational hearings of MSC personnel in this matter. Complaint Counsel has sought and received approximately 280 boxes of documents from 133 people at MSC, and MSC, at great cost, is in the process of producing electronic discovery and e-mail from 43 people. Complaint Counsel has issued 150 interrogatories to MSC (including subparts). In addition, Complaint Counsel has talked to 46 third parties; subpoenaed at least 38 of them; and has taken the sworn testimony of 33 people. Complaint Counsel has filed expert reports that quote extensively from the depositions, investigational hearings, and voluminous documents submitted in this matter. At this point, any information Complaint Counsel could obtain from this last round of witnesses would, by definition, have to be cumulative. It is not clear why these depositions are necessary; and, therefore, they can only serve to impose unfair expense and burden on MSC.

---

<sup>2</sup> (...continued)

Ron Dyer, Senior Director, Aerospace Corporate Accounts, May 9, 2002

Ken Blakely, Executive Vice President, May 16, 2002

Jeff Morgan, Vice President, Software and Business, May 21, 2002

Frank Perna, Chairman and Chief Executive Officer, May 23

Forcing MSC to produce these officials at this stage in the litigation and *for more than one day* is unduly burdensome, cumulative, and will be very expensive for MSC. Last week, the value of MSC's shares dropped by almost 40%. MSC has been forced to take steps to let go 15 percent of its work force. Key MSC people are leaving the company. For example, on Monday, an experienced Nastran developer announced that he was leaving to join Ansys to work on Al.Nastran. MSC is worried that others may follow. The senior officials that Complaint Counsel have noticed for deposition must be focused on MSC's business to keep it intact and insure its continued viability. This is a critical time for MSC: it must calm its investors and get a plan together to meet its earnings prediction for the next quarter. It would be extremely disruptive for these individuals to appear for several day depositions, particularly at the time demanded by Complaint Counsel.

These depositions are obviously not critical to Complaint Counsel's case. These individuals are, and have been, known to Complaint Counsel for some time -- Complaint Counsel has conducted investigational hearings of four of them well over a year ago; Complaint Counsel has met with Lou Greco; and Rick Murphy has held his sales position since the investigation's inception over two years ago. Complaint Counsel could have noticed these depositions several months ago when it noticed its first round of MSC employees for depositions or even two months ago when Complaint Counsel noticed its second round of depositions.

In addition, MSC and Complaint Counsel have substantial third-party discovery to complete and should not be sidetracked by this unreasonable, late demand for depositions by Complaint Counsel. Complaint Counsel has listed 24 witnesses, still including seven from Boeing, it expects will testify. Of these, only two have been deposed by MSC. MSC has also listed third-party witnesses

that Complaint Counsel has not yet deposed. With a discovery cut-off looming, MSC should be permitted to gather evidence to rebut Complaint Counsel's case, not waste time and money allowing Complaint Counsel the fourth bite of the apple. MSC will be severely prejudiced by this distraction and will not have an adequate time to prepare its defense.

For the reasons stated above, MSC respectfully requests that Your Honor grant this motion for a protective order precluding these depositions, or in the alternative, limit the scope and time for these depositions. We understand that Complaint Counsel is moving to compel MSC to make these witnesses available. If Complaint Counsel has convinced Your Honor that these depositions are necessary, we propose the following compromise: 1) the depositions be limited to MSC executives that will be called at trial; 2) they be held at the convenience of MSC, not Complaint Counsel; and 3) they be limited to one day. This would eliminate the need for the depositions of Mr. Blakely and Mr. Dyer, who MSC does not intend to call as witnesses. Complaint Counsel has taken both gentlemen's sworn testimony and, while we understand that this does not preclude Complaint Counsel from taking a deposition now, it does remove any prejudice to Complaint Counsel. Moreover, limiting the remaining depositions to one day in duration -- again Complaint Counsel has already taken the deposition of Mr. Perna and Mr. Morgan -- should not prejudice Complaint Counsel as they should certainly be able to focus their questions at this point in the case.

Finally, so these key executives can stabilize MSC's business, the depositions should take place at the end of May.

Respectfully submitted,



Tefft W. Smith (Bar No. 458441)  
Marimichael O. Skubel (Bar No. 294934)  
Michael S. Becker (Bar No. 447432)  
Bradford E. Biegon (Bar No. 453766)  
Larissa Paule-Carres (Bar No. 467907)  
KIRKLAND & ELLIS  
655 15<sup>th</sup> Street, N.W., 12<sup>th</sup> Floor  
Washington, DC 20005  
(202) 879-5000 (Phone)  
(202) 879-5200 (Facsimile)

*Counsel for Respondent*  
*MSC Software Corporation*

Dated: April 30, 2002

**CERTIFICATE OF SERVICE**

This is to certify that on April 30, 2002, I caused a copy of Respondent MSC Software Corporation's Motion for Protective Order to be served upon the following persons by hand delivery:

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

Richard B. Dagen, Esq.  
Federal Trade Commission  
601 Pennsylvania Avenue, N.W.  
Washington, DC 20580

P. Abbott McCartney, Esq.  
Federal Trade Commission  
601 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Karen Mills, Esq.  
Federal Trade Commission  
601 Pennsylvania Avenue, N.W.  
Washington, DC 20580



David Shotlander  
KIRKLAND & ELLIS  
655 15<sup>th</sup> Street, NW  
Washington, D.C. 20005  
(202) 879-5000 (tel.)  
(202) 879-5200 (fax)

# **EXHIBIT**

**A**



# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Lou Greco  
c/o Tefft W. Smith, Esq.  
Kirkland & Ellis  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005

2. FROM

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Federal Trade Commission  
601 Pennsylvania Ave., N.W.  
Room 2636  
Washington, D.C. 20580

4. YOUR APPEARANCE WILL BE BEFORE

Karen A. Mills or other designated  
Complaint Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

May 2, 2002 at 8:30 AM, and continuing each  
day thereafter until completed

6. SUBJECT OF PROCEEDING

In the matter of MSC Software Corporation, Docket No. 9299

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Ave., N.W., Room 3027  
Washington, D.C. 20580

DATE ISSUED

APR 19 2002

SECRETARY'S SIGNATURE

## GENERAL INSTRUCTIONS

### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

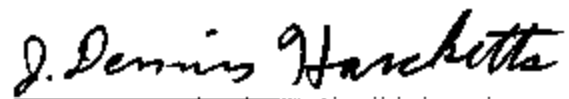


**CERTIFICATE OF SERVICE**

This is to certify that on April 26, 2002, I caused a copy of the attached Subpoena *Ad Testificandum* to Lou Greco issued on behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand-delivery on the following person:

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

Counsel for MSC Software Corporation



J. Dennis Harckett

# **EXHIBIT**

# **B**



# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

<p>1. TO Rick Murphy c/o Tefft W. Smith, Esq. Kirkland &amp; Ellis 655 Fifteenth Street, N.W. Washington, D.C. 20005</p>	<p>2. FROM  UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF HEARING Federal Trade Commission 601 Pennsylvania Ave., N.W. Room 2210 Washington, D.C. 20580</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE Karen A. Mills or other designated Complaint Counsel</p> <p>5. DATE AND TIME OF HEARING OR DEPOSITION May 7, 2002 at 8:30 AM, and continuing each day thereafter until completed</p>
--	---

6. SUBJECT OF PROCEEDING  
  
In the matter of MSC Software Corporation, Docket No. 9299

<p>7. ADMINISTRATIVE LAW JUDGE  The Honorable D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA Karen A. Mills Complaint Counsel Federal Trade Commission 601 Pennsylvania Ave., N.W., Room 3027 Washington, D.C. 20580</p>
--	---

<p>DATE ISSUED  APR 19 2002</p>	<p>SECRETARY'S SIGNATURE <i>Donald S. Clark</i></p>
---	---

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

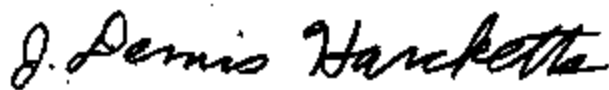
This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**CERTIFICATE OF SERVICE**

This is to certify that on April 26, 2002, I caused a copy of the attached Subpoena *Ad Testificandum* to Rick Murphy issued on behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand-delivery on the following person:

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

Counsel for MSC Software Corporation



J. Dennis Hareketts

# **EXHIBIT**

# **C**



# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

<p>1. TO          Ron Dyer          c/o Tefft W. Smith, Esq.          Kirkland &amp; Ellis          655 Fifteenth Street, N.W.          Washington, D.C. 20005</p>	<p>2. FROM           UNITED STATES OF AMERICA          FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF HEARING          Federal Trade Commission          601 Pennsylvania Ave., N.W.          Room 4420          Washington, D.C. 20580</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE          Karen A. Mills or other designated          Complaint Counsel</p> <p>5. DATE AND TIME OF HEARING OR DEPOSITION          May 9, 2002 at 8:30 AM, and continuing each          day thereafter until completed</p>
--	---

6. SUBJECT OF PROCEEDING

In the matter of MSC Software Corporation, Docket No. 9299

<p>7. ADMINISTRATIVE LAW JUDGE           The Honorable D. Michael Chappell           Federal Trade Commission          Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA          Karen A. Mills          Complaint Counsel          Federal Trade Commission          601 Pennsylvania Ave., N.W., Room 3027          Washington, D.C. 20580</p>
---	--

DATE ISSUED

APR 19 2002

SECRETARY'S SIGNATURE

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**CERTIFICATE OF SERVICE**

This is to certify that on April 26, 2002, I caused a copy of the attached Subpoena *Ad Testificandum* to Ron Dyer issued on behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand-delivery on the following person:

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

Counsel for MSC Software Corporation



---

J. Dennis Harckett

# **EXHIBIT**

# **D**





# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Ken Blakely  
c/o Tefft W. Smith, Esq.  
Kirkland & Ellis  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005

2. FROM

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Federal Trade Commission  
601 Pennsylvania Ave., N.W.  
Room 2001  
Washington, D.C. 20580

4. YOUR APPEARANCE WILL BE BEFORE

Karen A. Mills or other designated  
Complaint Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

May 16, 2002 at 8:30 AM, and continuing each  
day thereafter until completed

6. SUBJECT OF PROCEEDING

In the matter of MSC Software Corporation, Docket No. 9299

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Ave., N.W., Room 3027  
Washington, D.C. 20580

DATE ISSUED

APR 19 2002

SECRETARY'S SIGNATURE

## GENERAL INSTRUCTIONS

### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

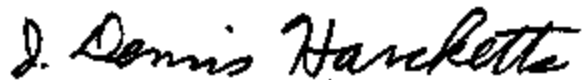
This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**CERTIFICATE OF SERVICE**

This is to certify that on April 26, 2002, I caused a copy of the attached Subpoena *Ad Testificandum* to Ken Blakely issued on behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand-delivery on the following person:

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

Counsel for *MSC Software Corporation*



J. Dennis Hacketts

# **EXHIBIT**

**E**



# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Jeff Morgan  
c/o Tefft W. Smith, Esq.  
Kirkland & Ellis  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005

2. FROM

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING

Federal Trade Commission  
601 Pennsylvania Ave., N.W.  
Room 2001  
Washington, D.C. 20580

4. YOUR APPEARANCE WILL BE BEFORE

Karen A. Mills or other designated  
Complaint Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

May 21, 2002 at 8:30 AM, and continuing a  
day thereafter until completed

6. SUBJECT OF PROCEEDING

In the matter of MSC Software Corporation, Docket No. 9299

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission  
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Karen A. Mills  
Complaint Counsel  
Federal Trade Commission  
601 Pennsylvania Ave., N.W., Room 3027  
Washington, D.C. 20580

DATE ISSUED

APR 19 2002

SECRETARY'S SIGNATURE

## GENERAL INSTRUCTIONS

### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

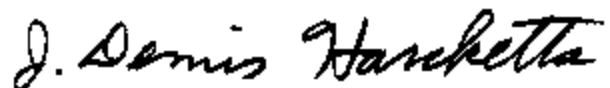
This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**CERTIFICATE OF SERVICE**

This is to certify that on April 26, 2002, I caused a copy of the attached Subpoena *Ad Testificandum* to Jeff Morgan issued on behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand-delivery on the following person:

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

Counsel for MSC Software Corporation



---

J. Dennis Harketts

# **EXHIBIT**

# **F**



# SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO  
 Frank Perna  
 c/o Tefft W. Smith, Esq.  
 Kirkland & Ellis  
 655 Fifteenth Street, N.W.  
 Washington, D.C. 20005

2. FROM  
  
 UNITED STATES OF AMERICA  
 FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in item 6.

3. PLACE OF HEARING  
 Federal Trade Commission  
 601 Pennsylvania Ave., N.W.  
 Room 2001  
 Washington, D.C. 20580

4. YOUR APPEARANCE WILL BE BEFORE  
 Karen A. Mills or other designated  
 Complaint Counsel

5. DATE AND TIME OF HEARING OR DEPOSITION  
 May 23, 2002 at 8:30 AM, and continuing  
 each day thereafter until completed

6. SUBJECT OF PROCEEDING  
  
 In the matter of MSC Software Corporation, Docket No. 9299

7. ADMINISTRATIVE LAW JUDGE  
  
 The Honorable D. Michael Chappell  
  
 Federal Trade Commission  
 Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA  
 Karen A. Mills  
 Complaint Counsel  
 Federal Trade Commission  
 601 Pennsylvania Ave., N.W., Room 3027  
 Washington, D.C. 20580

DATE ISSUED  
  
 APR 19 2002

SECRETARY'S SIGNATURE

## GENERAL INSTRUCTIONS

### APPEARANCE

The delivery of this subpoena to you by any method proscribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

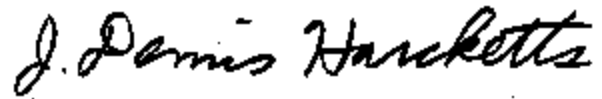
This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**CERTIFICATE OF SERVICE**

This is to certify that on April 26, 2002, I caused a copy of the attached Subpoena *Ad Testificandum* to Frank Perna issued on behalf of Complaint Counsel in *MSC Software Corporation* to be served by hand-delivery on the following person:

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

Counsel for MSC Software Corporation



J. Dennis Hacketts