

had agreed to dates for depositions of these eight current or former employees, but that MSC recently canceled three depositions which had been scheduled for January 8, 9, and 10, 2002.


On January 7, 2002, through a conference call conducted by the attorney advisor to the Administrative Law Judge, the parties were instructed to resolve their dispute and report any resolution or continued impasse by January 11, 2002.

On January 11, 2002, Complaint Counsel filed a Second Supplement to its motion to compel compliance. Complaint Counsel asserts that MSC has cancelled an additional three depositions, bringing the total to six cancellations out of the eight scheduled depositions. In the letter confirming the most recent cancellations, Respondent's counsel states that it is "not in a position to schedule the remaining depositions of current and former MSC employees" because they are dissatisfied with the discovery provided by Complaint Counsel. Complaint Counsel represents that it has already produced to MSC copies of all third party materials received in response to Commission investigative subpoenas, or voluntarily in lieu of process, in the investigation of this case; Complaint Counsel's witness list; verbatim statements of witnesses identified on Complaint Counsel's preliminary witness list; and all materials received to date in response to outstanding Part III subpoenas to third parties.

On January 14, 2002, at the direction of the Court, MSC filed an opposition to Complaint Counsel's motion to compel which responded to arguments raised in Complaint Counsel's first and second supplements. MSC asserts that it intends to make the subpoenaed individuals available for deposition, but that MSC seeks additional responses to its discovery requests served on Complaint Counsel.

MSC has not filed a motion to compel Complaint Counsel to supplement its discovery responses, thus the issue of whether Complaint Counsel has adequately responded to MSC's discovery requests is not ripe. MSC has not presented compelling arguments for further delay of the depositions of its former and current employees. Accordingly, MSC's motion to quash the subpoenas is DENIED. Complaint Counsel's motion to compel compliance is GRANTED. To the extent that depositions of these eight individuals have not already been conducted, the parties are hereby ORDERED to conduct the depositions of the eight proposed deponents by February 1, 2002.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Date: January 17, 2002