

November 29, 2006

Charles F. B. McAleer, Jr.  
Miller & Chevalier  
655 15<sup>th</sup> St. N.W. Suite 900  
Washington, D.C. 20005

Dear Chas,

Following our conversation regarding the proposed schedule yesterday, I have made adjustments in my proposed schedule set forth below. Additionally, I would like to clarify our position on certain points that we discussed.

Pursuant to the ruling issued by the Board on November 14, 2006, you will be required to make a definitive determination as to whether you will invoke the Fifth Amendment privilege within 10 days after the close of written discovery. By necessity, this will impact your decision to respond to our written discovery requests. In the event that you decide to waive your Fifth Amendment privilege, we would expect a timely supplement to your responses to our written discovery requests. The question of whether you have properly invoked your privilege in the responses you have provided to date will be the subject of our discovery motions to be filed December 1, 2006.

You have proposed submitting a list of defenses that may be presented in Mr. Geisen's case in chief, with an identification of possible witnesses and documents relating to this possible defenses, which is signed only by counsel and not by Mr. Geisen. Such a statement, in the Staff's view, does not constitute an adequate answer to the Staff's written discovery requests which seek Mr. Geisen's position on specific issues identified in our interrogatories that relate to the claims in the enforcement order which is the subject of the upcoming hearing. Therefore, the Staff would seek preclusion notwithstanding the type of presentation you have proposed if our interrogatories seeking Mr. Geisen's contentions are not answered. The portions of the schedule proposed below relating to your disclosures is only acceptable to the Staff provided that Mr. Geisen provides responses to our written interrogatories requesting contentions.

A statement such as the one you describe is not a sufficient response to satisfy the obligation to respond to the Staff's interrogatories under 10 C.F.R. § 2.706 (b), although it may serve to satisfy the pretrial disclosures required from parties other than the Staff under 10 C.F.R. § 2.704 (b) and (c), in the event that discovery of Mr. Geisen's contentions is provided in response to our interrogatories. Under that regulation, you are required to disclose, among other things, information regarding expert testimony that may be presented during the hearing, the identity of witnesses who may present testimony, and the identity of documents and exhibits that may be offered during the hearing. Disclosures regarding expert testimony are governed by subsections (b)(1) and (b)(2) which provide that when prefiled testimony is not used, certain specific information must be provided in advance of the hearing. Additional disclosures relating to witnesses, use of depositions and exhibits are governed by § 2.704 (c). The following schedule is intended to be fully consistent with those regulatory provisions.

As we discussed yesterday, the Staff is proposing to file pre-filed written expert testimony and may choose to file pre-filed written testimony from other witnesses who are Staff employees. We expect that testimony from other fact witnesses would be presented orally at hearing. We propose that both parties identify experts and submit either pre-filed written expert testimony or the information required under § 2.704(b)(2) simultaneously. Consistent with § 2.704(b)(3), I have included a joint filing date for rebuttal testimony and rebuttal evidence in response to expert testimony in the proposed schedule.

Because we do not expect to receive your document disclosures in response to our written discovery responses until sometime today, we will need to request additional time to file any motion to compel in order to allow for time to review those documents. Accordingly, I have included a separate date for a Staff motion to compel regarding those documents.

DATE	PARTY	EVENT
12/1/06	ALL	File motions to compel on unresolved issues relating to responses filed to October 3, 2006, discovery requests with the exception of document production provided by Geisen on November 29, 2006
12/1/06	ALL	Parties submit joint proposed pre-hearing and hearing schedule
12/11/06	STAFF	File motion to compel on unresolved issues relating to document production by Geisen on November 29, 2006
12/11/06	ALL	Parties file responses to motions to compel filed 12/1/06
12/15/06	GEISEN	Geisen deadline for answering Staff contention interrogatories and providing all claims or defenses to be presented at hearing. Geisen determination as to whether to invoke or waive his Fifth Amendment rights.

DATE	PARTY	EVENT
12/15/06	STAFF	Staff updates discovery responses
12/22/06	STAFF	Staff motion to compel on unresolved issues regarding Geisen 12/15/06 response to Staff interrogatories
Date to Be Determined by Board (estimated 1/16/06)	ALL	Parties comply with additional discovery compelled by Board based on motions to compel. Parties disclose expert witnesses
1/22/07 - 2/26/07	ALL	Parties conduct fact and expert deposition discovery
2/22/07	ALL	Parties file pre-filed testimony and/or pre-hearing statements containing information required by § 2.704(b) and ( c) and stipulations by parties.
3/5/07	ALL	Parties file pre-filed rebuttal testimony or, alternatively, statement of rebuttal testimony and supporting exhibits to be presented during hearing consistent with requirements of § 2.704 (b) and ( c).
3/9/07	ALL	Parties file evidentiary objections to pre-hearing statements and pre-hearing motions.
3/19/07 - 3/23/07	ALL	Evidentiary hearing.

I understand that you prefer to hold the hearing during the first week of March, but given the current status of discovery and the fact that this is already an extremely aggressive schedule, I do not believe that it is possible to conduct the hearing any sooner. Please let me know if you would like to discuss the schedule further.

Sincerely,

***/RA by Lisa Clark/***

Lisa Clark