UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

April 15, 1998

IN RE CHARGE OF JOHN MARK WILK, UNITED STATES OF AMERICA, Complainant, v. VOLVO TRUCKS NORTH AMERICA, INC., Respondent.	))))))) 8 U.S.C. §1324b Proceeding) OCAHO Case No. 98B00021))))

ORDER DENYING IN PART AND GRANTING IN PART COMPLAINANT'S MOTION TO COMPEL, AND SECOND TELEPHONIC PREHEARING CONFERENCE REPORT AND ORDER

I. *Introduction*

This case raises several issues of apparent first impression in OCAHO jurisprudence:

- Can the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) successfully maintain on behalf of a charging party and all similarly situated a discrimination action under 8 U.S.C. §1324b, if the charging party signs a termination agreement which includes a waiver of the right to sue his employer and accepts and retains benefits conferred by that agreement?

- Are the minutes and other notes of employer management meetings of or with executive staff ,which address discharge of U.S. citizen employees, privileged communications?

- Are personnel discharges incidental to corporate reorganization outside the scope of 8 U.S.C. §1324b?

II. *Factual and Procedural History*

From 1982 to August 1984, and from May 13, 1986, to November 15, 1996, Volvo GM Heavy Truck Corporation (Volvo or Respondent), a Delaware corporation doing business, *inter alia*, in Greensboro, North Carolina, employed John Mark Wilk (Wilk or Complainant), in various positions, including those of senior buyer, group leader, and purchasing manager. On November 15, 1996, allegedly incidental to a corporate reorganization, Volvo discharged Wilk from his position as Purchasing Administration Manager. Volvo allegedly refused Wilk's offer to accept demotion or foreign assignment in lieu of termination. Wilk was earning in excess of $72,000 per year, plus benefits. Volvo gave him five and one half month's severance pay.

On April 2, 1997, Wilk filed a charge with the Office of Special Counsel for Unfair Immigration Related Employment Practices (OSC), alleging that Volvo discriminated against him and other U.S. citizen workers on the bases of national origin and U.S. citizenship, in favor of Swedish, non-citizen workers. Specifically, Wilk alleged that:

> [F]our (4) non-citizen Swedish workers were added to the . . . Corporate Purchasing department. These individuals function as, but not limited to, group leader, senior buyer, buyer, and manufacturing process engineer. The skills these individuals employ in the function and duties of their assigned positions are skills that I possess and successfully practiced during my employment with Volvo. . . . I was discriminated against because I was not Swedish. I was injured by Volvo's . . . employment preferences [for] . . . non-citizen Swedish and other foreign workers over U.S. Citizens. . . . Of the approximately 100 Greensboro salaried employees who were terminated over the course of Volvo's corporate restructuring efforts ***none*** of the displaced workers were non-citizen Swedish or foreign workers.

OSC Charge at ¶9, Attachment, p. 2 (emphasis added).

> Prior to my termination, Volvo increased salaried staffing levels to support a massive new product project. Volvo added many non-citizen foreign workers in many departmental functions. . . . The skills these individuals employ . . . are

> skills that I possess and successfully practiced during my employment with Volvo.

Id., pp. 1–2.

On November 5, 1997, OSC filed a Complaint on behalf of Wilk and others similarly situated with the Office of the Chief Administrative Hearing Officer (OCAHO). While eschewing the national origin charge, the Complaint alleges that Volvo violated 8 U.S.C. §1324b(a)(1) by systematically discriminating against U.S. citizens during its reorganization:

> Beginning in or before June 1996 and continuing to the present, Respondent's practice has been to terminate U.S. citizen employees while retaining and/or continuing to hire equally or lesser qualified foreign contract workers.

Complaint at ¶13. For example,

> At the time of Mr. Wilk's termination, Respondent did not eliminate positions held by equally or lesser qualified foreign contract workers and/or moved these workers into remaining positions.

Complaint at ¶12.

Count I of the Complaint alleges that Volvo terminated Wilk on the basis of his U.S. citizenship; Count II alleges a pattern or practice of citizenship status discrimination. As remedy, the Complaint requests (1) that Volvo cease and desist from discriminating against U.S. citizens, (2) a civil money penalty of $2,000 for discrimination against Wilk, (3) a civil money penalty of $2,000 for each U.S. citizen discriminated against, (4) Wilk's reinstatement, (5) back pay and retroactive benefits and interest, and seniority, for Wilk, (6) back pay and retroactive benefits and interest, and seniority, for "each and every other U.S. citizen who may have been terminated as a result of Respondent's illegal actions," and (7) such other relief as justice may require.

On November 13, 1997, OCAHO issued a Notice of Hearing.

On December 16, 1997, Volvo filed its Answer, admitting that Wilk was employed as senior buyer, senior corporate buyer, and purchasing administration manager, but generally denying the remaining allegations. Volvo asserts as affirmative defenses: (1) failure to state a claim upon which relief can be granted; (2) that 8 U.S.C.

§1324b(a)(1) does not protect U.S. citizens in a corporate reorganization; (3) OSC failed to serve Volvo within ten (10) days by certified mail with notice of the charge, in violation of 8 U.S.C. §1324b(b)(1) and 44 C.F.R. §301(e); and (4) Wilk voluntarily executed an agreement waiving Volvo's liability for his discharge.

Subsequent to the first telephonic prehearing conference on January 22, 1998, OSC on March 25, 1998, filed a Motion To Compel Discovery under 28 C.F.R. §68.23(a).[1] Although OSC asks for an order that Volvo "respond immediately to Complainant's First Set of Interrogatories and Complainant's First Request for Production of Documents," its motion neglects to include *any* "[a]rguments in support of the motion," as required by 28 C.F.R. §68.23(b)(3).[2] Instead, OSC merely recites without elaboration that the information sought "is essential . . . to prosecute this case" and provides minutia of its apparently frustrating dealings with Volvo. Motion To Compel Discovery, p. 2.

On April 8, 1998, Volvo filed its opposition to OSC's motion. The parties filed copies of the discovery requests and responses.

During the second telephonic prehearing conference on April 14, 1998, I advised that I would issue an order addressing the pending motion in part and inviting further submissions and legal argument, without, however interfering with discovery and development by the parties of their own theories of the case. In order to accommodate anticipated negotiation to resolve discovery disputes and to provide time for further discovery and response to the inquiries set out in this order, the third telephonic prehearing conference is scheduled for **Friday, June 26, 1998, at 10:00 a.m., EDT**, with the evidentiary phase of the hearing, if necessary, to be held in or around Greensboro, North Carolina, probably in September 1998.

[1]Title 28 C.F.R. §68.24(a) permits an ALJ to order that an answer be served unless "the objecting party sustains his or her burden of showing that the objection is justified. . . . If the Administrative Law Judge determines that an answer does not comply with the requirements of these rules, he or she may order either that the matter is admitted or that an amended answer be served."

[2]Title 28 C.F.R. §68.24(b) commands that "The motion shall set forth: (1) The nature of the questions or request; (2) The response or objections of the party upon whom the request was served; and (3) Arguments in support of the motion." *See United States v. Tuttle's Design Build, Inc.*, 3 OCAHO 422, at 242 (1992), *available in* 1992 WL 535561 at *2 (O.C.A.H.O.) (discussing standard of relevancy).

III. *Discussion and Resolution of Discovery Issues*

Information sought in discovery must be relevant to the issue at hand. 28 C.F.R. §68.18(b) ("parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding"); FED. R. CIV. P. 26(b)(1) ("parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action," or information "reasonably calculated to lead to the discovery of admissible evidence"); *Kirkpatrick v. Raleigh County Bd. of Ed.*, 78 F.3d 579 (4th Cir. 1996) (Table), 1996 WL 85122, at *1 (4th Cir. 1996) (unpublished disposition) (Fourth Circuit Local Rule 36(c) permits citation of unpublished dispositions to establish law of the case); *Keyes v. Lenoir Rhyne College*, 552 F.2d 579, 581 (4th Cir. 1977), *cert. denied*, 434 U.S. 904 (1977); *United States v. Pedro Dominguez*, 6 OCAHO 910, at 4 (1997), *available in* 1997 WL 148816, at *1 (O.C.A.H.O.); *United States v. Nevada Lifestyles*, 3 OCAHO 463, at 699 (1992), *available in* 1992 WL 535620, at *16–17 (O.C.A.H.O.). It is the *de minimis* burden of the proponent of the material to be discovered to establish its relevancy. A simple assertion of need, without more, does not establish relevancy.

Volvo contends that in most respects it supplied the information requested, but objects to the document requests and interrogatories, as more particularly described below at **III. A**, Document Requests, and **III. B**, Interrogatories:

A. *Document Requests*

1. Respondent's most recent balance sheets, income statements, Annual Report to shareholders, and federal income tax return. Response to Complainant's First Request for Production of Documents at 3.

   Volvo contends that this post-action material is not relevant, and, in the case of the Annual Report, non-existent. Volvo agrees to provide the 1996 balance sheets, income statements, and tax returns, "upon agreement of counsel for Volvo and Special Counsel that these documents and the information contained therein will be kept confidential and will be for the internal use of the Special Counsel's office only."

2. Document request numbered "4." Response at 4.

Volvo objects that "there is no document request numbered 4."

3. The studies and reports regarding the 1996 layoffs generated by Booz, Allen & Hamilton for the President of Volvo and the executive staff and all minutes and notes of meetings of or with the executive staff wherein said studies and reports were discussed. Response at 6.

   Volvo objects to disclosure, claiming attorney client privilege, but asserts that, while preserving the objection, on October 17, 1997, it provided OSC with relevant sections of the Booz, Allen & Hamilton report entitled *Corporate Expense, Potential Incremental Opportunities*. Volvo is silent as to the request for all minutes and notes of meetings which discussed this report.

4. Copies of all minutes and other notes of meetings of or with the executive staff wherein the 1996 layoffs were discussed. Response at 7.

   Volvo objects to disclosure on the basis of attorney-client privilege, arguing that "[a]ll documents responsive to this request are protected from disclosure."

5. A list of all non-union positions available throughout the company (including those in Europe) at the time of and after Wilk's November 15, 1996 termination, and the position description for each. Response at 8.

   Volvo argues that this request is vague, over broad, unduly burdensome, and irrelevant, but, while preserving its objection, attaches a list of those who filled non-union positions and copies of all available job descriptions, except those of its European subsidiaries.

6. Organizational charts for Volvo at Greensboro. Response at 9.

   Volvo states that it provided this information at Tab 3 of its October 17, 1997 response to OSC's document request.

7. Wilk's exit performance review. Response at 10.

Volvo states that there was no exit performance review.

8. Resumes of Lars Garrenstad, Torbjorn Thungren, Lennart Kraft, and Per Beggar. Response at 12.

   Volvo maintains that it does not have these resumes.

9. Beggar's visa application. Response at 13.

   Volvo states that it does not have the visa application, but requested a copy from Beggar, who could not locate it.

10. Beggar's employment contract. Response at 14.

    Volvo contends that it provided this at Tab 1 of its October 17, 1997 response to OSC's document request.

11. The original November 1996 layoff list prepared before October 1996. Response at 15.

    Volvo contends that such a list is non-existent, and that Exhibit M of its October 16, 1997 response to Special Counsel's document request contained a list of all employees terminated in conjunction with Volvo's restructuring.

12. "All other documents that refer or relate to the allegations set forth in the Complaint, including, but not limited to, correspondence, memoranda, notes, reports, recommendations and statements." Response at 16.

    While preserving its objection that this request is vague, over broad, and burdensome, Volvo attaches its May 1996 *Staffing Process Resource Manual*, and Wilk's performance evaluation and personnel file, and references materials previously provided to OSC on June 4, 1997, and on October 17, 1997.

Resolution: **To the extent that OSC requests material Volvo provided in its October 16, 1997 response to its document request, or which does not exist, OSC's motion to compel is denied. As regards the materials OSC requests at ¶16, OSC may, by May 29, 1998, revise its request to specify with particularity which correspondence, memoranda, notes, reports,**

recommendations, and statements it requests. OSC should specify by exact subject headings (such as minutes of meetings in which "layoffs," "senior managers," etc., were discussed) the documents sought.

OSC's request for a list of all non-union positions available throughout the company at the time of and after Wilk's termination is denied because it is over broad; Wilk could not conceivably have been qualified for ***all*** non-union positions. Instead, **Volvo is directed by May 29, 1998, to provide to OSC lists, so denominated, of all senior buyer, group leader, or administration manager positions, or positions similar to them in responsibility, available throughout the country at the time of and after Wilk's termination.**

B. *Interrogatories*

In its Responses to Complainant's First Set of Interrogatories, Volvo reminds OSC that it previously provided information OSC now requests (*See* ¶¶2, 3, 5). To the extent this is so, OSC is urged to keep a log of materials received, and to avoid duplicative requests. Volvo specifically objects to the following interrogatories:

1. "Identify all personnel involved in formulating Respondent's policies and/or procedures for the period of January 1, 1994 through the present [sic] for implementing Respondent's hiring of employees (including foreign contract workers), and describing each individual's role or involvement therein." Response at ¶6.

   While preserving its objection that the request is over broad and unreasonably burdensome, Volvo attaches a list of individuals, with addresses and telephone numbers, in the Human Resources department who were or are involved in implementing hiring procedures from January 1, 1994 to present. However, Volvo does not identify the individuals ***responsible*** for Volvo's personnel policies.

Resolution: **Because policy makers are by definition few, this should prove no hardship, and Volvo is directed to produce these names, with addresses and phone numbers, by May 29, 1998.**

2. "Identify all personnel involved in formulating Respondent's policies and/or procedures for the period of January 1, 1994 through the present [sic] for implementing Respondent's layoff of employees, and describe each individual's role or involvement therein." Response at ¶7.

   While preserving its objection that the request is vague and over broad, Volvo appends a list of personnel employees. However, it does not list policy makers.

Resolution: **As above, Volvo is directed to produce the names of and titles of those responsible for layoff policies and selections — *i.e.,* those individuals who had the authority to decide whether or not a layoff would take place, and those individuals who determined which employees or classes of employees would be severed — by no later than May 29, 1998.**

3. "Identify and describe all documents relating or referring to Respondent's employment hiring and layoff policies and/or procedures for the period of January 1, 1995 through the present; (a) include the use, function, and distribution of these documents; and (b) identify all persons who were responsible for drafting, reviewing or implementing the policies outlined in these materials, the time period during which they exercised these responsibilities, and the nature of their responsibilities." Response at ¶8.

   Volvo objects to this interrogatory because it is over broad, vague, and burdensome.

Resolution: The burden of a request for over three years' worth of documents relating to "hiring" by this subsidiary of a major multinational employer appears disproportionately onerous, and not reasonably calculated to produce useful and relevant evidence. This request needs to be revised. **By May 29, 1998, OSC may revise its request for memoranda and other documents specifically relating to layoffs and replacement of the laid-off workers.**

4. Identify all individuals who were responsible for selecting employees to be included in layoffs from January 1, 1994, through the present. Response at ¶9.

While preserving its objection that the inquiry is over broad and burdensome, Volvo provides this information.

5. Identify by name, position, date of hire, and citizenship status, each person who has filled a vacancy at Respondent's Greensboro, N.C., headquarters from January 1, 1996, to present. Response at ¶12.

   Volvo provides a list of 125 workers, and reminds OSC that it provided foreign service contracts in its October 17, 1997, response to OSC's document request.

6. For each vacancy, describe in detail the steps taken to recruit and select a suitable candidate. Response at ¶13.

   Volvo objects to this query as over broad and burdensome. OSC offered no argument that this information is relevant. Because Wilk could not conceivably have been qualified for all 125 positions, and because OSC has neither named nor described any other affected employee, this interrogatory is over inclusive.

Resolution: **By May 29, 1998, OSC may revise this interrogatory, limiting its scope to those positions for which Wilk or other as yet unnamed complainants — to be named at that time — were presumptively qualified.**

7. Identify all experts consulted or hired and summarize their opinions. Response at ¶14.

   Volvo states that it has not yet hired or consulted experts.

Resolution: **Volvo is alerted to a continuing obligation to augment discovery requests, and ordered to provide this information when and if it consults or hires an expert.**

8. "Identify any other individuals whom Respondent has consulted, questioned, or interviewed in relation to this case: (a) summarize the information provided by these individuals in regard to this case, including their anticipated testimony (if any) in this case; (b) identify all documents referred to, created, drafted, edited, or produced by such individuals." Response at ¶15.

> Volvo objects to this interrogatory as vague, over broad, and burdensome. Volvo is not obligated to make OSC's case where it can reasonably obtain this information independently. For example, OSC has access to Wilk, who can provide information about potential witnesses. OSC provides neither reason nor rationale for needing this information, and has demonstrated no hardship in otherwise obtaining it.

Resolution: **The objection is sustained, but to the extent that any such individuals may be called as witnesses, Volvo must identify them at the third prehearing conference.**

> 9. "Identify all other persons not previously identified in answers to these Interrogatories, who have knowledge of any discoverable matter relating to this case, and give a detailed statement of their knowledge." Response at ¶16.
>
> While objecting on the grounds of vagueness, etc., Volvo attaches a list of persons who might have some knowledge of the matter.

Volvo augments its denials and defenses by arguing that Wilk never informed Volvo he was willing to accept a lower paying position, as OSC contends; that better qualified foreign contract workers were retained; and that Wilk has failed to plead a *prima facie* discrimination case.

IV. *Order*

Not later than the third telephonic prehearing on **Friday, June 26, 1998, at 10:00 a.m., EDT,** the parties should be prepared to identify potential witnesses and to agree to a schedule for an exchange of exhibits and witness lists in preparation for the confrontational evidentiary hearing.

Before the conference, *i.e.*, by **May 29, 1998**, Volvo is ordered to respond to OSC's discovery requests as directed above.

- **Also, not later than May 29, 1998, Volvo shall make available to OSC: 1) a list of discharged workers, dates of termination, position titles, and citizenship, and 2) a list of workers retained during the same time frame, position titles, and citizenship. Volvo shall also pro-**

vide copies of Wilk's termination agreement, as well as those of all other workers fired at the same time. Volvo shall state how these differ from Wilk's, if difference there be. Volvo shall provide a list of *similarly situated* workers laid off at the same time as Wilk who did *not* sign releases.

In addition, not later than **June 15, 1998**, the parties shall provide the following memoranda:

- **Volvo shall submit a memorandum of points and authorities regarding its claim of "attorney-client" privilege** as applied to OSC's request for copies of all minutes and other notes of meetings of or with Volvo executive staff which addressed the Booz Allen report and/or layoffs.

- **Volvo shall submit a memorandum of points and authorities regarding its contention that layoffs occasioned by business necessity, *e.g.*, corporate reorganization, are not within the scope of 8 U.S.C. §1324b, applying its theory to the facts of this case**.

- **Volvo and OSC shall submit memoranda of points and authorities, with particular attention to Supreme Court of the United States, Fourth Circuit, and Supreme Court of North Carolina decisions, analyzing law relevant to the issue of whether an employee who signs a termination agreement which includes a waiver of suit against the employer, and who accepts and retains benefits under that agreement, can successfully proceed under 8 U.S.C. §1324b.** The parties will be expected to analyze, apply, and distinguish or reconcile such authorities as *Oubre v. Entergy Operations, Inc.,* 118 S.Ct. 838, 840, 841, 843 (1998) (right to sue under Older Workers Benefit Protection Act (OWBPA) not abrogated by waiver of right to sue and retention of benefits where waiver did not comply with statutory rules for releases); *Hogue v. Southern R. Co.*, 390 U.S. 516, 517 (1968) ("whether a tender back of the consideration was a prerequisite to the bringing of the suit [under a federal statute] is to be determined by federal rather than state law;" tender back of benefits not condition precedent to suit where employee signed waiver); *Blistein v. St. John's College*, 74 F.3d 1459, 1464 (4th Cir. 1996) (even though waiver of right to sue violated OWBPA, employee ratified voidable waiver by retaining benefits); *O'Shea v. Commercial Credit Corp.*, 930 F.2d 358, 361 (4th

Cir. 1991), *cert. denied*, 502 U.S. 859 (1991) (even if release of age discrimination claims in employment termination agreement was invalid, employee ratified voidable waiver by accepting and retaining benefits of termination package; ordinary state law contract principles determine whether waiver was knowing and voluntary), *Alphonse v. Northern Telecom, Inc.*, 776 F. Supp. 1075, 1078 (E.D. North Carolina, 1991) (even if an employer fraudulently induced an employee to sign a waiver of right to sue under Age Discrimination in Employment Act, employee ratified voidable release by retaining benefits conferred by release); *Travis v. Knob Creek, Inc.*, 321 N.C. 279 (1987), 362 S.E.2d 277 (1987) (employee's waiver and retention of consideration does not bar after-accrued cause of action where waiver did not explicitly so state), *Presnell v. Liner*, 218 N.C. 152, 154 (1940), 10 S.E.2d 639, 640 (1940) (retention of consideration constitutes "a ratification of the release, even if it be conceded that its original execution was obtained by fraud and misrepresentation"). Specifically, the parties will be expected to address the impact of the Supreme Court's holding in *Oubre* on law in the Fourth Circuit, as embodied, *e.g.*, in *Blistein* and *O'Shea*.

The parties shall also discuss whether Wilk "knowingly" and "voluntarily" signed the waiver with particular attention to the circumstances in which the waiver was signed, defining "knowing" and "voluntary" under applicable law, describing with particularity Wilk's opportunity (if any), to consult counsel, and to consider and modify the waiver, and detailing those qualities (if any) that distinguished the waiver Wilk signed from those signed by other employees.

- **Volvo shall provide a list of benefits, if any, to which Wilk would have been entitled had he not signed the settlement agreement, and a written account of how the termination agreement exceeds or otherwise affects those benefits**. Volvo shall also provide a written account of **the manner in which the settlement agreement was negotiated** — *i.e.,* whether Wilk was afforded a reasonable opportunity to submit the agreement to his own counsel before signing it, and whether counsel was involved.

- **OSC shall provide a memorandum of points and authorities on the subject of numerosity and typicality required in pattern and practice actions under 8 U.S.C. §1324b, analogizing, where necessary, to class action law**.

- **OSC shall specify which Volvo employees it seeks to join in this action**, providing names, occupations, dates of termination, and citizenship, and whether or not each executed waiver of his or her right to sue. OSC is reminded that the class of employees it alleges were affected by the alleged pattern or practice discrimination must be restricted to *similarly situated* members who could have *timely* filed an OSC charge. *See* 8 U.S.C. §1324b(d) (3) ("no complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of filing the charge with Special Counsel"); 28 C.F.R. §44.304; *McCaffrey v. LSI Logic Corp.*, 6 OCAHO 867, at 6 (1996), *available in* 1996 WL 492319, at *5 (O.C.A.H.O.) ("one may not simply allege discrimination and rely on the nature of the allegation itself to satisfy the adequacy of representation requirements. . . . There should be some showing that a putative representative has the same interest and suffered the same injury as the class of persons whose interest he seeks to raise or represent. Common questions of law and fact should predominate. . . . Where . . . the allegations do not include any specific information about the nature of the jobs at issue, the qualifications, the hiring process, or when the events occurred, it is impossible to ascertain which, if any, of the acts sought to be alleged . . . arises out of the same conduct, transaction, or occurrence as is alleged in the original complaint . . . the scope of a case is ordinarily limited to persons who could have filed timely charges in the 180-day period prior to the filing of the subject charge. . . . [S]imilarly situated individuals are those who either filed timely charges or could have filed timely charges on the same date as the person whose charge forms the basis for the action").[3]

[3]*See U.S. v. Zabala*, 6 OCAHO 830, at 17 (1995), *available in* 1995 WL 848947, at *11 (O.C.A.H.O.):

> This case calls for a word about Complainant's practice of shielding until the confrontational evidentiary phase of the hearing the number and identification of individuals — other than those who testified at the hearing — on whose behalf the Complaint is filed. On presenting its case at hearing, and on brief, OSC indulges in the luxury of viewing a pattern or practice cause of action as in the nature of a class action. *See Walker v. United Air Lines, Inc.*, 4 OCAHO 686, at 46, n.31 (1994). Accordingly, OSC should be prepared in future cases, at a minimum well before hearing if not at the time of filing its complaint, to identify with particularity the number and identity of all individuals on whose behalf a pattern or practice complaint is filed.

SO ORDERED.

Dated and entered this 15th of April 1998.

MARVIN H. MORSE
Administrative Law Judge