

conduct the deposition by telephone and to use only the interrogatory responses as exhibits.

Fish has simply refused to schedule a date for the telephone deposition insisting that the parties work out a more elaborate plan for all depositions before the witness will be made available. Agreement on other depositions unnecessary for the completion of this deposition which we anticipate can be completed in less than four hours.

Copies of the original deposition notice and the relevant correspondence on the subject are attached as Exhibits A-D. We hereby certify that a good faith effort was made to resolve this matter and that Fish's counsel has refused to set a firm date for the deposition despite efforts to reduce the burden on the witness and the parties by doing the deposition by telephone with limited exhibits.

For the reasons stated, it is respectfully requested that this motion be granted and that Fish be ordered to set a date certain in the next 5 days for taking the noticed deposition.

Respectfully submitted,

/s/ Raymond P. Niro

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **MOTION TO COMEPL DEPOSITION** was electronically filed with the Clerk of Court using CM/ECF system, which will send notification by electronic mail to the following:

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on June 24, 2008.

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