

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
STATE OF NEW YORK, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 98-1233 (CKK)
)	
MICROSOFT CORPORATION,)	
)	Next Court Deadline: March 4, 2002
Defendant.)	Status Conference
_____)	

**JOINT STATUS REPORT OF THE PARTIES CONCERNING
PROCEDURES FOR UPCOMING REMEDIES HEARING**

As directed by the Court, the parties have conferred with respect to procedures for the upcoming hearing, and hereby submit the following status report concerning these matters.

1. Presentation of witnesses.

The parties agree that live witnesses should be presented orally in court for direct, cross and redirect examination. Both sides agree, and respectfully submit, that the use of written direct examination will neither shorten the trial nor sharpen the presentation of the facts that are in dispute. To facilitate the orderly presentation of the case, the parties also agree that written summaries of each witness' expected testimony should be filed and exchanged three days before the witness takes the stand. Plaintiffs believe that, to be useful to the Court and the opposing party, these summaries should be approximately ten pages in length. Microsoft proposes that the summaries should be no more than five pages in length.

2. Number of witnesses and length of trial.

The parties agree that there should be an overall time limit on each side's presentation of evidence and that this time limit should apply to both direct and cross-examination by that party. The parties also agree generally that the maximum amount of time for most witnesses for direct and cross-examination should be approximately one day. The parties have been unable to agree, however, on the issues of how many witnesses each side should be permitted to call and how long the hearing should be.

a. *Plaintiff Litigating States' position.* The Plaintiff Litigating States believe that each side should be permitted to call no more than 20 witnesses, live or by deposition. On the expectation that the total time for each witness, including direct and cross-examination, should be, on average, less than a full trial day, the Plaintiff States believe each side should be limited to a total of 85 hours of court time for its presentation, including its direct and cross-examination of live witnesses, and time spent on video or audio presentation of deposition testimony. The Plaintiff States believe that amount of time, which is almost three full weeks of trial time per side, should be sufficient for a presentation of the factual matters that are in dispute. The Plaintiff States also note, however, that if the Court permits the number of witnesses Microsoft proposes, then the total time limit allowed each side would have to be extended accordingly.

b. *Defendant Microsoft's position.* Microsoft believes that it is not the number of witnesses but the number of hours allowed to each side for the presentation of evidence that is the relevant factor. Microsoft proposes that each side be given 150 hours within which to make its case through direct and cross-examination, as well as such video and/or audio presentation of deposition testimony. This is an average of 6 hours of court time for each of the 50 witnesses listed by the parties.

Microsoft's position regarding the number of witnesses it requires will be presented to the Court in connection with the Litigating States' motion to strike the majority of Microsoft's witnesses.

3. Presentation of witnesses by deposition. Neither side will call by deposition rather than as a live witness any witness other than a hostile witness or a representative of an opposing party as specified in Rule 32(a)(2). Witnesses to be called by deposition shall be identified to the other side by Monday, March 4, 2002. With respect to such witnesses the parties have agreed on and propose the following procedure:

The offering party will provide the other side with the proposed designations five days before the testimony is to be presented in court. Within forty-eight hours, the opposing side will provide its counter designations and objections. The offering party will then have one day to amend its designations and lodge its own objections. The portions of the deposition that each side proposes to offer, with objections noted, will then be submitted to the Court no later than two days before the deposition is to be used at the hearing. Deposition designations and counter-designations shall be read or displayed at one time, and in the order in which the designated questions and answers occur in the deposition transcript. Any time spent reading a transcript or playing the videotape of a deposition will count against the total time allotted to that side for the conduct of the hearing, except with respect to counter designations, in which case the time will count against the time allotment for the counter-designating party.

4. Use of demonstrative and summary exhibits at trial. The parties have agreed on and propose the following procedure with respect to the use of demonstrative and summary exhibits at trial:

The offering party will provide the other side with each proposed demonstrative or summary exhibit three days before the exhibit is to be offered or used in court. Within twenty-four hours, the opposing side will provide its objections if any. The parties shall seek to resolve any objections by agreement, failing which the proposed exhibit and their respective positions shall be submitted to the court for a ruling.

5. Opening statements, closing argument and post-hearing filings. The parties agree that final argument should be deferred until after the parties have submitted post-trial proposed findings of fact and conclusions of law. Given the complexity of the material and expected length of the trial, the parties further agree that such post-trial filings should be due thirty days after the close of the evidence, and that closing or final argument should then be scheduled for at least two weeks later, as the Court's calendar permits. The Court has previously fixed two hours per side for openings; the parties propose that final argument be limited to four hours per side. The parties further propose that each side be permitted to divide its opening statement and final argument between two lawyers.

Dated: February 13, 2002

Respectfully submitted,

Brendan V. Sullivan, Jr.
(Bar No. 12757)
Steven R. Kuney
(Bar No. 253286)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Tel: (202) 434-5000
Fax: (202) 434-5029

Thomas Greene
Office of the Attorney General
of the State of California
455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102
Tel: (415) 703-5555

Counsel on behalf of the Plaintiff Litigating States

Douglas L. Davis
Assistant Attorney General for the State
of West Virginia
Consumer Protection/Antitrust Division
P. O. Box 1789
Charleston, West Virginia 25326-1789
Tel: (304) 558-8986
Counsel on behalf of the Plaintiff
Litigating State West Virginia

John L. Warden (Bar No. 222083)
Michael Lacovara
SULLIVAN & CROMWELL
125 Broad Street
New York, NY 10004
(212) 558-4000

William H. Neukom
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052
(425) 936-8080

Charles F. Rule (Bar No. 370818)
FRIED, FRANK, HARRIS, SHRIVER,
& JACOBSON
1001 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20004-2505
(202) 639-7300

Bradley P. Smith (Bar No. 468060)
SULLIVAN & CROMWELL
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 956-7500

Dan K. Webb
WINSTON & STRAWN
35 West Wacker Drive
Chicago, IL 60601
(312) 558-5600

Counsel on behalf of Defendant
Microsoft Corporation