

For Immediate Release

April 20, 2001

COURT UPHOLDS \$27 MILLION AWARD OF ATTORNEYS FEES IN CLASS ACTION CASE

(*Vizcaino, et al., v. Microsoft Corp., et al.*)

The United States District Court for the Western District of Washington in Seattle upheld the proposed award of \$27 million in attorneys fees being sought in the settlement of this major class action case. The attorneys were seeking 28 percent of the common settlement fund of \$98 million, which amounted to approximately \$27 million in attorneys fees. In doing so, the court rejected the argument made by the Washington Legal Foundation (WLF) on behalf of several class members that the fees were excessive, and denied WLF's request that, at a minimum, the court should appoint its own independent expert to verify the number of hours reasonably expended by the attorneys in this litigation.

This lawsuit was originally filed against Microsoft in late 1992 on behalf of employees of Microsoft who were classified as temporary employees or independent contractors. They claimed that they should have been treated as permanent employees, and should have been entitled to participate in employee benefit plans such as health insurance, the company's stock purchase plan, and similar benefits.

During the ensuing litigation, the class members prevailed on some issues, such as the right to participate in Microsoft's Employee Stock Purchase Plan, but lost on other issues. On December 12, 2000, a proposed settlement was reached between the parties. It is estimated that there are 10,000 to 12,000 class members who could receive benefits under the settlement.

WLF objected to the proposed attorneys fees of 28 percent of the common fund as being excessive. In its brief filed earlier this year, WLF cited numerous cases supporting its position, including a recent case in which WLF also participated, *In re Synthroid Marketing Litigation*. In that case, the court reduced a fee award request of 29 percent of an \$86 million common fund to only 10 percent as WLF had suggested. At a minimum, WLF requested that the court order the plaintiffs' attorneys to submit time and billing records to determine how much work was performed in the case. The court would then be able to determine the "lodestar" fee amount, that is, the number of hours reasonably expended on the case times the reasonable hourly rate of the attorneys. The court could then compare that figure with the contingency fee award to

determine whether the \$28 million was excessive.

The plaintiffs' attorneys vigorously opposed WLF's brief, arguing that because they took the case on a contingency fee basis, they were not required to keep time records or submit such information to the court. The court disagreed with that position, and in a partial victory for WLF, ordered the attorneys to submit billing records and information for the court's consideration in order to cross-check the reasonableness of the contingency fee request.

In its opinion released earlier this week, the court determined that the lodestar figure was approximately \$7.3 million. The court then considered various factors in this case that justified an increase in the lodestar, such as the complexity of the case, the risk of nonrecovery, and the results obtained. In doing so, the court found that a multiplier of 3 or 4 of the lodestar was within the range of awards that have been upheld by other courts in comparable cases. A multiple of 3 of the \$7.3 million lodestar would yield approximately \$22 million in fees, and a multiple of 4 would yield approximately \$29 million. Thus, the court determined that the \$28 million fee computed on the basis of the original contingency fee agreement was within the range of an appropriately enhanced lodestar amount.

WLF filed the objections as co-counsel with Lawrence Schonbrun of California, who specializes in opposing excessive fee awards in class action cases. WLF will review this case to determine whether any further legal proceedings may be appropriate. WLF will continue to oppose such fee requests in other class action cases.

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