

November 11, 2002

COURT APPROVES SETTLEMENT OF MICROSOFT ANTITRUST LAWSUIT *(United States v. Microsoft Corp.)*

The United States District Court for the District of Columbia approved the settlement of the antitrust lawsuit against Microsoft Corporation brought by the U.S. Department of Justice that included certain provisions to ensure that the terms of the settlement agreement would be followed. The decision was a resounding victory for the Washington Legal Foundation (WLF) and a setback for the various States that had opposed the settlement.

WLF had filed formal comments with the Department of Justice (DOJ) earlier this year pursuant to the Tunney Act supporting the settlement. WLF supported the terms of the Proposed Final Judgment that was the result of intense negotiations with the assistance of two of the nation's top mediators, as a rational resolution to a case formally initiated in May 1998, but effectively tracing its roots to a Federal Trade Commission investigation begun more than a decade ago. WLF had also recommended that DOJ and the District Court urge the States that have not accepted the settlement to reconsider their position and adopt the final judgment.

The Tunney Act contemplates that the Court will evaluate the relief set forth in the Proposed Judgment and enter the judgment if the settlement is within the reaches of the public interest and within the government's rather broad discretion, considering (1) the competitive impact and adequacy of the judgment and (2) the impact on the public generally, and on affected individuals, and the benefit, if any, of an eventual trial determination. WLF argued that settlement of the case as proposed would benefit consumers and encourage competition, and that further litigation was unwarranted.

In her recent decision, Judge Kollar-Kotelly rejected arguments made by several States and the District of Columbia that the settlement contained loopholes and that Microsoft could not be trusted to follow the agreement. She castigated the States for their last minute legal arguments that the court should consider all existing complaints regarding Microsoft's business practices. She ruled that the settlement was "laudable...for the clear, consistent and coherent manner in which it accomplishes its task."

The court concluded that the settlement was in the "public interest" as WLF had argued, and also within the parameters of an earlier ruling by the court of appeals that a breakup order was not warranted.

WLF had participated in another aspect of the *Microsoft* case last year. WLF filed a brief in the United States Supreme Court supporting Microsoft's petition to review the judgment of the court of appeals that left intact the district court's findings of fact and conclusions of law, despite the flagrant judicial misconduct of the trial judge in giving secret interviews to the press during the trial expressing his bias and hostility to Microsoft and Bill Gates. The Supreme Court declined to hear that appeal, thereby allowing the settlement proceedings to go forward.

WLF's comments filed with the Justice Department were prepared with the *pro bono* assistance of Robert A. McTamaney, an antitrust lawyer with the New York law firm of Carter, Ledyard, & Milburn. WLF's comments were one of the few selected by the Justice Department that warranted the court's full attention and consideration.

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