

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

DANIEL GORDON, MICHAEL STOLEE,
VOCAL SIGNS, INC., DAVID
ELLINGSON, KARI A. WALLACE,
RECLAIM CENTER, INC., Individually and
On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Case Type: Class Action
Court File Nos. MC 00-5994, 03-4162

JUDGE BRUCE A. PETERSON

PAMELA K. UGLEM, Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into, subject to Court approval, as of _____, 2004, on behalf of the Minnesota Class (as defined below as plaintiffs), and Microsoft Corporation ("Microsoft" as defendant), in *Gordon et al. v. Microsoft Corporation*, Case No. 00-005994, and *Uglem v. Microsoft Corporation*, Case No. 03-4162, pending before Judge Bruce A. Peterson in the District Court for the County of Hennepin, Fourth Judicial

District ("All Cases").

WHEREAS, plaintiffs have made certain claims against Microsoft based upon alleged violations of Minnesota antitrust law;

WHEREAS, such plaintiffs contend that they and the members of certain certified classes have suffered damages and other injuries as a result;

WHEREAS, Microsoft denies each and every one of plaintiffs' allegations of unlawful conduct, damages and other injuries;

WHEREAS, after arm's-length negotiations between Lead Counsel for the Minnesota Class (as defined below) and Microsoft, this Settlement Agreement has been reached;

WHEREAS, the class representatives and Lead Counsel for the Minnesota Class have concluded, after investigation of the facts, and after carefully considering the circumstances, that it would be in the best interests of the Minnesota Class to enter into this Settlement Agreement; and both the class representatives and Lead Counsel for the Minnesota Class consider the Settlement set forth below to be fair, reasonable, adequate and in the best interests of the Minnesota Class;

WHEREAS, Microsoft has concluded that it will enter into this Settlement Agreement in order to, among other things, avoid the further expense, inconvenience, burden, uncertainty and risk of this litigation;

NOW, THEREFORE, it is agreed by the undersigned on behalf of the Minnesota Class and Microsoft, that All Claims (as defined below) of the Minnesota Class against Microsoft be settled and compromised, and that All Cases (as defined below) against Microsoft be dismissed with prejudice, without costs to any party (except as provided below), on the following terms and

conditions:

I. DEFINITIONS

For purposes of this Settlement Agreement, the following terms shall have the meanings set forth below.

- A. "All Cases" has been defined as *Gordon v. Microsoft Corporation* and *Uglem v. Microsoft Corporation*, as listed in Appendix A.
- B. "All Claims" means all claims, demands, actions, suits and causes of action against Microsoft and/or its directors, officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the Minnesota Class ever had, could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission which was or could have been alleged in any of the cases listed on Appendix A and which arise from or relate to the purchase, use and/or acquisition of a license for a Microsoft Operating System and/or Microsoft Application (as defined below) and where the claims, demands, actions, suits or causes of action concern or relate to any of the following: (a) antitrust (including without limitation the Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.*, and the Minnesota Antitrust Law, Minn. Stat. § 325D.49 *et seq.*), (b) unfair competition, (c) unfair practices, (d) price discrimination, (e) trade regulation, (f) trade practices, and/or (g) other federal or state law, regulation or common law similar or analogous to any of the above. "All Claims" does not include (a) claims relating to the acquisition or licensing of Microsoft Operating System or Microsoft Application software for use outside of Minnesota, (b) claims arising from purchases directly from Microsoft Corporation of licenses for Microsoft Operating System or Microsoft Application software or (c) claims by competitors of Microsoft in their

capacity as competitors. "All Claims" does not include claims relating to Microsoft's conduct, acts or omissions that take place after March 17, 2003. However, "All Claims" includes any and all claims described above relating to Microsoft's conduct, acts or omissions that occurred on or prior to March 17, 2003.

C. "Minnesota End Users" means persons or entities who indirectly licensed Microsoft Applications and/or Microsoft Operating Systems software for use in Minnesota and not for resale during the Class Period. "Minnesota End Users" include companies headquartered outside Minnesota who are identified in the MS Sales database as using Microsoft Applications and/or Microsoft Operating Systems in Minnesota.

D. "Minnesota Class" means all persons or entities who, from and including May 18, 1994, through March 17, 2003 (the "Class Period"), indirectly acquired a license for Microsoft Operating System and/or Microsoft Applications software for use in Minnesota and who did not acquire it for the purpose of resale and includes all Minnesota End Users. Excluded from the Minnesota Class are:

1. government entities, Microsoft officers and directors, subsidiaries in which Microsoft has greater than a 50 percent ownership interest and any judges or justices assigned to hear any aspect of this litigation; and

2. all persons or entities who have properly excluded themselves from the plaintiff classes previously certified by the Court.

E. "Category I products" means all titles of software listed on Appendix B-1.

F. "Category II products" means all titles of software listed on Appendix B-2.

G. "Category III products" means all titles of software listed on Appendix B-3.

- H. "Category IV products" means all titles of software listed on Appendix B-4.
- I. "Claim Period" means the period beginning with the Notice Commencement Date (defined in Section II.E.3 below) and ending six months after the Notice Ending Date (defined in Section II.E.3 below), provided, however, that the Claim Period shall end no sooner than 30 days after the date on which the Court enters an Order of Approval and Final Judgment as provided in section II.H below. The Claim Period may be extended by agreement of the parties or subsequent order of the Court for good cause shown.
- J. "Consumer Vouchers" means the vouchers issued to members of the Minnesota Class pursuant to the terms of this Settlement Agreement.
- K. "Lead Counsel for the Minnesota Class" means Richard Hagstrom of Zelle, Hoffman, Voelbel, Mason and Gette, LLP and Daniel Hume of Kirby McInerney & Squire, LLP.
- L. "Court" means the Fourth Judicial District Court of Minnesota, County of Hennepin.
- M. "Date of Final Approval" means the first date upon which all of the events listed in Section I.Q below have occurred.
- N. "Effective Date of the Settlement" means 60 days after the Date of Final Approval.
- O. "Eligible Schools" means those public elementary, middle, junior high and high schools (K-12) in Minnesota that are most in need of the vouchers made available through Section VI of this Settlement Agreement, as per agreement among Lead Counsel for the Minnesota Class, Microsoft and the Minnesota Department of Children, Families and Learning.
- P. "Face Value Amount" means the maximum amount of money available to pay for

claims made by members of the Minnesota Class in accordance with this Settlement Agreement as further defined in Section IV.B below.

Q. "Final Approval" means the occurrence of all of the following events:

1. This Settlement is approved in all respects by the Court;
2. The Court enters an Order of Approval and Final Judgment as provided in Section II.I below;
3. The Court dismisses All Cases with prejudice as provided in Sections II.H and II.K below;
4. The clerk of the court for each case listed on Appendix A enters the Final Judgment and serves notice of entry of the Final Judgment upon all named parties to that case; and
5. The time to appeal or seek permission to appeal from the Court's Order of Approval and/or Final Judgment has expired, or, if appealed, the Order of Approval and Final Judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

R. The "First Cy Pres Amount" is fifty percent (50%) of the difference between the Face Value Amount and the amount of issued Consumer Vouchers.

S. The "First Cy Pres Period" shall begin on a date no later than the Effective Date of the Settlement (the "First Cy Pres Distribution Date") and shall end on a date six years after the First Cy Pres Distribution Date.

T. "IT Support Services" are services that primarily involve the maintenance of hardware procured through this Settlement and the installation and maintenance of software

procured through this Settlement.

U. “Microsoft” means Microsoft Corporation, its successors, assigns and subsidiaries.

V. “Microsoft Application” means the versions of the products listed on Appendices B-2, B-3 and B-4.

W. “Microsoft Operating System” means the versions of the products listed on Appendix B-1.

X. “Microsoft’s End User Data” shall include the following: the Microsoft eOpen database, the Microsoft Volume Licensing Services (“MVLS”) database, the Worldwide Marketing Database (“WWMDB”), the Microsoft Open License Program (“MOLP”) database, the Microsoft LIR database, the Microsoft License (“MSL”) database, and any reasonably accessible data in the MS Sales database that is useful to making or verifying a claim and that is not included in the databases and systems listed above.

Y. “Objection Date” means the date by which members of the Minnesota Class must file with the Court and serve on Lead Counsel for the Minnesota Class and counsel for Microsoft any written objections to the Settlement and any written objections to the request for attorneys’ fees included in the class notice, along with any supporting documentation.

Z. “Professional Development Services” are: (1) Professional development services directed solely at leadership development for school administrators; (2) Professional development services directed solely at general curriculum development and instructional strategies; (3) Professional development services directed solely at the improvement of technology integration for any software title acquired through this Settlement; and (4) Training

in the use of any hardware or software title acquired through this Settlement.

AA. The "Second Cy Pres Amount" is one hundred percent (100%) of the difference between the amount of issued Consumer Vouchers and the amount of redeemed Consumer Vouchers at the end of the Settlement Period.

BB. The "Second Cy Pres Period" shall begin on a date no later than 60 days after the end of the Settlement Period (the "Second Cy Pres Distribution Date") and shall end on a date two years after the Second Cy Pres Distribution Date.

CC. The "Settlement Claims Administrator" is Rust Consulting, Inc., who is designated to manage specified portions of the notice program, receive requests to opt-out from class members under Section II.F below, process claims, issue Consumer Vouchers and redeem Consumer Vouchers from class members under Sections IV and V below as well as issue and redeem cy pres General Purpose Vouchers and Software Vouchers under Section VI below. The Settlement Claims Administrator shall be jointly retained and supervised by Microsoft and Lead Counsel and copies of all information or correspondence sent to the Settlement Claims Administrator by Microsoft or counsel for the Minnesota Class shall also be sent simultaneously to the other party. Microsoft will pay all reasonable costs and expenses of the Settlement Claims Administrator relating to this Settlement Agreement.

DD. The "Settlement Period" means four years from the Effective Date of the Settlement.

EE. "Opt-Out Date" means the postmark date by which members of the Minnesota Class must mail their request to be excluded from the Minnesota Class in order for that request to be effective.

FF. "Class Counsel" means Kirby, McInerney & Squire LLP; Zelle, Hofmann, Voelbel, Mason & Gette LLP; Roxanne Conlin & Associates PC; Krause & Rollins; Heins, Mills & Olson PLC; Berry & Leftwich; Milberg, Weiss, Bershad, Hynes & Lerach LLP; Townsend & Townsend & Crew; and Kellogg, Huber, Hansen, Todd & Evans PLLC.

II. COURT APPROVAL, CLASS NOTICE AND OBJECTION PROCEDURES

A. Best Efforts. Lead Counsel for the Minnesota Class and Microsoft agree that they will: (1) recommend approval of this Settlement Agreement to the Court; (2) use their best efforts to obtain approval of this Settlement Agreement and to carry out its terms; and (3) support the Settlement contemplated by this Settlement Agreement in all public statements, including all statements in court and all statements to the news media.

B. Certification of Settlement Class.

On or before July 1, 2004, Lead Counsel for the Minnesota Class shall file a consolidated and amended Complaint that will make the definition of the classes on whose behalf the suits were brought coextensive with the Minnesota Class.

For settlement purposes only, Lead Counsel for the Minnesota Class will request, as part of the Order for Preliminary Approval and Conditional Certification of Class, that the Court make preliminary findings and enter an Order granting provisional certification of the Minnesota Class subject to final findings and ratification in the Final Judgment, and appointing plaintiffs and Lead Counsel for the Minnesota Class as representatives of the Minnesota Class.

Microsoft does not consent to consolidation and/or amendment of the Complaints or certification of the Minnesota Class for any purpose other than to effectuate the settlement of this action. If this Settlement Agreement is terminated pursuant to its terms, or if the settlement

is not approved, the Order granting leave to consolidate and/or amend the Complaints and the Order conditionally certifying the Minnesota Class shall be automatically vacated upon notice to the Court of the termination of the Settlement Agreement, and the matter shall proceed as though the Minnesota Class had never been conditionally certified and such findings had never been made, without prejudice to the ability of any party thereafter to request or oppose class certification on any basis.

C. Motion for Preliminary Approval. Lead Counsel for the Minnesota Class shall submit to the Court on or before July 15, 2004 a motion for preliminary approval of this Settlement Agreement on behalf of the Minnesota Class, together with a proposed preliminary approval order substantially in the form attached as Appendix C. The motion for preliminary approval shall seek approval of the form and manner of notice and opt-out and objection procedures as set forth in Sections II.E-G below. The motion for preliminary approval shall also ask the Court to schedule a hearing date for final approval of this Settlement Agreement. If such settlement is terminated or does not obtain Final Approval, then the status of class certification in this litigation shall be as it existed prior to the execution of this Settlement Agreement.

D. Stay of Proceedings. Upon execution of this agreement, the parties shall notify the Court that the parties have entered into a settlement agreement that will fully resolve the case, but is subject to binding arbitration of several terms. The parties shall jointly request that the trial be adjourned *sine die* and that the jury be excused.

E. Notice.

1. In the motion for preliminary approval of this Settlement Agreement (as set forth in Section II.C above) or prior to making such motion, Lead Counsel for the Minnesota

Class shall apply to the Court for an order authorizing summary notice by publication to the Minnesota Class, substantially in the same form that was approved for use in the settlement of the consumer antitrust class action against Microsoft in California, subject to modification as agreed by the parties and approval by the Court. Such notice shall inform the Minnesota Class of the terms of the Settlement Agreement, state the date scheduled by the Court for the hearing on final approval of the Settlement, and advise class members of their right to exclude themselves from the Settlement or to object to the Settlement or to the request for attorneys' fees and costs submitted by Lead Counsel for the Minnesota Class or by any other counsel for plaintiffs in any of the cases listed in Appendix A, and to appear at the hearing on final approval. The notice will also contain a stern warning regarding the possibility of audit and the penalties for the submission of false information in connection with claiming and/or redeeming Consumer Vouchers.

2. Subject to approval of the Court, Lead Counsel for the Minnesota Class and Microsoft agree that notice shall be published in print publications and/or disseminated via electronic media (such as America Online, Hotmail, and/or other Internet Access Providers that can direct notice specifically to Minnesota customers). Microsoft will bear the reasonable cost of publishing notice in print publications and the cost of disseminating notice via electronic media. Lead Counsel for the Minnesota Class will determine the reasonable allocation of these funds between print publications and electronic media.

a. Postal Mail:

(1) In the motion for preliminary approval of this Settlement Agreement (as set forth in Section II.C above), Lead Counsel for the Minnesota Class shall apply

to the Court for an order authorizing mailed written notice (which notice shall include a hard copy of a Claim Form) substantially in the same form that was approved for use in the settlement of the consumer antitrust class action against Microsoft in California, subject to modification as agreed by the parties and approval by the Court.

(2) Lead Counsel for the Minnesota Class and Microsoft will provide the Settlement Claims Administrator with the information in their possession that is necessary to facilitate such written notice to be mailed, via the U.S. Postal Service, (a) to those Minnesota End Users whose mailing addresses are in any of the following databases: MS Sales, MSL, MOLP, WWMDB, and Microsoft product support databases (including the Clarify, PSS Reporting Warehouse and PID Server databases); (b) to those Minnesota End Users who are subscribers to MSN-Internet Services and whose mailing addresses indicate that they live in Minnesota; (c) to those Information Technology managers whose mailing address indicates that they are located in Minnesota or work for companies with operations in Minnesota, and are included in any database compilation of IT managers maintained by Microsoft, including but not limited to TechNet; (d) to those Minnesota End Users whose mailing addresses are known by Lead Counsel for the Minnesota Class and provided to the Settlement Claims Administrator within 90 days after preliminary approval of the Settlement; and (e) to those Minnesota End Users whose mailing addresses can be obtained in discovery by Lead Counsel for the Minnesota Class from third parties and provided to the Settlement Claims Administrator within 90 days after preliminary approval of the Settlement.

(3) Information obtained through such third party discovery shall not be provided to any person or entity other than the Settlement Claims Administrator

chosen to administer this Settlement. Such information shall not be used for any purpose other than provision of notice and other information concerning the Settlement to the class, administration of the claims process under this Settlement Agreement and such other purposes as may be authorized by order of the Court.

(4) The mailed notice to each Minnesota End User whose mailing address is recorded in WWMDB and who is not a volume licensee will include a printout (to be provided by Microsoft to the Settlement Claims Administrator) sufficient to identify the number and type of licenses when such information is available in each applicable product category found in WWMDB for that Minnesota End User.

(5) The Settlement Claims Administrator shall utilize the national change of address service through the United States Postal Service to obtain corrected mailing addresses for Minnesota End Users whose notices are returned because they were sent to incorrect addresses. Microsoft will pay up to an additional ten thousand dollars (\$10,000.00) to allow the Settlement Claims Administrator to utilize other reasonable means to obtain corrected addresses.

(6) All mailed notices will contain a stern warning regarding the possibility of audit and the penalties for the submission of false information in connection with claiming and/or redeeming Consumer Vouchers. Microsoft will bear the cost of such notice.

b. Email:

(1) In the motion for preliminary approval of this Settlement Agreement (as set forth in Section II.C above), Lead Counsel for the Minnesota Class shall apply to the Court for an order authorizing emailed notice (which notice shall include a link to an

