

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

* MDL-1332
*

SUPPLEMENTAL OPINION

Since January 12, 2001, when I issued my opinions ruling on motions to dismiss filed in these proceedings, I have had several conferences with counsel. We have discussed three matters relating to my opinions.

First, counsel for all parties in these MDL proceedings (as well as counsel for plaintiffs in numerous state court cases that have not been removed to a federal forum) oppose my certifying to state courts the state law questions identified in my opinion. In light of the position taken by counsel, I will not certify any of those questions.

Second, Microsoft has asked me to reconsider my stated intention to certify for interlocutory appeal under 28 U.S.C. § 1292 my rulings denying plaintiffs' motion to remand in cases where plaintiffs made claims for injunctive relief and/or disgorgement. I remain of the view that an interlocutory appeal of those rulings (or, at least, providing the Fourth Circuit with an opportunity to review whether an interlocutory appeal is appropriate) is advisable, particularly since (1) there appears to be a split of authority among the circuits on the issues, and (2) it is unwise to leave without any appellate scrutiny rulings that inject into these proceedings the fundamental issue of subject matter jurisdiction.

Third, plaintiff in the Gravity case has requested an opportunity to file a second amended complaint. Such a request was informally made in a supplemental memorandum plaintiff filed opposing the motions to dismiss the first amended complaint. I implicitly rejected that request since I considered

the arguments made by plaintiff in that supplemental memorandum when I granted defendants' motions to dismiss. To the extent that plaintiff has now requested an opportunity to file a motion for leave to file a second amended complaint on grounds other than those stated in the supplemental memorandum, I will grant the request and give leave to plaintiff to file a motion to file a second amended complaint on or before February 23, 2001.

I am today entering orders formally implementing my rulings.

Date: February 15, 2001

/s/

J. Frederick Motz

United States District Judge