

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**VISA U.S.A. INC.,  
VISA INTERNATIONAL CORP., AND  
MASTERCARD INTERNATIONAL  
INCORPORATED,**

**Defendants.**

---

**HIGHLY CONFIDENTIAL  
SUBJECT TO  
PROTECTIVE ORDER**

**98 Civ. 7076 (BSJ)**

**JOINT PRETRIAL ORDER**

Plaintiff United States of America (hereafter “the United States” or “the Government”) and defendants Visa U.S.A. Inc., Visa International Corporation (actually named Visa International Service Association), and MasterCard International Incorporated (hereafter collectively Visa U.S.A., Visa International and MasterCard, respectively) hereby jointly set forth various matters concerning the issues, documents and witnesses to be presented at trial of this matter, now scheduled to commence on June 7, 2000, before the Honorable Barbara S. Jones:

**I. Trial Counsel**

Counsel for the United States:

Melvin A. Schwarz  
United States Department of Justice  
Antitrust Division  
325 7<sup>th</sup> Street, Suite 300  
Washington, D.C. 20004  
Telephone No.: (202) 305-3652  
Fax No.: (202) 307-9952

Counsel for Visa U.S.A.:

M. Laurence Popofsky  
Stephen V. Bomse  
Dale A. Rice  
Heller Ehrman White & McAuliffe LLP  
333 Bush Street  
San Francisco, CA 94104-2878  
Telephone No.: (415) 772-6000  
Fax No.: (415) 772-6268

Richard A. Martin  
Heller Ehrman White & McAuliffe LLP  
711 Fifth Avenue  
New York, NY 10022  
Telephone No.: (212) 832-8300  
Fax No.: (212) 832-3353

Counsel for Visa International:

Eugene F. Bannigan  
John D. Gordan, III  
Michele A. Connaughton  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, NY 10178-0060  
Telephone No.: (212) 309-6000  
Fax No.: (212) 309-6273

John H. Shenefield  
Morgan, Lewis & Bockius LLP  
1800 M Street, N.W.  
Washington, D.C. 20036  
Telephone No.: (202) 467-7000  
Fax No.: (202) 467-7176

Counsel for MasterCard:

James C. Egan, Jr.  
Kenneth A. Gallo  
Clifford Chance Rogers & Wells LLP  
607 Fourteenth Street N.W.  
Washington, D.C. 20005-2018  
Telephone No.: (202) 434-0700  
Fax No.: (202) 434-0800

Aimee H. Goldstein  
Gary R. Carney  
Clifford Chance Rogers & Wells LLP  
200 Park Avenue  
New York, NY 10166  
Telephone No.: (212) 878-8000  
Fax No.: (212) 878-8375

## **II. Subject Matter Jurisdiction**

Plaintiff: This action is brought by the Government under the Sherman Act, 15 U.S.C. § 4, as amended, to prevent and restrain violations by defendants of 15 U.S.C. § 1, as amended.

Defendants: This Court has subject matter jurisdiction pursuant to the Sherman Act, 15 U.S.C. § 4, as amended.

## **III. Summary of the Claims and Defenses of the Parties to be Tried**

### **A. The Government's Claims**

The Government will prove at trial that defendants have violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by entering into agreements in unreasonable restraint of trade, as described in the Complaint. Defendants are joint venture associations of member banks that issue Visa and MasterCard-branded general purpose credit and charge cards (cards accepted by unrelated merchants for which there is a grace period before payment is due) ("general purpose cards") in the United States (and elsewhere around the world) to consumers and that acquire transactions from merchants who agree to accept these cards as a means of payment for the goods and services they sell. The defendants are associations created, owned, governed, and operated by their member banks. Together, they account for 75-85 percent of the outstanding general purpose cards, transaction volume, and receivables in the United States.

Membership in the associations, and the composition of the Boards of Directors and governing committees of the associations, are governed by various by-laws, rules and policies of the associations. The Boards and other governing committees of defendants are principally made up of representatives from the largest issuers of Visa and MasterCard cards. Most of these governing issuers have significant portfolios of both Visa and MasterCard cards. The presence of banks with such conflicting loyalties and incentives on the defendants' Boards and governing committees is referred to as dual governance.

Dual governance has enabled the banks that control Visa and MasterCard to restrain competition between the Visa and MasterCard networks. These banks frequently have access to competitively sensitive information about both associations. More importantly, these banks have diminished incentives to support competition between the networks: for each Visa transaction a bank gains because of a

competitive initiative by Visa, the bank might lose a MasterCard transaction, and vice versa. For this reason, the banks have prevented or delayed the associations from undertaking promotional or innovative activities designed to attract business to one brand at the expense of the other.

At the same time that dual governance has lessened competition between the Visa and MasterCard networks, both Visa and MasterCard have adopted certain rules and practices that have limited competition from other networks. Visa and MasterCard have adopted rules that permit their member banks to issue both Visa and MasterCard cards, but prohibit those banks from issuing American Express or Discover cards. These rules: (1) unnecessarily restrict the ability of Visa and MasterCard member banks to compete with one another by offering additional brands of cards to their customers; (2) lessen consumer choice by preventing banks from creating new products that combine the American Express or Discover brands with the banks' own terms, features, and services; (3) hinder the ability of American Express and Discover to compete by denying them access to bank issuers, which have unique marketing and distribution skills, including access to demand deposit (*i.e.*, checking) account relationships necessary to offer certain types of multifunction payment cards; and (4) limit the pressure on Visa and MasterCard to compete vigorously against other networks in attracting banks to issue their cards. As a result of the reduction of network competition, consumers have been injured through (i) increases in the quality-adjusted prices of credit and charge card services, (ii) reduction in output of those products and services, and (iii) loss of innovation in network level services among the few competitors able to offer such services.

Through the by-laws, rules, and policies of the defendant associations, the member banks have entered into unlawful combinations and conspiracies in restraint of trade that have substantially reduced competition in two markets within the United States: (i) the market for general purpose card network or system services (*i.e.*, the brand recognition, advertising, computer and terminal links, merchant relationships and operating regulations, among other things, that create the worldwide network on which members' cards function) and (ii) the market for issuance of general purpose cards (*i.e.*, the market in which issuers compete to issue general purpose cards to consumers).

To end those anticompetitive effects, the Government seeks to permanently enjoin Visa U.S.A., Visa International, and MasterCard from (i) allowing any bank not dedicated to their brand to exercise a direct governance voice in their network; and (ii) enforcing Visa U.S.A.'s Bylaw 2.10(e), MasterCard's Competitive Programs Policy, or any similar by-law, rule, or policy, and such other relief as is appropriate.

**B. Visa U.S.A.'s Defenses<sup>1</sup>**

The Government has asserted two claims against Visa. The first challenges duality, the historically-based structure that allows member banks to issue both Visa and MasterCard products, with concomitant rights to vote for and serve as a director ("governor" in DOJ parlance), and to sign merchants to accept their cards. But it does so by asserting that while dual issuance is pro-competitive, dual governance is not. The Government's second claim challenges Visa's Bylaw 2.10(e) (and MasterCard's similar policy), which prohibits Visa members from issuing American Express or Discover cards. While the Government has not specified the remedy it seeks, it argues that the Boards of Directors of the associations should be comprised of at least a majority of "dedicated" members (defined loosely by its economic expert as members that issue 80-90% of their charge and credit cards bearing the brand of the association), but that all other issuers should be allowed and encouraged to issue multiple brands, including American Express and Discover. On their face, the Government's claims are fundamentally inconsistent—the first seeks greater separation at the system level; the second seeks less, replacing dual issuance with triality or quadrality.<sup>2</sup>

---

<sup>1</sup> Visa U.S.A. has set forth below its primary defenses but it is not providing a complete list of all legal and factual issues raised by the Government's claims and Visa U.S.A.'s defenses to those claims.

<sup>2</sup> The Government tries to reconcile its conflicting claims by arguing that it is challenging only "dual governance" and not "dual issuance." This is an artificial distinction that has never been recognized by industry participants. To the contrary, under Visa's rules (not challenged by the Government here), member voting rights and the ability to sit on the Board of Directors are based upon issuance—the member's volume of Visa transactions as compared to total volume on the system determines its weighted vote. The Government's attempt to separate issuance from governance simply makes no sense. The Government's "dual governance" construct is equally flawed as a practical matter. Even if a large issuer does not sit on the Board, the associations

More importantly, the extraordinary relief the Government seeks is neither necessary nor warranted under Section 1 of the Sherman Act (15 U.S.C. § 1). In the United States, we typically rely upon markets, not government regulation, to create and maintain competitive markets. *See, e.g.,* Phillip E. Areeda, *Introduction to Antitrust Economics* in *Antitrust Policy in Transition* (Eleanor M. Fox & James T. Halverson eds., ABA 1984). The Court should not order a restructuring of the payment card industry unless the Government first proves that there is a demonstrable market failure which significantly harms competition and hence consumer welfare. That it cannot do.

### **1. The Government's Duality Claim**

The Government will fail to prove that "dual governance" has had a significant harmful effect on competition. Even though Visa has long argued that duality (including dual issuance, acquiring and ownership/governance) should not have been allowed to occur, its practical consequences have been largely remitted to history since the appearance of American Express and Discover as major brand competitors in the late 1980's. Moreover, the Government's attempt to identify incidents where "dual governance" as opposed to "dual issuance" supposedly harmed competition is meager at best. Only six incidents are cited. Illustrative is that involving so-called smart cards. When it initiated this litigation the Government claimed at a press conference that, but for dual governance, there would have been a smart card payment product (a card with a silicon chip embedded in it instead of or together with a magnetic stripe) in the United States in the late 1980's. The documents from the 1980's and the testimony of the witnesses unequivocally prove the opposite. In fact, Visa U.S.A. is *still* struggling to find a positive business case to introduce smart card products in the United States since there must be significant economic benefits to offset the estimated \$3.5 billion cost to switch merchants in the United States to smart card technology. Nor can the Government sustain its burden of proof by arguing that the evidence offered is perhaps only the tip of an unseen and unseeable iceberg. The evidence suggests otherwise: that

---

derive virtually all of their revenue from volume-based fees. Management and the Board cannot risk losing the participation of large issuers and the sales volume they contribute to the system by disregarding the views of such issuers.

despite the millions of documents which have been produced and the 125 or so depositions taken, there is simply nothing substantial supporting the Government's claim. It is a theory in search of real world facts.

Visa U.S.A. will also demonstrate that duality historically involves trade-offs that have shifted over time as the industry has grown and matured. The Government recognized the importance of such trade-offs when it declined to support Visa's exclusivity rules in the 1970's, leading to the rapid spread of duality. Having effectively declared that it considered duality (and presumptively dual governance) to be lawful in 1977, the Government did not change its position for some twenty years, allowing the industry to rely upon that judgment. It is ironic that the Government altered its views only after 1996, after the market began moving away from duality and towards greater brand loyalty.

Finally, Visa U.S.A. will demonstrate at trial that developments in the market and resulting changes in Visa's Board of Directors have eliminated any theoretical need for the regulatory relief that the Government seeks on its "dual governance" claim. As set forth in more detail in Visa U.S.A.'s Memorandum of Law in Support of its Motion for Summary Judgment, there has been increasing differentiation of the associations and a move towards greater brand loyalty during the 1990's. First, Visa has always placed limits on dual governance—a member bank cannot serve on the Visa Board (or on any Board committees) if that member bank has a seat on the MasterCard Board. More recently, Visa has introduced a partnership program under which issuers agree to generate a minimum of 90 percent of total credit sales volume on the Visa network within three years. Until that percentage is reached, all of the issuer's new card solicitations must be for Visa branded cards. Visa partners also must agree to issue only Visa off-line debit cards. The purpose of the program is to encourage increased loyalty to Visa by rewarding members for dedication to the brand. Of the twelve outside directors on Visa's Board of Directors, nine of the directors are from member banks that have signed the partnership agreements.

In February 2000, the Visa Board also amended Bylaw 5.10, to require that, accounting for portfolio acquisitions or sales, "[d]irectors elected or appointed to serve beginning with the first meeting of the Board after the annual meeting of members in 2003 must be employees of members whose sales volume . . . on nationally branded general purpose payment cards is at least 75% Visa." Thus there can be

no serious dispute that Visa's Board of Directors is currently dedicated as that term is used by the Government and its expert, and will become increasingly so over time. Consequently, it would be a serious error in our nation's competition policy to impose a long-term regulatory regime on this industry which would interfere with Visa's ability to respond to a rapidly changing marketplace.

## **2. The Bylaw 2.10(e) Claim**

The evidence will also show that Visa's Bylaw 2.10(e) does not significantly harm competition in the relevant card issuance market. American Express and Discover are strong competitors; both operate successful credit and charge card programs which can and do solicit new customers through the same channels used by Visa issuers—direct mail, telemarketing, and the internet. While Visa's rules may make it more difficult for them to distribute their products through bank partners who are members of Visa, they enjoy compensating advantages through their closed-loop merchant networks that Visa issuers do not share. The analysis applicable to the legality of Bylaw 2.10(e) is substantially the same as that employed by the Tenth Circuit in *MountainWest, SCFC ILC, Inc. v. Visa U.S.A. Inc.*, 36 F.3d 958 (10th Cir. 1994), to Visa's related Bylaw 2.06. Since Bylaw 2.10(e) does not significantly foreclose American Express or Discover from competing in the issuer market, it does not violate Section 1 of the Sherman Act.

If justification is required, Visa U.S.A. will show that eliminating Bylaw 2.10(e) could have serious anticompetitive effects. The exclusivity provisions contained in Bylaw 2.10(e) are a reasonable means of preserving Visa's fragile joint venture structure by ensuring that individual members do not enter agreements with American Express or Discover that might harm other members and the association as a whole. In economic terms, Bylaw 2.10(e) prevents opportunistic member behavior and the resulting harm to the association. It instead encourages the cohesiveness and loyalty that are essential to the cooperative. This is particularly true since American Express has plainly stated that it does not intend to become an "open" network and instead would partner only with a select group of Visa members. If the benefits of such partnerships with American Express are shared only with a few Visa members, those members will be less inclined to support important new Visa product and brand development initiatives.



Banks simply cannot be part of Visa and compete with it at the same time without the association paying a price in terms of its competitive vigor.

Finally, the Government contends that Bylaw 2.10(e) must be invalidated to end “discrimination” inasmuch as banks can issue MasterCard but not the brands of the closed systems. Initially, we would observe that this is not a civil rights contest about unequal treatment; rather it is an inquiry under Section 1 of the Sherman Act into economic effects. Secondly, the same type of “discrimination” about which the Government complains was deemed irrelevant as a matter of law by the Tenth Circuit in *MountainWest* when it validated Bylaw 2.06 by holding that association members (including those issuing Mastercards) can issue Visa cards, but American Express and Discover cannot, because they operate competing systems or networks. Finally, the Government would seemingly replace one form of “discrimination” with another since the competitive playing field it favors is one in which American Express and Discover possess the unfettered right to pick and choose with whom they will partner among the banks, but Visa and Mastercard must be open to all comers. In economic terms, the Government would thus render the joint venture form of industrial organization ineffective (a “second class citizen” as it were) in its efforts to compete with traditional, single owner firms. For that, there is no justification whatsoever.

### **C. Visa International’s Defenses**

Visa International denies, and the Government’s proof at trial will not prove, that Visa International violated Section 1 of the Sherman Act, 15 USC § 1, by entering into agreements in unreasonable restraint of trade, as described in the Complaint. More specifically, under a rule of reason analysis, the evidence at trial will show that the Government’s claim that “dual governance”—in contrast to dual ownership and issuance—has had, or threatens to have, anticompetitive effects causing significant harm to consumers is unsupportable. Indeed, the proof at trial will show that the concept of “dual governance” is nothing more than a construct devised by American Express and embraced by the Government, in an attempt to reconcile the irreconcilable inconsistency between the Government’s concern that duality harms competition (Count I) but that competitive rules such as Visa USA By-Law 2.10(e) and MasterCard’s Competitive Programs Policy, which are, at least in part, designed to prevent

triality or worse, are also anticompetitive (Count II). The only potential beneficiary of this morass created by the Government's conundrum is American Express. It is, of course, a basic principle that the antitrust laws are designed to advance consumer welfare, not the economic interests of competitors.

#### Visa International

Visa International is a Delaware membership corporation, the members of which include individual financial institutions authorized under applicable law to accept demand deposits, or Group or National entities which are themselves membership corporations, or their equivalent, the members of which are financial institutions of the types that would otherwise qualify for individual membership. Visa USA Inc. ("VISA USA"), a separate Delaware membership corporation composed of United States based financial institutions is a Group member and the sole member of Visa International operating in the United States.

Visa USA is regulated by its own set of By-Laws, and is served by its own Board of Directors. As a Group member of Visa International, it represents one of the six geographic regions represented in the international corporation.<sup>3/</sup> Visa International is not a parent corporation of Visa USA; rather, Visa USA is a member of Visa International and has an ownership interest in, Visa International. Visa International does not control Visa USA.

Each of Visa International's Regions is entitled to elect a minimum of two and a maximum of eight representatives to the Visa International Board of Directors, depending upon the ratio of sales volume produced by the Region in relation to total worldwide sales. At present, Visa USA has eight representatives on the International Board. In total, there are 24 directors on the International Board.

#### The Government's Duality Claim (Count I)

Duality is the phenomenon whereby financial institutions are members of both the Visa and MasterCard joint ventures, and issue both Visa and MasterCard branded products. Visa management has

---

<sup>3/</sup> These are Visa USA, Visa Europe, Visa Central Europe Middle East & Africa, Visa Latin America and Caribbean, Visa Canada and Visa Asia-Pacific.

always been opposed to duality. In the 1970's Visa USA management endeavored to get the Department of Justice to sanction rules which would have prohibited duality. With full knowledge of the potential adverse competitive consequences of duality, the Government rejected those efforts. As certain as day follows night, the predicted consequences of the Government's action followed.

With the blessing of the Department of Justice, duality grew from a relatively small number of financial institutions in 1977, to virtual universal duality in the United States by the early 1980's. Thereafter, for nearly twenty years, until the filing of this suit in October 1998, the Government sat on the sidelines silently watching the majority of financial institutions in this country invest untold millions of dollars to develop dual infrastructures and the management expertise needed to support a United States card base numbering in the hundreds of millions of cards. For reasons that the evidence will show are totally theoretical and speculative, the Government would have this court restructure how this industry has been effectively managed at the associations' level for more than 20 years.

Even if one was prepared to concede that duality carries with it the potential of adverse competitive consequences, the reality, as the evidence will show, is that the effects of duality have always been a "mixed bag." In that regard, at trial, the Government will not be able to prove that duality—as traditionally understood or in its newly minted form embracing only "governance"—has caused harm to innovation, product promotion or other forms of beneficial competition. Indeed, the evidence will show that duality as traditionally understood has actually benefited consumers in a number of ways. Two examples are illustrative: it has facilitated the adoption of standards necessary to efficiently process the exchange of data that is the very essence of the credit card payment system, and the ability of dual members to play one association against the other has fostered vigorous competitive conduct between the Visa and MasterCard brands. Even when examined under the Government's new artificial definition of duality, which inexplicably seeks to separate governance from ownership, the proof will show that Visa International Board members—regardless of the composition of their respective banks' portfolios—have always acted in the best interest of Visa and have never declined to embrace competitive programs because they might also have a negative impact on MasterCard. The bottom line is that the payment card

industry is one of the most competitive industries in the world, and the evidence will show that duality has been a major contributing factor to the growth of that industry.

Visa USA By-Law 2.10(e) (Count II)

The Government's claims against Visa International arising out of the existence of Visa USA's By-Law 2.10(e) are completely without merit. Putting entirely aside the fact that Visa USA will establish at trial ample justification for the by-law, the incontestible evidence at trial will be that Visa International does not have and never has had a provision comparable to 2.10(e). Nothing in the rules, regulations or policies of Visa International prohibits its members, under penalty of any sanctions, from issuing cards of competitors such as American Express, Discover, etc. The Government's efforts to tag Visa International with responsibility for Visa USA's By-Law 2.10(e) on the grounds that Visa International controls Visa USA will fail for lack of evidentiary support. Indeed, the evidence will affirmatively demonstrate that in the circumstances of this case, Visa International has no right or power to take any action with respect to the by-law. For a more detailed discussion of Visa International's relationship to Visa USA and its lack of power to affect in any way Visa USA's by-law see Visa International's Motion for Partial Summary Judgment seeking dismissal of Count II.

Notably, the overwhelming evidence will show that American Express and the other for-profit card networks are successful and, in some instances, exceptionally profitable. Like the financial institutions that issue Visa and MasterCard products, these for-profit networks are able to distribute their products to the same classes of customers using the same distribution and solicitation methods. It will be abundantly apparent that By-Law 2.10(e) has not foreclosed these for-profit networks from any customers or relevant market.

The Market

Finally, Visa International takes issue with the Government's claimed relevant markets. The evidence will establish that the relevant market in which Visa International's conduct should be addressed is the United States payments market in which credit cards compete with charge cards, cash, check, debit cards, proprietary cards and other forms of payment. When Visa International's alleged conduct is

evaluated in the context of this proper economic market, it will become readily apparent that Visa International does not have, nor has it ever had, sufficient market power in the United States to restrain competition. Since the proof at trial will not support the narrow relevant markets advanced by the Government, its entire case will fail.

#### **D. MasterCard's Defenses**

At trial, MasterCard will prove that it competes vigorously in the payments industry with Visa, American Express, Discover and many other forms of payment including cash, checks and debit. Because of this competitive environment, MasterCard and its member banks have produced continually innovative programs, increased their output of goods and services and have reduced quality adjusted prices. For more than twenty-five (25) years, "duality" has existed openly and notoriously in this industry with the Government's knowledge and acquiescence precisely because it produces no anticompetitive effects. Indeed, during that time the payments system has been revolutionized by innovation and change prompted both by the bankcard associations and by the highly successful American Express and Discover/Novus networks. Yet, the Government blithely ignores this commercial reality in bringing a highly theoretical attack on (i) "dual governance," a term never used in the payments industry until the Government coined it in this case, and (ii) MasterCard's Competitive Programs Policy (CPP), a policy adopted to preserve the integrity of the MasterCard brand and association structure.

Since the advent of duality in the 1970's, financial institutions in this country have invested billions of dollars in a MasterCard association that does not restrict "dual issuance" and imposes no artificial rules or agreements related to "dual governance." This flexibility allows the MasterCard association to respond quickly to changes in a dynamic and rapidly changing marketplace. MasterCard, and the payments industry in general, have functioned efficiently and served consumers well in this environment. MasterCard is fighting for its very existence every day against tough, well-financed competitors, including Visa and American Express, who would like nothing more than to see MasterCard shackled with an unworkable governance structure.

The Government's belated attempt to place rigid and artificial restraints on the ability of MasterCard to organize and govern itself optimally is ill-conceived. After years of investigation, now even the Government admits that "dual issuance" (the other half of the Government's theoretical duality construct) actually produces procompetitive benefits to consumers. Moreover, duality developed, not as part of some anticompetitive scheme to limit competition, but rather as a result of a private antitrust lawsuit brought in 1973 that challenged a Visa rule requiring non-duality, i.e., exclusivity. Although the Government was invited by Visa during that lawsuit to endorse exclusivity (and prevent the growth of duality), it declined to do so, undoubtedly because it could not determine that duality would be anticompetitive.

Even today, the Government has no concrete proof that duality has reduced competition or harmed consumers. For this reason and others, the Government will be unable to carry its burden at trial of establishing that MasterCard has entered into any agreements in unreasonable restraint of trade, as required under § 1 of the Sherman Act, 15 U.S.C. § 1. In order to prove both of its causes of action, the Government must prove that the alleged "dual governance" it contends characterizes MasterCard's Board of Directors and the CPP enacted in MasterCard's United States region caused significant anticompetitive effects in a properly defined relevant product market. This it will fail to do.

Initially, the Government's purported relevant network and general purpose card issuance "markets" are improperly defined and unduly circumscribed. To the contrary, the evidence will show that MasterCard's conduct can only be assessed meaningfully in the context of an "all forms of payment market" in which credit cards compete with cash, checks, debit cards, proprietary cards and other payment methods. When evaluated against the proper economic market standard, the alleged misconduct of MasterCard cannot result in any measurably anticompetitive effects inasmuch as MasterCard simply cannot exercise market power in such a manner as to restrain competition in this market. Nor, in light of its bitter competition with Visa, can the market shares of the two associations be aggregated legally for

purposes of engaging in a market power analysis. Thus, the Government will not be able to overcome its initial hurdle of establishing a properly defined relevant market.

In order to reconcile its two competing claims, the Government has fashioned a convenient but ultimately artificial construct that challenges the dual nature of certain members of the MasterCard Board (who are representatives of institutions with substantial Visa, as well as MasterCard portfolios) as anti-competitive while acknowledging that the dual issuance practices of non-Board institutions is pro-competitive. The Government has failed to explain how such a groundless distinction can lead to disparate competitive effects; nonetheless, the proof will unequivocally demonstrate that even the MasterCard Board members from banks with the largest Visa portfolios at all times acted in the best interest of MasterCard, never refrained from acting competitively because it could harm Visa, and oversaw a degree of product and service innovation from MasterCard that helped revolutionize the industry over the past decade.

The evidence at trial will further reveal that the Government's "dual governance" claim is not predicated upon any "agreement" to which MasterCard was a party as required by § 1 of the Sherman Act. If anything, as demonstrated by its Prayer for Relief, the Government is asking the Court to impose an order requiring a portfolio-based eligibility rule where none exists today. In essence, the Government is seeking to rectify what it believes to be deficiencies that flow from the absence of an agreement. The antitrust laws should not be used to compel this perverse result.

Similarly, the Government's attack on MasterCard's Competitive Programs Policy is without basis. The enactment of this policy was a legitimate step taken by the MasterCard association (in response to a specific proposal by American Express) to protect the integrity of its brand and to preserve the fragile association structure under which it operates. As all three of the other general purpose card networks are quite successful and not foreclosed by the CPP from any customer or alleged relevant market, the Government will fail to establish any significant anticompetitive effects resulting from the CPP.

The Government's two § 1 claims are insufficient as a matter of law and fact; MasterCard will respectfully request that judgment be entered in its favor.

#### **IV. The Trier of Fact**

The parties agree that the case is to be tried by the Court without a jury. The parties have not agreed that the case may be tried before a Magistrate Judge.

#### **V. Stipulations of Fact**

The parties have agreed that the following statements of fact are true and correct and the Court may consider such facts as conclusively established, without further proof, for the purposes of this action only:

1. The Court has personal jurisdiction over Visa U.S.A., Visa International and MasterCard, and venue is proper under 15 U.S.C. § 22.
2. Visa U.S.A. and Visa International are nonstock membership corporations incorporated under the laws of the State of Delaware, with their principal places of business in San Mateo County, California.
3. MasterCard is a nonstock membership corporation incorporated under the laws of the State of Delaware, with its principal place of business in Purchase, New York.
4. The Court has subject matter jurisdiction over the claims brought against the defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1.
5. Visa U.S.A.'s By-Law 2.10(e), which was passed by consent vote of the Visa U.S.A. Board of Directors in March 1991 and remains in effect, reads as follows:

##### **Section 2.10 Involuntary Termination of Membership and Cessation of Cheque and Travel Money Issuance**

- (e) The membership of any member shall automatically terminate in the event it, or its parent, subsidiary or affiliate, issues, directly or indirectly, Discover Cards or American Express Cards, or any other card deemed competitive by the Board of Directors; in the event the member has issued such competitive card prior to the Board declaring such cards competitive, the membership of such Member shall not terminate if it discontinues issuing such competitive card within 60 days of notification by Visa. Outstanding competitive cards need not be cancelled prior to expiration.



6. In February 2000, the Visa U.S.A. Board of Directors amended By-Law 5.01(b), which now reads as follows:

Directors must be (i) officers of this corporation or (ii) officers of Charter Members other than Acquiring Associate, Group, Credit Participant or Debit Participant Members having sales volume or check guarantee accounts as defined in Section 3.03 and having at least the equivalent rank of Chief Executive Officer or Chief Administrative Officer, or, if such organizations's total assets exceed 15 billion dollars, adjusted for the equivalent value of U.S. dollars as of January 1, 1981, a person who in the performance of his regular duties reports to such an officer. Directors elected or appointed to serve beginning with the first meeting of the Board after the annual meeting of members in 2003 must be employees of members whose sales volume, as defined in Section 3.03, on nationally branded general purpose payment cards is at least 75 percent Visa. For purposes of determining a person's eligibility to serve as a director in accordance with this Section 5.01(b), sales volume shall not include cash and shall not include non-Visa sales volume (i) on a card portfolio acquired or sold by the member within the three year period ending March 31 preceding the director's election or (ii) on cards issued pursuant to a co-branding or affinity agreement entered into prior to February 11, 2000. A director shall not be disqualified from serving the current term as a result of card portfolio acquisitions or sales during his or her term.

## **VI. Designation Of Trial Witnesses**

### **A. The Government's "Trial" Witnesses**

Attached as Exhibit A is a list of witnesses, most or all of whom the Government currently intends to call "live" at trial as part of its case in chief.

The Government reserves the right to call those witnesses that may be necessary to overcome evidentiary objections maintained by the defendants at the time exhibits on the Government's exhibit list are offered by the Government. Defendants object to this reservation. The Government also objects to defendants' incorporating every other party's, including plaintiffs, witness list into each of their own witness lists. Such wholesale incorporation renders each of defendants' witness lists virtually meaningless.

The Government also denies the assertion of Visa International and MasterCard that it has not provided them with a list of deponents whose testimony it does not intend to introduce. The Government has told the parties that it intends to introduce testimony from every deposition save those that are not admissible and has specifically listed all such deposition. that it will not use. Since all parties know the

list of deponents -- and the lists are evident from defendants' own submissions -- there is no issue in fact. Moreover, despite the Government's repeated offer to clarify any point, only Visa U.S.A. counsel has ever asked a question and that question was promptly answered. Defendants' counsel know precisely what depositions the Government intends to use.

**B. Visa U.S.A.'s Trial Witnesses**

Attached as Exhibit B is the list of witnesses Visa U.S.A. may call to testify at trial live or by deposition.

**C. Visa International's Trial Witnesses**

Attached as Exhibit C is a list of witnesses most or all of whom Visa International currently intends to call "live" at trial as part of its case in chief. This list undoubtedly is overinclusive because the Government has not provided in this Pretrial Order information sufficient to permit Visa International to determine definitively which of its witnesses must be called "live." In particular, the Government has stated that it intends to introduce testimony from "every deposition taken in this case which constitutes admissible evidence, whether because the testimony constitutes an admission of a party and/or the witness is outside the 100 mile subpoena range." The Government, however, has not identified the names of those deponents,<sup>4/</sup> leaving Visa International unable to determine which of its testimonial evidence must be presented live, and which might fairly, properly and more efficiently be introduced by deposition transcript.

Nonetheless, Visa International has endeavored to indicate with an asterisk (\*) those witnesses whom it might not otherwise call "live" but for the uncertainty created by the Government's conduct. In

---

<sup>4/</sup> The Government's failure to do so conflicts with its representation to this Court that it would "certainly" identify those names in the Pretrial Order. See Transcript of March 14, 2000 Conference before the Honorable Barbara S. Jones, at p. 57. The Government's failure also puts Visa International in the untenable position of not knowing with any certainty the universe of exhibits it should designate in this Pretrial Order. Visa International therefore reserves the right to designate additional exhibits when the Government complies with the Court's order and later designates with specificity the portions of the transcripts of the witnesses it intends to offer.

addition, Visa International reserves the right to offer evidence from any witness designated live or by deposition by any other party.

**D. MasterCard's Trial Witnesses**

Attached as Exhibit D is the list of witnesses MasterCard currently intends to call to testify in person and by deposition. As the Government to date has not indicated the witnesses it intends to call by deposition, MasterCard hereby reserves its rights to modify its list after learning of such witnesses and the designated deposition testimony. MasterCard hereby also reserves its rights to call any of the witnesses designated by any other party to testify and it expressly incorporates those lists into its own by reference.

**E. Order of Witnesses**

The parties shall notify one another of the order of the witnesses each intends to call in its case-in-chief according to the following procedure: At least fourteen (14) days prior to the respective week of trial, a party shall notify all other parties of the witnesses it intends to call during that week. Thereafter, at least (7) days prior to the commencement of that week of trial, the party shall notify the other parties of the order in which it intends to call its witnesses for the week.

**VII. Designations of Deposition Testimony to be Offered at Trial**

On March 14, 2000, the Court approved an agreement among the parties whereby they would disclose deposition designations for particular witnesses at specified times before the expected introduction of such testimony at trial. The parties have agreed to the following schedule:

If a party is designating testimony from less than seven witnesses at one time, the following schedule will apply:

initial page and line testimony designations will be served no less than 10 court days (excluding the submission date) prior to the day that the party expects to offer that testimony;

counter-designations and objections to the initial designations will be served no less than five court days (excluding the submission date) prior to the expected submission date;

reply designations and objections to counter-designations will be served no less than three court days (excluding the submission date) prior to the expected submission date; and

objections to reply designations will be served no less than one court day prior to the expected submission date.

If a party is designating testimony from seven or more witnesses at one time, the following schedule will apply:

initial page and line testimony designations will be served no less than 15 court days (excluding the submission date) prior to the day that the party expects to offer that testimony;

counter-designations and objections to the initial designations will be served no less than seven court days (excluding the submission date) prior to the expected submission date;

reply designations and objections to counter-designations will be served no less than three court days (excluding the submission date) prior to the expected submission date; and

objections to reply designations will be served no less than one court day (excluding the submission date) prior to the expected submission date.

#### **VIII. List of Trial Exhibits**

Exhibits E and F, attached hereto constitute, respectively, the lists of exhibits that the Government, Visa U.S.A., Visa International and MasterCard expect to offer in their cases in chief. The Government's list is attached as Exhibit E. The defendants have consolidated their exhibits into one list attached as Exhibit F.

##### **A. The Government's Trial Exhibits**

Attached as Exhibit E is a list of exhibits that the Government currently intends to offer in its case-in-chief, together with an indication of defendants' objections thereto, in the format set forth in the Court's Individual Rules. The parties agree to consult further before trial in an effort to identify the defendants' specific objections and eliminate or address defendants' objections. The parties also intend to submit to the Court before trial an amended Exhibit E for inclusion in an amended pretrial order that sets forth the specific unresolved objections for each document (*i.e.* "hearsay", "internal hearsay", and/or "foundation").

The Government objects to defendants incorporating every other party's, including plaintiff's, trial exhibit list into each of their own exhibit lists. Such wholesale incorporation renders defendants' exhibit list virtually meaningless. The Government reserves its right – as have defendants – to designate demonstrative exhibits and exhibits for use in rebuttal.

Each defendant objects to the admissibility against it of any document admitted against one of them, on the ground that as to those defendants, the document constitutes hearsay.

**B. The Defendants' Trial Exhibits**

Attached as Exhibit F is a list of defendants' trial exhibits. Through no fault of the parties, they have been unable to complete their lists of objections to defendants' exhibits. The Government and defendants intend to complete and submit to the court their lists of objections to defendants' exhibits prior to commencement of trial for inclusion in an amended joint pre-trial order. During that period the parties intend to work together in an effort to explain to each other the specific bases of their objections and work in an effort to resolve those objections.

**1. Visa U.S.A.'s Trial Exhibits**

Visa U.S.A.'s list of exhibits that it may use or offer into evidence at trial is reflected on Exhibit F. Visa U.S.A. reserves all evidentiary objections to the exhibits it has designated with the exception of those that it will specifically identify. Visa U.S.A. also reserves the right to use or offer into evidence at trial any exhibits designated by the Government, Visa International or MasterCard, subject to and without waiving any objections it may have to those exhibits. Visa U.S.A. also reserves the right to designate and introduce summary and demonstrative exhibits.

**2. Visa International's Trial Exhibits**

The schedule of exhibits that Visa International expects to offer in its case in chief is reflected on Exhibit F. In addition to the exhibits identified on the attached schedule, Visa International, without waiving any evidentiary objections, reserves the right to offer any document identified on any party's exhibit listing. Visa International also incorporates the reservation made by Visa U.S.A. and MasterCard with respect to summary and demonstrative exhibits.

### **3. MasterCard's Trial Exhibits**

The list of exhibits that MasterCard may use or offer into evidence is reflected on Exhibit F. MasterCard hereby reserves its rights to designate (i) any exhibits designated by any other party; (ii) all summary and demonstrative exhibits, (iii) all deposition exhibits corresponding to the deposition designations to be made in the future and (iv) exhibits for use in any rebuttal case.

### **IX. EXPERT WRITTEN STATEMENTS**

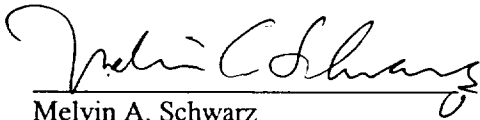
Any written statement of an expert to be used in a party's case-in-chief shall be served by that party upon the other parties at least fourteen (14) calendar days prior to the date the party anticipates calling the expert witness to testify.

Dated: May 16, 2000

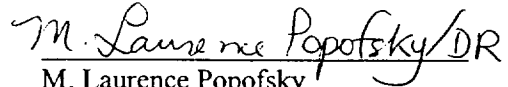
AGREED:

United States of America

Visa U.S.A. Inc.



Melvin A. Schwarz  
Special Counsel for Civil Enforcement  
U.S. Department of Justice, Antitrust Division  
325 7<sup>th</sup> Street, N.W., Suite 300  
Washington, D.C. 20004



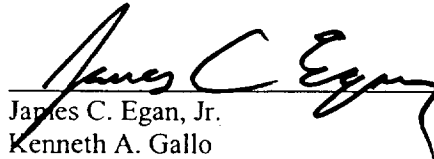
M. Laurence Popofsky  
Heller Ehrman White & McAuliffe LLP  
333 Bush Street  
San Francisco, CA 94104

Visa International Service Association

MasterCard International Incorporated



Eugene F. Bannigan  
Morgan, Lewis & Bockius, LLP  
101 Park Avenue  
New York, NY 10178



James C. Egan, Jr.  
Kenneth A. Gallo  
Clifford Chance Rogers & Wells, LLP  
607 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20005

APPROVED AND SO ORDERED:

\_\_\_\_\_  
Barbara S. Jones, U.S.D.J.

Dated: New York, NY  
May \_\_, 2000

### Government's "Live" Witness List

Auriemma Consulting (only if necessary to provide an evidentiary basis for admission of exhibits)  
Boudreau, Don (Chairman, MasterCard International Board of Directors)  
Chenault, Ken (American Express)  
Cracchiolo, James (American Express)  
DiSimone, Harry (Chase Manhattan Bank)  
Elliott, John (formerly of MasterCard)  
Golub, Harvey (American Express)  
Hart, Alex W. ("Pete") (former C.E.O. of MasterCard)  
Hochschild, Roger (Discover)  
Hogg, Russ (former C.E.O. of MasterCard)  
Jewett, Walter (Booz, Allen)  
Katz, Bennett (former general counsel of Visa U.S.A./Visa International)  
Professor Michael L. Katz (testifying expert)  
Kesler, Lawrence (Banco Popular)  
Khanna, Robert (Citigroup)  
Laufer, Leonard (Argus)  
Lockhart, H. Eugene (former C.E.O. of MasterCard)  
McCurdy, Steve (American Express)  
Mott, Stephen (formerly of MasterCard)  
Nelms, David (C.O.O., Discover)  
Purcell, Phil (C.E.O., Morgan Stanley Dean Witter Discover)  
Reed, John (retiring Co-C.E.O., Citigroup)  
Rigione, Gayle (formerly of MasterCard)(only if she still resides within 100 miles of courthouse)  
Rodgers, Mike (Saks Inc.)  
Rothschild, Adam (American Express)  
Saunders, Joe (Fleet, former Chairman, MasterCard Board of Directors)  
Timko, Michael (MasterCard)(only to authenticate and describe his notes of meetings)  
Tylenda, James (Fleet)  
Woods, Sandy (Publix Super Markets, Inc.)  
Zyda, Christopher or Britto, Mark (Amazon.com)



## **VISA U.S.A.'S DESIGNATION OF TRIAL WITNESSES**

Pursuant to this Court's rules and to its request at the March 14, 2000 status conference, Visa U.S.A. has designated below the witnesses that it may call at trial, either live or by deposition, and it has indicated how it intends to call each witness. The witnesses are listed by current or former affiliation.

Visa U.S.A.'s list of live witnesses is necessarily overinclusive because the Government has stated that it will call 29 live witnesses and more than 100 witnesses by deposition. While it did not list the witnesses it intends to call by deposition, the Government intends to designate testimony from every deposition that it is allowed to use, including almost 50 Visa witnesses and more than 30 witnesses from member banks. Given the breadth of the Government's witness list, Visa U.S.A. has designated its most likely live witnesses (designated "live" below), but also has reserved the right to call a number of additional witnesses live (designated "live reserve" below). As the trial proceeds and the Government provides greater certainty about its case, Visa U.S.A. will make every effort to eliminate unnecessary live reserve witnesses or use their depositions instead.

Visa U.S.A. has designated a number of potential live witnesses who also have been designated as live witnesses by the Government (indicated with an asterisk below). Visa U.S.A. will not recall those witnesses during its case if it is able to complete its examination during the Government's case. Similarly, to the extent that Visa International or MasterCard also designate witnesses who have been designated by Visa U.S.A., Visa U.S.A. will coordinate with the other defendants. Visa U.S.A. reserves the

right to call at trial any witness designated by the Government or the other defendants not specifically designated below.

**I. VISA U.S.A. AND VISA INTERNATIONAL WITNESSES<sup>1</sup>**

Notably, while the Government intends to offer deposition testimony from dozens of Visa witnesses, it only intends to call one Visa witness live. In fact, the Government has never even requested that any other Visa witness appear during its case. The Government instead plans to present its claims against Visa without allowing the Court to view the Visa witnesses and assess their credibility, knowledge and experience and their views about those claims. Visa U.S.A. intends to remedy this defect during its case by calling a reasonable number of live witnesses from Visa and its member banks. If the Government proceeds with its current plan, the Court therefore will receive deposition testimony from witnesses who then will appear live during Visa U.S.A.'s case. To avoid this, Visa U.S.A. is willing to make available during the Government's case any of the Visa U.S.A. witnesses designated "live" below.

<b>Witness</b>	<b>Designation</b>	<b>Witness</b>	<b>Designation</b>
Laurie Ailworth (Visa U.S.A.)	live reserve	Tony Lewis (Visa Int'l)	live reserve
Paul Allen (Visa U.S.A.)	live reserve	Andrzej Lubowski (Visa U.S.A.)	live reserve
Michael Beindorff (Visa U.S.A.)	live	Michael Marx (Visa U.S.A.)	live reserve
John Bennett (Visa U.S.A./Visa Int'l)	live	Edjv Massazza-Gal (Visa Int'l)	live reserve
Kenneth Bignall (Visa Int'l)	live	Anthony McEwen (Visa U.S.A.)	live
Vince Boston (Visa Int'l)	live	William Moore (Visa U.S.A.)	live reserve
Sergio Botelho (Visa Int'l)	live	Bradford Morgan (Visa U.S.A.)	live reserve

---

<sup>1</sup> Visa U.S.A. has designated a number of Visa International witnesses who are also being designated by Visa International. Visa U.S.A. and Visa International will of course coordinate their efforts to prevent any need to call these witnesses more than once.

<b>Witness</b>	<b>Designation</b>	<b>Witness</b>	<b>Designation</b>
David Brooks (Visa U.S.A.)	live reserve	James Partridge (Visa Int'l)	live reserve
Kenneth Crone (Visa U.S.A.)	live	Carl Pascarella (Visa U.S.A.)	live
Richard Cullen (Visa Int'l)	live	William Powar (Visa U.S.A./Visa Int'l)	live reserve
Victor Dahir (Visa U.S.A.)	live reserve	Charles Russell (Visa U.S.A./Visa Int'l)	live reserve
Irwin Derman (Visa U.S.A./Visa Int'l)	live reserve	Rebecca Saeger (Visa U.S.A.)	live reserve
Linda Elliott (Visa Int'l)	live	Francine Schall (Visa U.S.A.)	live
Dale Fehringer (Visa Int'l)	live reserve	Steven Schapp (Visa U.S.A./Visa Int'l)	live
Derek Fry (Visa International)	live reserve	Ronald Schmidt (Visa U.S.A.)	live reserve
Patrick Gauthier (Visa U.S.A.)	live reserve	William Sheedy (Visa U.S.A.)	live reserve
Heather Gray (Visa U.S.A.)	live reserve	Jan Soderstrom (Visa U.S.A./Visa Int'l)	live reserve
Peter Gustafson (Visa U.S.A./Visa Int'l)	live reserve	Una Somerville (Visa Int'l)	live reserve
Richard Hagadorn (Visa U.S.A./Visa Int'l)	live reserve	Robert Stock (Visa U.S.A.)	live reserve
Steve Herz (Visa Int'l)	live reserve	Wesley Tallman (Visa U.S.A./Visa Int'l)	live reserve
Edward Jensen (Visa Int'l)	live reserve	Hans van der Velde (Visa Int'l)	live reserve
Annika Hill Karlsson (Visa Int'l)	live reserve	Malcolm Williamson (Visa Int'l)	live reserve
Bennett Katz (Visa U.S.A./Visa Int'l)*	live	Philip Yen (Visa International)	live reserve
Diana Knox (Visa U.S.A.)	live		

## **II. VISA U.S.A. EXPERT WITNESSES<sup>2</sup>**

<b>Witness</b>	<b>Designation</b>	<b>Witness</b>	<b>Designation</b>
Dr. Eric Clemons	live	Dr. Stewart Myers	live
Henry Dreifus	live	Dr. Richard Rapp	live

<sup>2</sup> The list below includes experts designated by Visa U.S.A. as well as Dr. Richard Rapp, an expert designated by Visa International and Visa U.S.A. Visa U.S.A. and Visa International will coordinate efforts so that Dr. Rapp submits written direct on behalf of both entities and appears only once as a live witness.

Witness	Designation	Witness	Designation
Professor Ronald Gilson	live	Dean Richard Schmalensee	live

### III. MASTERCARD WITNESSES

At present, Visa U.S.A. does not intend to call any MasterCard witnesses live during its case-in-chief, although it may examine witnesses called by the Government or MasterCard during their cases and designate deposition testimony of MasterCard witnesses in response to deposition designations by the Government or MasterCard.

### IV. MEMBER BANK WITNESSES

Witness	Designation	Witness	Designation
Jack Antonini (First Union)	live reserve	Anil Khanna (Citibank)*	live reserve
David Armentrout (Crestar/Suntrust)	live reserve	Shailesh Mehta (Providian)	live reserve
Patrick Blewett (Bank One)	live reserve	Siddharth Mehta (Household)	live reserve
William Boardman (Bank One)	live reserve	Jeffrey Neubert (Bank One)	live reserve
Donald Boudreau (Chase)*	live reserve	David Nole (First Union)	live reserve
Patrick Boylan (NatWest Group)	live reserve	William Parent (BankBoston)	live reserve
Charles Cawley (MBNA)	live	G. Patrick Phillips (Bank of America)	live reserve
Randy Christofferson (Bank One/First U.S.A.)	live	Felipe Pinhal (Banco Comercial Portugues)	deposition
James Cosman (BankBoston)	live reserve	John Reed (Citibank)*	live
Peter Dimsey (MBNA/former MasterCard)	live reserve	Kevin Rhein (Wells Fargo)	live reserve
Harry DiSimone (Chase)*	live	Eugene Ryzewicz (Chase)	live reserve
Charles Doyle (Texas Independent Bancshares)	live reserve	Joseph Saunders (Household/Fleet)*	live reserve
Richard Fairbank (Capital One)	live	Asmat (Sami) Siddiqui (Citibank)	live reserve
Henry Fulton (Bank of America)	live reserve	Mark Tonneson (Royal Bank of Canada)	live reserve
Kenneth Guenther (IBAA)	live reserve	James Tylenda (Fleet)*	live reserve
Richard Hartnack (Union Bank)	live reserve	Charles Walsh (Chase)	live reserve
Philip Heasley (U.S. Bancorp.)	live	Beverly Wells (Wachovia)	live
Charles Hegarty (Wachovia)	live reserve	Robert Willumstad (Citibank)	live reserve

<b>Witness</b>	<b>Designation</b>	<b>Witness</b>	<b>Designation</b>
Larry Kesler (Banco Popular de Puerto Rico)*	deposition	Ronald Zebeck (Metris)	live reserve

#### **V. AMERICAN EXPRESS WITNESSES**

<b>Witness</b>	<b>Designation</b>	<b>Witness</b>	<b>Designation</b>
American Express ("AmEx") Custodian of Records	live	Elizabeth Horowitz (AmEx)	deposition
Anne Busquet (AmEx)	live	Alfred Kelly (AmEx)	live
Kenneth Chenault (AmEx)*	live	James Li (AmEx)	live
James Cracchiolo (AmEx)*	live	Stephen McCurdy (AmEx)*	live
Edward Gilligan (AmEx)	live	Adam Rothschild (AmEx)*	live
Harvey Golub (AmEx)*	live	Martin Wittwer (AmEx)	live
David House (AmEx)	live	Peter Wright (AmEx)	deposition

#### **VI. DISCOVER AND JCB WITNESSES<sup>3</sup>**

<b>Witness</b>	<b>Designation</b>	<b>Witness</b>	<b>Designation</b>
Thomas Butler (Discover)	deposition	David Nelms (Discover)*	live
Joanne Hackwell (Discover)	deposition	William O'Hara (Discover)	deposition
Roger Hochschild (Discover)*	live	Philip Purcell (Morgan Stanley Dean Witter/Discover)*	live
Riley Dwane Krumme (JCB)	deposition	William Simmons (Discover)	deposition
John Mannion (Discover)	deposition	Richard York (Discover)	deposition

---

<sup>3</sup> Although they are not within 100 miles of the courthouse, Visa U.S.A. has listed Roger Hochschild and David Nelms as live witnesses because they are listed as live witnesses during the Government's case. If Messrs. Hochschild or Mr. Nelms do not agree to appear as live witnesses, Visa U.S.A. will designate testimony from their depositions.

## VI. OTHER THIRD-PARTY WITNESSES<sup>4</sup>

Witness	Designation	Witness	Designation
Jerry Craft	deposition	John Moore (General Services Administration)	deposition
Gary Grippo (U.S. Treasury Department)	deposition	Carl Pace (Abt Associates)	deposition
William Holcombe (General Services Administration)	deposition	Michael Rodgers (Saks)*	deposition
Walter Jewett (Booz Allen)	live	Terence Scully (Dayton Hudson)	deposition
Annelie Kuhn (U.S. Treasury Department)	deposition	Sandy Woods (Publix Supermarkets)*	deposition
Robert McKinley (RAM)	deposition	Stephen Young (Gartner Group)	deposition

---

<sup>4</sup> Visa U.S.A. has designated Michael Rodgers and Sandy Woods, both of whom are more than 100 miles from the courthouse, to appear by deposition. The Government, however, as listed them as live witnesses. If these witnesses agree to appear live during the Government's case, Visa U.S.A. reserves the right to examine them as live witnesses when they appear.

### Visa International Trial Witness List

American Express Custodian of Records

John Bennett

Kenneth Bignall

\*William Boardman

Vince Boston

Sergio Botelho

Richard Cullen

\*Win Derman

Linda Elliott

\*Dale Fehringer

\*Derek Fry

\*Richard Hagadorn

Steve Herz

\*Ed Jensen

Annika Hill Karlsson

Bennett Katz

Tony Lewis

James Li

Edvj Massazza-Gal

\*Jim Partridge

\*William Powar

Richard T. Rapp

\*Charles Russell

Steven Schapp

Jan Soderstrom

\*Una Somerville

\*Wes Tallman

\*Mark Tonneson

\*Hans van der Velde

Marcy Wilkov

Malcolm Williamson

Philip Yen

In addition to those witnesses indicated with an asterisk whose testimony may be offered by deposition, Visa International expects to offer the testimony of Patrick Blewett and Patrick Boylan by deposition.

## MASTERCARD TRIAL WITNESS LIST

MasterCard intends to call the following witnesses to testify in person in its case in chief:

WITNESS NAME	AFFILIATION
Boudreau, Donald	Chase Manhattan Bank
Cawley, Charles	MBNA
Child, Richard	MasterCard International
Christofferson, Randy	Bank One/First USA
Deskin, Eric	Clifford, Chance (for authentication purposes)
Dimsey, Peter	MasterCard International; MBNA
DiSimone, Harry	Chase Manhattan Bank
Fairbank, Richard	Capitol One
Flanagan, Larry	MasterCard International
Flood, Gary	MasterCard International
Hanft, Noah	MasterCard International
Hanson, Tracy Folkes	MasterCard International
Hartnack, Richard	Union Bank; MasterCard International
Heuer, Alan	MasterCard International
Hogan, Ed	MasterCard International
Hogg, Russell	MasterCard International
Jewett, Walter	Booz, Allen
Johnsson, Mary	MasterCard International
Lockhart, Eugene	MasterCard International
Lucki, Beatriz	MasterCard International
Mehta, Siddhartha	Household Credit Services
Mehta, Shailesh	Providian Financial Corp.
Mundt, Henry	MasterCard International
Norton, Robert	MasterCard International
Pindyck, Robert	Expert
Reed, John	Citibank
Rigione, Gayle	MasterCard International
Ryzewicz, Eugene	Chase Manhattan Bank
Selander, Robert	MasterCard International
Saunders, Joseph	Fleet; MasterCard International
Siddiqui, Sami	Citibank
Singer, Jay	MasterCard International
Timko, Michael	MasterCard International
Wankmueller, John	MasterCard International
Wells, Beverly	Wachovia
Robert Willumstad	Citibank
Zebeck, Ronald	Metris; MasterCard International



## MASTERCARD TRIAL WITNESS LIST

MasterCard intends to call the following witnesses to testify by deposition in its case in chief:

WITNESS NAME	AFFILIATION
Ailworth, Laurie	Visa U.S.A.
Allen, Paul	Visa U.S.A.
Antonini, Jack	First Union
Armentrout, David	Crestar
Beindorff, Michael	Visa U.S.A.
Bennett, John	Visa U.S.A.; Visa International
Bignall, Kenneth	Visa International
Blewett, Patrick	Bank One
Boardman, William	Bank One; Visa International
Boston, Vince	Visa International
Boylan, Patrick	NatWest
Botelho, Sergio	Visa International
Brooks, David	Visa U.S.A.
Cosman, James	BankBoston
Craft, Jerry	Inficorp
Crone, Kenneth	Visa U.S.A.
Cullen, Richard	Visa International
Dahir, Victor	Visa U.S.A.
Derman, Irwin	Visa International
Doyle, Charles	Texas Independent Bancshares
Elliott, Linda	Visa International
Fehringer, Dale	Visa International
Fry, Derek	Visa International
Fulton, Henry	Bank of America
Gauthier, Patrick	Visa U.S.A.
Gray, Heather	Visa U.S.A.
Grippio, Gary	U.S. Treasury Dep't
Guenther, Kenneth	Independent Community Bankers of America
Gustafson, Peter	Visa U.S.A.
Hagadorn, Richard	Visa U.S.A.; Visa International
Heasley, Philip	U.S. Bancorp.
Hegarty, Charles	Wachovia
Herz, Steve	Visa International
Hill-Karlsson, Annika	Visa International
Holcombe, William	U.S. Treasury Dep't
Jensen, Edward	Visa International
Knox, Diana	Visa U.S.A.
Krumme-Riley, Dwane	JCB

WITNESS NAME	AFFILIATION
Kuhn, Annelie	U.S. Treasury Dep't
Lewis, Tony	Visa U.S.A.; Visa International
Lubowski, Andrejz	Visa U.S.A.
Marx, Michael	Visa U.S.A.
Massazza-Gal, Edvj	Visa International
McEwen, Anthony	Visa U.S.A.
McKinley, Robert	RAM
Moore, William	Visa U.S.A.
Moore, John	U.S. Treasury Dep't
Morgan, Bradford	Visa U.S.A.
Neubert, Jeffrey	Bank One
Nole, David	First Union
Pace, Carl	ABT Associates
Parent, William	BankBoston
Partridge, James	Visa International
Pascarella, Carl	Visa U.S.A.
Phillips, Patrick	Bank of America
Pinhal, Filipe de Jesus	Banco Comercial Portugues
Powar, William	Visa U.S.A.
Rhein, Kevin	Wells Fargo
Russell, Charles	Visa U.S.A.; Visa International
Saeger, Rebecca	Visa U.S.A.
Schall, Francine	Visa U.S.A.
Schapp, Steven	Visa International
Schmidt, Ronald	Visa U.S.A.
Scully, Terrance	Dayton Hudson
Sheedy, William	Visa U.S.A.
Soderstrom, Jan	Visa International
Somerville, Una	Visa International
Stock, Robert	Visa U.S.A.
Tallman, Wesley	Visa U.S.A.; Visa International
Tonneson, Mark	Royal Bank of Canada
Van der Velde, Hans	Visa International
Wells, Beverly	Wachovia Bank Corp.
Williamson, Malcolm	Visa International
Wolfe, Mitchell	Visa International
Yen, Philip	Visa International
Young, Stephen	Gartner Group