

In this case, the transaction at issue is the Settlement Service Fee (the "SSF"), which Visa adopted in order to facilitate its payment of the settlement reached in In re Visa Check. The merchant class argues that the Court should grant its mandatory intervention because it has interests in the stream of payments guaranteed by the SSF and that no party to the DOJ Action represents the merchant class' right to this payment stream.

This purported interest, however, is too remote and contingent to justify the merchant class' intervention in this action. The merchant class concedes that Visa "likely will be able to satisfy its obligations to the settlement fund via its operating revenues with or without the SSF." (Merchant Letter of Feb. 9, 2005 at 4.) Its interest in the settlement funds is therefore not dependent upon the continued existence of the SSF. Indeed, the merchant class' interest in the SSF is that of a creditor, and as such, the merchant class will continue to have legal remedies available to enforce the settlement even if the SSF ceases to exist. Mountain Top Condominium Ass'n v. Dave Stalbert Master Builder, Inc., 72 F.3d 361 (3d Cir. 1995), cited by the merchant class, is inapposite. Unlike in that case, there is no specific pool of funds out of which Visa will pay its share of the In re Visa Check settlement. Furthermore, in


Mountain Top, the Third Circuit stated that intervention is improper where the proposed intervenor's "only interest . . . [is] to ensure that [a party] would have sufficient resources" to satisfy a judgment in another case. Mountain Top, 72 F.3d at 366. The merchant class' only interest in this action is in ensuring that it receives the settlement from In re Visa Check, an interest too remote to justify intervention.

As to the representation of the merchant class in the DOJ Action, the Government is correct that a motion such as this one should be denied absent a showing of bad faith or malfeasance on the part of the Government. No such showing has been made here.

Finally, the Court finds that granting the merchant class amicus curiae status, for the purpose of obtaining discovery, would serve no purpose.

Accordingly, the merchant class' motion is denied.

SO ORDERED:


BARBARA S. JONES
/ UNITED STATES DISTRICT JUDGE

Dated: New York, New York
March 16, 2005