UNDEED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNDEED STATES,

Plaintiff

v. : 98 Civ. 7076 (BSJ)

VISA U.S.A., et al. :

Defendants. :

Defendants. :

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

The merchant class from In re Visa Check/MasterMoney

Antitrust Litigation, 96 Civ. 5238 (JG) ("In re Visa Check"),

has roved pursuant to Rule 24(a) to intervene in the above

captioned action (the "DOJ Action"). In the alternative, the

merchant class has moved for amicus curiae status in these

proceedings. The Government has opposed this motion. The Court

has reviewed the submissions of the parties and finds that the

merchant class' intervention would be inappropriate.

Accordingly, the merchant class' motion to intervene is denied.

The merchant class argues that its intervention is justified by FED. R. CIV. P. 24 (a), which provides for intervention

when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

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 randatory 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 Teb. 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 deases to exist. Mountain Top Condominium Ass'n v. Dave Stablert 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

HONORABLE BARBARA JONES

Morniain 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 OF DERED:

BARBARA S. JONES

UNITED STATES DISTRICT JUDGE

Dated: New York, New York March 16, 2005

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