

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

IN RE MICROSOFT LITIGATION                   \*     MDL-1332

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**ORDER**

This order is to govern deposition practice in Microsoft Cases, J.C.C.P. No. 4106 (“the California litigation”), and In Re Microsoft Corp. Antitrust Litigation (“the MDL litigation”). It will also be recommended for adoption in all parallel cases pending against Microsoft in states other than California in which the presiding judges decide to coordinate their cases with the California litigation and the MDL litigation (“the Coordinated State Cases”). Unless otherwise indicated, the term “plaintiffs” as used in this order refers to plaintiffs in the California litigation, plaintiffs in the MDL litigation and plaintiffs in the Coordinated State Cases.

1. Plaintiffs will coordinate with one another in noticing depositions.
2. Depositions noticed by counsel in the California litigation shall be deemed to have been noticed in the MDL litigation and in the Coordinated State Cases. Depositions noticed by counsel in the MDL litigation shall be deemed to have been noticed in the California litigation and in the Coordinated State Cases.
3. Lawyers and parties who do not attend jointly-noticed depositions are prohibited from retaking that deposition except for good cause shown before Judge Charles Renfrew (who is serving as the discovery referee in these proceedings).

4. Microsoft (directly or through counsel for plaintiffs in the MDL litigation) may invite plaintiffs in parallel state cases in which coordination orders have not been entered (“Non-Coordinated State Cases”) to attend depositions jointly noticed under this order. Counsel for plaintiffs in Non-Coordinated State Cases may examine the witness after counsel for plaintiffs in the California litigation, the MDL litigation, and Coordinated State Cases have completed their examinations. The unwillingness of one or more plaintiffs in Non-Coordinated State Cases to participate in a deposition shall not be grounds for rescheduling the deposition. If Microsoft does invite plaintiffs in Non-Coordinated State Cases to attend a deposition, its counsel shall provide counsel for plaintiffs written notice of the persons who were extended invitations at least five days in advance of the deposition.

5. No deposition will be taken on less than 21 days’ notice unless the parties otherwise agree or good cause is shown before Judge Renfrew.

6. Before jointly noticing depositions, plaintiffs shall inform Microsoft in writing of a 30 day period in which they wish to depose each Microsoft witness. Microsoft shall respond in writing within one week by stating each and every date within the 30 day period that the witness can be made available for deposition. Plaintiffs will notice the deposition on one of the dates provided by Microsoft. If this coordination process has not been successful by July 15, 2001, plaintiffs or Microsoft may seek the intervention of Judge Renfrew to ensure appropriate coordination.

7. Depositions shall be conducted efficiently and expeditiously. Plaintiffs are not required to predesignate the exhibits they intend to use during any deposition. They are, however, encouraged to do so. Any unreasonableness by the plaintiffs with respect to predesignation will be a factor taken into account in the event plaintiffs seek an extension of the limit on the number of hours of depositions of

Microsoft witnesses set forth in paragraph 8.

8. Plaintiffs' depositions of current and former Microsoft employees shall be limited to 700 hours. This figure has been derived by multiplying 50 depositions (the number of current and former Microsoft employees whom plaintiffs now estimate must be deposed) by 14 hours (two days of depositions of seven hours each). This limit shall not be exceeded except by agreement of the parties or for good cause shown before Judge Renfrew.

9. Plaintiffs shall make a good faith estimate of the time required for each deposition and advise Microsoft of their estimate at least five business days in advance of the deposition. Plaintiffs may exceed their estimate but by no more than four hours unless the parties otherwise agree or good cause is shown before Judge Renfrew. In any event, all time used by plaintiffs for examination shall count against the 700 hour limit.

10. Unless the parties otherwise agree, for one-day depositions of Microsoft witnesses, plaintiffs shall examine the witness for no more than six hours and fifteen minutes, and Microsoft may then examine the witness for forty-five minutes. Unless the parties otherwise agree, for multiple-day depositions of Microsoft witnesses, plaintiffs may examine the witness for up to seven hours on each day except for the last day. On the last day plaintiffs may examine the witness for no more than six hours and Microsoft may then examine the witness for one hour. If Microsoft examines a Microsoft witness, plaintiffs may conduct further examination of the witness for a reasonable time period but only as necessary to follow-up on Microsoft's examination. The time spent in any such follow-up examination shall count against the 700 hour limit.

11. Depositions of individual plaintiffs shall be conducted in no more than one day.

Depositions of employees of plaintiff entities shall be conducted in no more than two days.

12. Any deposition that proceeds for more than one day shall be continued on the next day, unless the parties otherwise agree or good cause is shown before Judge Renfrew for continuing the deposition on a non-consecutive day.

13. Any party may apply for modification of this order for good cause shown before the judge presiding over the case in which the modification is sought. That judge shall advise the judges in the California litigation, the MDL litigation, and the Coordinated State Court Cases of the request for modification.

Date:

/s/  
J. Frederick Motz  
United States District Judge