UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. **COMPUWARE CORPORATION** and **VIASOFT, INC.**, Defendants.	Civil Action No.: 1 : 99CV02884 (EGS)

JOINT LCvR 16.3 REPORT

Pursuant to LCvR 16.3, counsel for the undersigned parties met by telephone on November 17 and 18, 1999, to discuss case management issues and to develop a discovery plan and report as follows:

1. The case should be placed on the complex track. It is not contemplated that either side will file a dispositive motion.

2. The parties do not anticipate joining any other party or amending the pleadings.

3. The parties do not believe it would be desirable to refer this case to a magistrate judge for trial. The parties envision the need for expedited discovery and to resolve discovery disputes quickly and we defer to the Court the question of whether these objectives may be best achieved by assigning discovery matters to a magistrate judge.

4. The parties are not currently engaged in settlement negotiations.

5. The parties do not believe the Court's Alternative Dispute Resolution (ADR) procedures are appropriate in this case.

6. The parties do not believe the case can be resolved by summary judgment.

7. The parties agree to make Fed. R. Civ. P. 26(a)(1) disclosures.

8. The parties have been able to agree on the trial management and discovery items identified in Section A of this Report. As set forth in Section B of this Report, the parties have been unable to reach an agreement regarding the sequencing of discovery, limits on the number of depositions and trial witnesses, and deadlines for completing discovery and the conduct of this case.

The parties also wish to advise the Court that this will case will involve confidential business information and trade secrets and that the parties request, pursuant to Fed. R. Civ. P. 26(c)(7), that the Court enter the Stipulated Protective Order attached at Tab 1.

9. The parties shall exchange expert witness reports and the following information for each expert:

(a) all documents and things prepared by or under the supervision of the expert witness;

(b) any resumes, *curriculum vitae* or other documents that set forth the expert witness' expertise, qualifications, publications, or other research work that qualify him or her as an expert witness as to the matter that will be the subject of his or her testimony;

(c) copies of all publications, including unpublished articles by such expert witness;

(d) copies of all affidavits, declarations and prior testimony by each such expert witness; and

(e) all documents and things that were created by or for, reviewed, or considered by the expert witness, in whole or in part, in forming his or her opinions or assumptions relating to the proposed transaction, whether prepared by the expert witness or not, including, without limitation, any documents, memoranda, studies, reports, articles, testimony, notes, calculations, speeches or publications, whether or not prepared in connection with the investigation or this action.

As set forth in Section B of this Report, the parties have been unable to agree on a schedule for exchanging expert reports and completing expert discovery.

10. The class action section does not apply to the present action.

11. The bifurcated trial/discovery section does not apply to the present action.

12. As set forth in Section B of this Report, the parties disagree on the date for scheduling the pretrial conference.

13. As set forth in Section B of this Report, the parties disagree on the trial date. The parties anticipate each side will require one week to present its case.

A. Stipulated Terms

The parties stipulate and agree to the following:

1. To protect confidential business information and trade secrets produced by parties and non-parties, and to ensure the public's right of access to the Court's proceedings, the parties stipulate, subject to approval and entry by the Court pursuant to Fed. R. Civ. P. 26(c)(7), that the attached Stipulated Protective Order shall govern pretrial discovery and procedures.

2. In the interest of efficient adjudication of this case, the parties agree that: (i) the Plaintiff need not obtain a temporary restraining order or move for a preliminary injunction to block the proposed acquisition of Viasoft, Inc. by Compuware Corporation, and (ii) the Defendants will not complete the proposed transaction until after a trial on the merits and a decision is entered by the Court. This agreement is subject to the availability of a trial date within a reasonable time.

3. The Plaintiff shall make Fed. R. Civ. P. 26(a) disclosures on or before November 24, 1999, provided that Plaintiff may delay making any disclosure that is the subject of any legitimate outstanding confidentiality concern raised by a non-party that the Plaintiff shall attempt to resolve promptly. Defendants shall make such disclosures on or before December 3, 1999.

4. Each side shall serve on the opposing side no more than 25 written interrogatories, 25 requests for production of documents and 50 requests for admissions, including subparts.

5. Responses, including objections, to interrogatories and requests for admissions, and responses to request for production and the production of responsive documents, shall be made within 14 days of service of the request. Days mean calendar days.

6. Each side shall identify the economic experts it intends to call at trial in accordance with

Fed. R. Civ. P. 26(a)(2)(A) on November 24, 1999.

7. All papers shall be served by hand or by facsimile and overnight courier.

8. The agreements and stipulations regarding case management and discovery embodied in this Report may be modified by agreement of the parties or upon order of the Court, for good cause shown.

B. Proposed Discovery Schedules

The parties have not reached agreement on a schedule for discovery and trial. The principal, but not only, issues dividing the parties are the sequencing of discovery and deadlines for completion of discovery and commencement of the trial. Plaintiff proposes that the taking of discovery, the exchange of witness lists and expert reports, and the filing of pretrial statements should occur simultaneously, while the Defendants propose staggered discovery and filings whereby the plaintiff would go and finish first. As to scheduling, Plaintiff would establish January 21, 2000, as the deadline for completing all discovery and would be ready for trial on February 7 or as soon thereafter as the Court's calendar could accommodate. The Defendants would establish March 7, 2000, as the deadline for completing all discovery and would be ready for trial on April 3 or as soon thereafter as the Court's calendar could accommodate.

The following chart sets out the parties' respective deadlines for discovery and trial:

COMPARISON OF PARTIES DISCOVERY SCHEDULES		
Activity	**Plaintiff's Proposal**	**Defendants' Proposal**
Exchange of preliminary fact witness lists	11/26	Plaintiff - 12/2 Defendants - 12/17
Close of non-expert discovery	1/12	Plaintiff - 1/28 Defendants - 2/18
Exchange of expert reports	1/14	Plaintiff - 2/4 Defendants - 2/25
Exchange of final fact witness list	1/14	1/21
Close of expert discovery	1/21	3/7

COMPARISON OF PARTIES DISCOVERY SCHEDULES		
LCvR 16.5 Statements, pretrial briefs & any motions	Initial filing - 1/24 Opposition - 1/31 Reply - 2/2	Plaintiff - 3/17 Defendants' Statement and any Objections - 3/24 Plaintiff's Objections - 3/28
Pretrial Conference	2/4	3/31
Ready for Trial	2/7	4/3

The parties have also been unable to agree on limiting the number of depositions and trial witnesses. In order to meet its expedited discovery and trial schedule, Plaintiff would permit each side to take 18 non-expert depositions and would permit each side to present trial testimony from a maximum of eight non-expert witnesses, two expert witnesses, and two rebuttal witnesses. Defendants would permit each side to present live trial witnesses from a maximum of 15 non-expert witnesses, three expert witnesses, and two rebuttal witnesses. Defendants are willing in principal to limit the number of non-expert depositions. However, until they obtain and have had a reasonable opportunity to review all materials Plaintiff obtained in pre-litigation discovery (including, but not limited to, declarations), Defendants are unable to agree to a specific limit. Once Defendants have had a reasonable opportunity to review those materials, they will confer with Plaintiff and seek to reach agreement on a specific limit. Both parties agree that final non-expert witness lists may be supplemented by naming up to five witnesses who were not on preliminary witness lists.

The Plaintiff's and Defendants' Proposed Scheduling Orders reflecting their respective positions are attached at Tabs 2 and 3, respectively.

Dated: November 23, 1999

Respectfully submitted,

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