

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>Civil Action No. 98-7076 (BSJ)</b>
<b>VISA U.S.A. INC.,</b>	)	
<b>VISA INTERNATIONAL CORP., AND</b>	)	
<b>MASTERCARD INTERNATIONAL</b>	)	
<b>INCORPORATED,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**DECLARATION OF MARY JEAN MOLTENBREY**

Mary Jean Moltenbrey hereby declares the following to be true and correct, based on her personal knowledge unless otherwise indicated below:

1. I am the Chief of the Civil Task Force of the Antitrust Division (“Division”), United States Department of Justice. I have held that position since December 1994. I make this declaration in support of plaintiff’s opposition to defendant’s motion to compel interview memoranda prepared by Division lawyers and legal assistants and economic memoranda prepared by the Division’s economic experts in the course of the Division’s investigation of Visa and MasterCard.

2. As Chief of the Civil Task Force, I have the overall responsibility for directing and coordinating the section’s attorneys, legal assistants, and support staff. Civil Task Force attorneys, in conjunction with economists within the Division’s Economic Analysis Group, conducted the investigation of the anticompetitive structure and policies of Visa and MasterCard

that culminated with the initiation by the Division of this lawsuit against Visa and MasterCard in October 1998.

3. In its motion, Visa seeks interview memoranda created by or under the direction of Division attorneys during the investigation that lead up to the filing of this case. The investigation was a formal civil investigation that commenced with the authorization of a “preliminary investigation”(“PI”). The Division takes the formal procedural step of authorizing a PI only when it has indications that there is evidence that an antitrust violation may have occurred.

4. Once a PI is opened, Division attorneys, with the assistance of economists, legal assistants and support staff, gather information and analyze the competitive effects of the allegedly anticompetitive activities, make recommendations to Division decision-makers, and develop evidence for use in the prosecution of any resulting litigation. Although not all PIs result in litigation, once a PI is opened, litigation is a real and substantial possibility and the staff handling the investigation act accordingly.

5. In December 1993, the Division opened a PI to investigate the overlapping structure of Visa and MasterCard. In January 1996, it also began investigating the by-laws, rules, and policies that permit their member banks to issue both Visa and MasterCard cards without restriction but prohibit them from issuing American Express and Discover cards.

6. One of the principal methods employed by the Division in its investigations is to interview individuals who may have information relevant to the suspected anticompetitive conduct. During the Division’s investigation of Visa and MasterCard’s activities, the Civil Task Force conducted interviews of approximately 180 individuals. Approximately 115 of these individuals are or were officers and employees of the defendants or their member banks. The

remainder are officers or employees of defendants' competitors or other industry participants. These interviews were usually attended by one or more attorneys, one or more economists, and one or more legal assistants. In each instance, the attorney or attorneys conducted most of the questioning. As explained in ¶ 4, these interviews were conducted as part of the Division's process of gathering information and analyzing competitive effects to determine whether to file this case, and to develop evidence for use in the prosecution of the case. Now that litigation has been commenced, the interview memoranda will be relied upon by attorneys as an important resource in preparing for trial.

7. The results of these interviews are summarized in interview memoranda. These memoranda were drafted either by the attorneys who conducted the interviews or by other personnel attending the interviews, usually legal assistants. When non-attorneys drafted the memoranda, they did so at the direction of attorneys. Frequently, the attorneys would advise the non-attorney of specific material to include in the memorandum. In every case, attorneys are expected to -- and, on information and belief, did -- review each memorandum and edit it if necessary. A memorandum is finalized only after an attorney has approved it.

8. The interview memoranda are not the equivalent of stenographic transcripts or substantially verbatim recordings of questions and answers. The memoranda summarize only the information from the interviews that the authors selected as important and relevant to the theories being pursued in the investigation. Moreover, the memoranda do not present the information in the order in which it was discussed during the interview; rather, the information is summarized by topic or issue. The memoranda thus reveal the legal and economic theories being considered in the investigation and how the selected information relates to those theories.

9. The memoranda often also contain other mental impressions of the Division personnel attending the interviews. The memoranda frequently describe the reasons why each interview was conducted, characterize the importance of the information learned in the interview, draw inferences from that information, contain observations concerning the cooperativeness, credibility, or knowledge of the interviewee, and/or identify potential areas of further inquiry.

10. Some of the individuals who were interviewed during the investigation agreed to the interview on the express condition that the government maintain the confidentiality of their identities. All of these individuals are or were employed in some aspect of the credit card industry, and if their cooperation with the government were revealed, they could become the subject of professional ostracism or economic retaliation. Disclosure of the memoranda summarizing the interviews of these confidential informants would necessarily reveal their identities.

11. Visa has also moved to compel production of certain analyses prepared by the Division's economists during the course of the investigation. The Schedule attached to the Declaration of Joel I. Klein lists memoranda prepared by the Division's economists for which the Division is asserting deliberative process privilege (as well as work product immunity). I am familiar with the memoranda identified in this list. Any factual information contained in these memoranda was derived from materials that either (1) were produced to the Division by the defendants in this action, (2) have already been produced to the defendants by the Division, or (3) are available from public sources. Thus, Visa can obtain all of this factual material from other sources.

I declare under penalty of perjury that the foregoing is true and correct.

Executed January 13, 1999 at Washington, D.C.

\_\_\_\_\_/s/\_\_\_\_\_  
Mary Jean Moltenbrey