

Visa Check/MasterMoney Antitrust Litigation

THE CLIENT: [Constantine Cannon](#)

THE CASE: The antitrust litigation against Visa and MasterCard filed on behalf of the nation's retailers (In Re Visa Check/MasterMoney Antitrust Litigation) was filed to reduce the fees and tying arrangements on the use of debit cards and credit cards imposed on retailers by the banks. Even though the actual cost of use for debit cards is lower than the cost of credit cards, the banks charged retailers the same fees for both. In addition, in order to encourage the acceptance of debit cards when they were first introduced to the market, the banks required that retailers accept both debit and credit cards in order to retain the privilege of accepting credit cards. Given the tens of billions of dollars that were potentially at stake, the plaintiffs reached a \$2 billion settlement with Visa USA Inc. and a \$1 billion settlement with MasterCard International Inc., along with reductions in the fees the credit card associations would charge retailers who accepted their debit cards. And, most importantly, tying arrangements were ended that forced merchants who accept Visa/MasterCard credit cards to accept their debit cards at credit card prices.

THE TRIAL: Constantine Cannon, counsel for the plaintiff, retained DOAR Litigation Support & Trial Services to coordinate the vast amount of evidence involved in this antitrust case in the Eastern District of N.Y. before Judge Gleeson.

- This case involved nearly 3 million pages of documents produced during [discovery](#) all of which were imaged and coded to create an image-based system for trial preparation. There were over 400 depositions taken, most of which were videotaped and ultimately converted to digital MPEG files with synchronized text for [presentation](#) at trial. The parties exchanged exhibit lists consisting of more than 10,000 trial exhibits comprising over 180,000 pages.
- On top of imaging all of the evidence gathered throughout 7 years of discovery, DOAR developed hundreds of demonstrative [graphics](#) and presentations to help convey the more complex issues of the case to the jury. There were animated charts and graphs that explained the drastic rate increases in the debit interchange fee over various periods of time. We also used company documents to recreate hundreds of full-color proofs of credit and debit cards to describe the design approval process of the defendants.



- Constantine Cannon, who had already "focused" the case twice before, decided to test their case again within a realistic courtroom setting in front of their clients. This exercise, held at DOAR's [Digital Court Facility](#), confirmed that the team was ready for trial and provided an extra layer of confidence during settlement discussions.

All of the technological tools that counsel intended to use at trial were present in the mock courtroom. The presentation of evidence and witness testimony - both live and through the use of videotaped testimony - was a true multimedia event that took full advantage of the Digital Court Facility's capabilities including multi-streamed closed captioning, evidence annotation and trial technicians supporting all of the parties which were played by various members of the trial team. There was even a retired federal judge on the bench presiding over the proceedings. The 7-day process collected [mock juror](#) feedback that proved to be overwhelmingly favorable of the plaintiffs' case and the lawyer's rhetorical and graphic presentations to the jury.

- Plaintiffs' counsel was committed to maintaining control of the [technology](#) due to its integral role in the presentation of their case to the jury. An informal hearing before the judge's clerk resulted in the selection of DOAR as the technology provider for all parties. Technology included a 5800 lumens projector, flat panel monitors, annotation monitors, a document camera and the mini-DEPs which controlled all of the video distribution and audio amplification as well as all of the display devices. It also included a judge override switch which provided the judge with control of what the jury was shown through the projector while allowing the witness' and counsels' display devices to remain active so admissibility issues could be argued and ruled on. Since many corporate representatives from the retailers and credit associations were scheduled to attend the trial as observers and/or witnesses, a 50" plasma display was put in place to display evidence to the gallery. A relatively new technology, wireless communications in the courtroom, was also incorporated.

DOAR was also responsible for outfitting the trial team's [war room](#) with technology including one terabyte of storage on a portable mini-DEPS™ system. Our litigation artists and trial technologists worked side-by-side the trial team on the days and nights preceding the settlement.

THE OUTCOME: The plaintiffs reached a \$2 billion settlement with Visa USA Inc. and a \$1 billion settlement with MasterCard International Inc. along with reductions in the fees that the credit card associations would charge retailers who accepted their debit cards. And, most importantly, an end to tying arrangements which forced merchants who accept Visa/MasterCard credit cards to accept their debit cards at credit card prices.