

# Media Update

**RE:**  
**IOWA COURT CASE**  
**Comes vs. Microsoft, Inc.**

January 12, 2007

Contact: Eileen Wixed 515-240-6115  
Jim Hibbs 515-201-9004  
Office 515-226-0818

## Coverage Notes:

1. “Holy API Batman!” Internal Microsoft documents show that Microsoft used hundreds of undocumented Windows APIs to keep competitors out.
2. The testimony of John Constant has been postponed to a later date.
3. Trial exhibits are now posted on the Plaintiffs’ web site:  
<http://www.iowaconsumercase.com>.
4. No court Monday in observation of Martin Luther King, Jr. Day

### **1. Ronald Alepin concludes his testimony with internal Microsoft emails showing that Microsoft’s use of undocumented API’s used to lock out competitors.**

Ronald Alepin testified that Microsoft applications developers enjoyed a significant advantage over competing software developers like Lotus. Microsoft used undocumented APIs (Applications Programming Interfaces) in Windows that allowed its developers to write programs that worked better with the Microsoft operating system than the competitors. According to one series of email messages, to the extent these APIs were provided to developers at all, they were simply inserted into several megabytes of notes onto a CD-ROM, in a “very low profile” intended to “discourage” developers from using them and to provide enough “air cover” to allow Microsoft to say they were documented. One Microsoft product manager noted the number of APIs at issue: “All I can say is holy API batman...I’m not kidding...we are talking about literally 500-800 APIs here, no joke.”

On Thursday, January 11, Alepin testified that Microsoft’s “FUD” (fear, uncertainty and doubt) was deceptive, and thus different from what other companies did to promote their products. For example, Microsoft ran specialized “demonstration” programs whose only purpose was to crash rival products, and had MS-DOS broadcast a false “error” message when a rival’s software was present Alepin testified that a Microsoft development group manager described MS-DOS and Windows 95 as “stuck together with baling wire and bubblegum,” and that Microsoft’s CEO Bill Gates previously conceded that “Windows simply sat on top of MS-DOS.” Alepin recounted the “subversion” of developers who used Microsoft’s Java thinking they were developing multi-platform applications, but were actually developing Windows-specific applications.

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## **2. John Constant's testimony postponed to later date.**

British software developer John Constant was scheduled to testify live this week. Numerous objections and other interruptions in Ronald Alepin's testimony extended the time on the stand for Alepin. Because of the delay, Plaintiffs have postponed Constant's testimony to a later date so that he can return to his home in Great Britain.

## **3. Plaintiffs post exhibits from the Comes trial on web site, <http://www.iowaconsumercase.com>.**

Judge Rosenberg previously ruled that Plaintiffs may maintain a web site in order to provide the public with access to daily court transcripts, admitted trial exhibits, and other information from the *Comes* trial. As of today, more than 80 trial exhibits have been added to the web site, along with transcripts and additional information that were loaded onto the web site earlier this week. These materials are available for viewing at: <http://www.iowaconsumercase.com>. Additional trial exhibits will be posted on the web site as they are admitted into evidence.

The web site is temporary. A new site is in the works to better handle the high volume of traffic to the webpage. The web site address will remain the same.

## **4. Court will be closed Monday in observation of Martin Luther King, Jr. Day. Court resumes Tuesday January 16, 2007 at 8:30am.**

### **Case background:**

*Comes v. Microsoft* is an Iowa state court class action brought by consumers, small businesses, and other indirect purchasers of Microsoft software products. Plaintiffs allege that from May 18, 1994 through June 30, 2006, Microsoft engaged in illegal monopolization and other anticompetitive conduct in the markets for operating systems, word processing, spreadsheets, and office suite software. Plaintiffs contend that Microsoft charged higher prices than it would have charged had it not engaged in the anticompetitive conduct. Plaintiffs also contend that Microsoft's conduct caused its operating systems software to be more vulnerable to security breaches. Plaintiffs seek damages for their injuries. Trial is expected to continue until the spring of 2007.

### **About the firms:**

Roxanne Conlin & Associates P.C. is owned by Roxanne Barton Conlin, a Plaintiffs' attorney whose practice is focused on personal injury and civil rights cases. Ms. Conlin is a former President of the Association of Trial Lawyers of America and a member of the Inner Circle of Advocates. She is co-editor of a 6-volume treatise, *ATLA's Litigating Tort Cases*, published by West Publishing Company (June, 2003). She has also served as United States Attorney for the Southern District of Iowa.

Zelle, Hofmann, Voelbel, Mason & Gette LLP is a national dispute resolution and litigation law firm with offices in Boston, Dallas, Los Angeles, Minneapolis, San Francisco and Washington, D.C. The Zelle Firm handles complex litigation and disputes on a national and international basis. The Firm has about 85 attorneys and represents both defendants and plaintiffs in its trial and dispute resolution practice. The Firm's broad litigation experience includes antitrust, banking, business torts, class action, commercial, employment, environmental, ERISA, financial services, insurance coverage, intellectual property, mass tort, mold claims, personal injury, product liability, professional liability, reinsurance, securities, subrogation third-party recovery, unfair business practice and unfair competition litigation. Co-Lead Counsel Rick Hagstrom has successfully pursued Microsoft in two other class actions. In 2004, Rick, as co-lead counsel, was successful in reaching a settlement with Microsoft of \$182 million on behalf of Minnesota businesses and consumers. In 2006 on behalf of Wisconsin businesses, consumers, school districts, and governmental entities, Rick and co-lead counsel reached a \$224 million settlement with Microsoft. In 2005, Rick was honored as a Minnesota Attorney of the Year.