

# Media Update

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

January 15, 2007

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## Coverage Notes:

1. Week ahead: Microsoft employees and others testify about anticompetitive practices.
2. Public web page update: 3,000 trial exhibits to be posted this week.
3. Ronald Alepin recap: despite Microsoft's attempts to block this witness, Alepin testifies for seven days on every subject in his expert report.

After the Martin Luther King, Jr. holiday weekend, trial will re-commence on Tuesday, January 16, at 8:30 a.m.

### **1. Jury hears about Microsoft's anticompetitive conduct through prior testimony of Microsoft, Digital Research, and Zeos employees.**

This week, Plaintiffs will continue their presentation of evidence with testimony about Microsoft's actions against Digital Research, Inc. ("DRI"). DRI's DR DOS was a competing operating system with advanced features and functions not available in Microsoft's MS-DOS. Through prior testimony, Microsoft and DRI employees will testify about anticompetitive tactics and practices Microsoft used to exclude DRI from the operating system market. These tactics included market-freezing "vaporware" and "per-processor" licenses that forced Original Equipment Manufacturers ("OEMs") to pay Microsoft a fee every time the OEM sold a machine with DR DOS or another rival operating system installed. Plaintiffs will also present the prior testimony of Richard Apple, an officer of an OEM named Zeos, that Microsoft used threats and other acts of intimidation to prevent Zeos from loading competing operating systems onto Zeos machines.

In addition, Plaintiffs will present further testimony of Microsoft's use of "fear, uncertainty and doubt" ("FUD") and the effect of such anticompetitive conduct on DRI. Microsoft's use of FUD went so far as to include coding incompatibilities into the Windows 3.1 beta to prevent DR DOS from running with Windows. Microsoft also led DR DOS users to believe there was something wrong with DR DOS, by running false error messages warning that DR DOS was an untested, unapproved operating system.

### **2. Over 3,000 trial exhibits to be posted to [www.iowaconsumercase.com](http://www.iowaconsumercase.com).**

Last week, Plaintiffs offered over 3,000 exhibits into evidence, and the Court gave Microsoft time to review them for any confidentiality concerns. Plaintiffs will post the exhibits onto their web site about the *Comes* trial immediately, upon approval. Many of these exhibits are internal Microsoft documents that have never been available to the public before now.

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### **3. Ronald Alepin recap: despite Microsoft's eleventh-hour attempt to block his testimony, Alepin testified for seven days about every subject in his expert report.**

Plaintiffs' first witness of 2007 was technology and industry expert Ronald Alepin, who was presented as one of Plaintiffs' experts on technology and other issues. Just before Alepin was to testify, Microsoft's counsel brought a motion to block his testimony. Judge Rosenberg's ruling allowed Alepin to testify about every subject in his expert report, and only restricted him from testifying about legal and economic matters—two areas he was not brought to court to talk about.

Alepin began with the basic components of a hardware and software system, and described the historical development of software over the last twenty years. He described how Microsoft used “vaporware” and FUD against developers of competing operating systems; how Microsoft frustrated cross-platform compatibility of applications by deceiving developers into writing Microsoft-specific applications; how Microsoft used secret, undocumented technical interfaces to benefit its own developers; and how Microsoft deliberately eliminated the competitive threat posed by browsers, media players, and other types of middleware.

Alepin explained how Microsoft's tactics in the operating systems market crushed other companies and helped Microsoft leverage its operating systems monopoly into the applications market. He testified that much of Microsoft's anticompetitive conduct has continued even after the 2002 Final Judgment in the Government Action. He also stated that there would have been more technological innovation had Microsoft not engaged in the conduct at issue.

Alepin testified on these and other topics for seven trial days. Transcripts of each day of Alepin's testimony are provided on Plaintiff's web site at [www.iowaconsumercase.com](http://www.iowaconsumercase.com).

#### **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

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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.