

Media Update

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

January 16, 2007

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Coverage Notes:

1. Court gives Plaintiffs permission to inform the U.S. Department of Justice about Microsoft's non-compliance with the 2002 Final Judgment in *United States v. Microsoft*.
2. Former Digital Research, Inc. OEM sales manager testifies that Microsoft's tactics locked out potential competitors.
3. Court admits over 3,000 documents as trial exhibits: will be posted on web site by Friday. (www.iowaconsumercase.com)

Trial resumes with the videotaped deposition testimony of Anthony Speakman of Digital Research, Inc. ("DRI") and Mark Chestnut of Microsoft.

1. **Court grants Plaintiffs' motion allowing them to inform the Department of Justice about Microsoft's failure to comply with the 2002 Final Judgment in *United States v. Microsoft*.**

Today, Judge Rosenberg authorized Plaintiffs to inform the Government that Plaintiffs have information that raises questions about Microsoft's compliance with the terms of the 2002 Final Judgment. A copy of the Court's ruling is posted on Plaintiffs' web site, www.iowaconsumercase.com.

Plaintiffs contend that Microsoft has not disclosed certain application programming interfaces ("APIs") used by Microsoft middleware in violation of the 2002 Final Judgment in *United States v. Microsoft*, the case brought by the federal government, the State of Iowa, and other states. Plaintiffs requested that the Court modify the protective order in *Comes* to allow Plaintiffs to report their findings to the proper authorities. The request is based in part on discovery produced in this case.

2. **Former Digital Research OEM sales manager Anthony Speakman testifies that Microsoft used restrictive licensing provisions to lock other software companies out of the operating system software market.**

Plaintiffs presented the prior videotaped deposition testimony of Anthony Speakman, former original equipment manufacturer ("OEM") sales manager for Northern Europe for Digital Research, Inc. ("DRI"). Speakman testified that Microsoft's restrictive licensing provisions forced OEMs to install only MS-DOS on their machines. Speakman described how Microsoft's "per-processor" licenses forced OEMs to pay Microsoft a fee every time the OEM sold a machine with an Intel processor, regardless of whether the machine had MS-DOS or not.

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Additional Microsoft license terms required OEMs to guarantee high volume shipments of Microsoft software, which discouraged OEMs from shipping operating systems software from any other company. Because the terms of the licenses were kept secret, Speakman could not negotiate terms that would have mitigated the exclusionary effect of the Microsoft licenses.

Speakman further testified that Sandy Duncan, a Microsoft sales manager, admitted to him that Microsoft would not license Windows to OEMs to be used with any operating system other than MS-DOS, but that Microsoft would deny this if asked. Speakman recalled Duncan knowing that what Microsoft was doing was illegal:

“The tone of his comment was that he was aware of the seriousness of making any statement in that he was aware of the fact that to do so would be illegal, and therefore he was making light of the fact at the same time recognizing that this was the situation.”

Following the conclusion of Speakman’s testimony, the video deposition of a former Group Manager in Microsoft’s OEM Sale Group began. Mark Chestnut will testify about the anticompetitive tactics and practices Microsoft used to exclude OEMs from the operating system market, including “fear, uncertainty and doubt” (FUD) and the manipulative pre-announcing of products (“vaporware”).

Court resumes on Wednesday, January 17, at 8:30 a.m. with the conclusion of Mr. Chestnut’s testimony.

3. Court admits over 3,000 documents as trial exhibits, which Plaintiffs will post to their website by Friday.

Today, Judge Rosenberg admitted as evidence over 3,000 documents offered by Plaintiffs. After Microsoft has reviewed the documents for any confidentiality concerns, Plaintiffs will post these documents to their web site, www.iowaconsumercase.com. Plaintiffs expect to post the documents to their web site by Friday morning.

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.

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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.