

# Media Update

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

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## Coverage Notes:

1. Live witness testimony begins when the trial resumes Thursday.
2. Expert and other witness testimony will take place over the next week. Roxanne Conlin and Rick Hagstrom, co-lead counsel for Plaintiffs, are available for preview interviews today.
3. Trial hours are now 8:30 a.m. to 3:00 pm Central time daily.

## **Software Technology Expert Richard S. Alepin and British Software Developer John Constant Will Testify Against Microsoft in *Comes et al. v. Microsoft***

The *Comes vs. Microsoft* case resumes Thursday morning in a Polk County, Iowa courtroom. The trial will turn to live witness testimony, including testimony from software technology expert Richard S. Alepin and British software developer John Constant. The testimony of these witnesses will help show that Microsoft engaged in anticompetitive practices which harmed Iowa consumers.

### **Witness background:**

**Ronald Alepin** has 35 years of experience in the computer industry as a software developer, programmer, marketing manager, consultant, and expert witness on issues involving computer technology. He assisted the federal government with its investigation of Microsoft's anticompetitive practices in the 1990s. He also assisted Iowa Attorney General, Tom Miller and several other states attorneys general with their lawsuit against Microsoft, which resulted in a binding determination that Microsoft unlawfully monopolized the operating systems software market. More recently, Mr. Alepin gave a presentation before the European Union Court of First Instance in connection with Microsoft's appeal of the Commission's finding that Microsoft violated EU Competition Law.

Mr. Alepin was retained by Iowa consumers to describe the tactics used by Microsoft to thwart and crush competitors. He is expected to testify to Microsoft's use of anticompetitive tactics including "vaporware," "fear, uncertainty and doubt" ("FUD"), non-disclosure of critical technical interfaces for Windows, and other tactics to smash smaller software companies. He will describe Microsoft's deliberate effort to eliminate the competitive threat posed by browsers, media players, and other types of middleware. He will explain how Microsoft frustrated cross-platform compatibility of applications. Mr. Alepin will also explain, from a technical perspective, how Microsoft's tactics in the operating systems market allowed it to leverage its

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operating systems monopoly into the applications market and how Microsoft's actions continue to harm competition even after the 2002 Final Judgment in the Government Action. Mr. Alepin will also describe what could have happened in the development of software had Microsoft not engaged in the anticompetitive conduct at issue.

**John Constant** is a key witness who will testify about his experiences at a small competitor of Microsoft. The British-born Constant is a former Product Manager for Digital Research Incorporated. He designed and developed an operating system software called DR DOS. DR DOS was intended to compete with Microsoft's MS-DOS, and was considered by most to be superior to MS-DOS. Mr. Constant will compare the two companies' products and describe the tactics Microsoft used to drive DR DOS from the market.

Mr. Alepin's testimony is expected to begin on Thursday, January 4, 2007 and continue through Tuesday, January 9. Mr. Constant's testimony will commence on January 9 and is expected to continue through the end of the week.

## **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 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 Firm excels at handling 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. The Firm has recovered billions of dollars for its clients in the past two decades.

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The following information was provided by Wixted Pope Nora Thompson & Associates (WPNT). WPNT is working on behalf of Plaintiffs to assist with media inquiries. Questions regarding the *Comes v. Microsoft* case can be directed to Eileen Wixted or Jim Hibbs at 515.226.0818.