

Media Update

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

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Coverage Notes:

1. Court resumes with expert witness Ronald S. Alepin.
2. Microsoft challenged Mr. Alepin's qualifications, but the Court qualified Mr. Alepin as an expert witness and allowed him to testify.
3. Alepin described how Microsoft "handicapped development" by withholding critical information about its operating system software.
4. Mr. Alepin's testimony will continue through tomorrow and into next week.

Software technology expert Ronald S. Alepin testifies that Microsoft reduced innovation and quality by unnecessarily tying applications to its operating systems software

The *Comes vs. Microsoft* case resumed Thursday morning in a Polk County, Iowa courtroom. The trial began with live witness testimony from software technology expert Ronald S. Alepin.

Over Microsoft's objection, Alepin gave specific examples of how Microsoft restricted access to its operating system by "tying" applications to its operating systems. He testified that tying applications and software was technically unnecessary, and that it reduced the quality of Microsoft's products.

Mr. Alepin also detailed the rise of the web browser including Mosaic's "Spyglass" browser in 1987 to Netscape's "Navigator." He testified that the early versions of Microsoft's browser, Internet Explorer, merely copied earlier browsers. He told the jury about the explosion of interest in Navigator in 1995, and discussed a 1995 email message among Microsoft product managers discussing ways to address the Navigator "challenge" which stated, "Clone their client technology early and often (full embrace strategy)." He further explained, from a technical standpoint, that Microsoft's strategy was to "extend" its rival's specifications by adding its own features, and then "extinguish" the rival's products by becoming the new standard.

Given the highly technical nature of the trial, Alepin spent time explaining to the jury the basic components of a computer, including the different types of software that can be used. He testified that there is no technical requirement that a single vendor provide all of the different

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types of software for a computer system. He also described the development of operating systems and applications software over time. He explained that “killer applications” are those that transform the industry but noted that many so-called “innovations” that Microsoft touted in its opening statement merely represented Microsoft’s efforts to copy others programs to catch up with other developers.

Early in the day, Microsoft challenged Mr. Alepin’s qualifications to testify on numerous topics, including how technology would have developed had Microsoft not engaged in the anticompetitive conduct at issue. The Court overruled this and other objections by Microsoft, and held that Mr. Alepin is qualified to render opinions on virtually all of the topics for which he has been proffered.

Mr. Alepin’s testimony will continue into next 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 Plaintiff’s 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 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.

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