

# Media Update

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

January 7, 2007

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## Coverage Notes:

1. The testimony of expert witness Ronald S. Alepin will continue through Tuesday with British software developer John Constant to take the stand next.
2. The Court will rule this week on Plaintiffs' request to allow them to disclose technical information to the Department of Justice, the State of Iowa and other plaintiff states about whether Microsoft is fulfilling its obligations under the 2002 Final Judgment.
3. The Court will also rule on Plaintiffs' request to set up a web site to provide the public access to daily court transcripts, exhibits, and other information about the *Comes* case.

**Preview for week of 1/7: Testimony of software expert Ronald S. Alepin will conclude; testimony of John Constant will begin; two key rulings expected from the Court.**

The *Comes vs. Microsoft* case will continue on Monday before a Polk County, Iowa jury, with more testimony from software technology expert Ronald S. Alepin. Mr. Alepin's testimony is expected to continue for two more days, after which Plaintiffs will call British software developer John Constant to testify.

- 1. Ronald Alepin will explain that Microsoft's anti-competitive conduct is continuing; John Constant will testify about the creation of DR DOS.**

Alepin will explain, from a technical perspective, the conduct that was found to be illegal in the government's case against Microsoft. He will further testify that Microsoft continues to engage in some of this conduct or technologically similar conduct, such as the tying and bundling of Windows Media Player with the operating system.

After the conclusion of Alepin's testimony, British software developer John Constant will take the stand. Constant will describe the creation of Digital Research Inc.'s DR DOS, and explain that it was technically and commercially viable as an alternative to Microsoft's MS-DOS.

- 2. Plaintiffs seek to disclose Application Programming Interfaces ("APIs") that Microsoft has not disclosed as required by the 2002 Judgment in the Government Case.**

The 2002 Final Judgment in the case brought by the federal government, the State of Iowa and other states, requires Microsoft to disclose certain Applications Programming

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Interfaces (“APIs”) used by Microsoft “middleware” products like Internet Explorer and Windows Media Player. The *Comes* Plaintiffs, however, contend that some APIs used by Microsoft middleware have not been disclosed. On December 19, 2006 the *Comes* Plaintiffs requested that the Court modify the protective order in this case to allow Plaintiffs to discuss their findings, which are based on confidential information produced in this case, with the Department of Justice, the State of Iowa and other plaintiff states. Microsoft asked for additional time to respond to Plaintiffs’ motion. Judge Scott Rosenberg indicated that he would rule on Plaintiffs’ request by Wednesday.

### **3. Plaintiffs seek to create a public web site providing evidence and other information regarding the *Comes* trial.**

On Friday, Plaintiffs said they were proceeding to set up a web site in order to provide the public with access to the daily court transcripts, exhibits, and other information from the *Comes* trial. Microsoft expressed additional confidentiality concerns, and asked for additional time to respond to this motion. Judge Rosenberg indicated he would rule on Plaintiffs’ request on Monday.

Further information about the web site will be released when it is available for viewing by the public.

#### **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.

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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.