

\$180 Million Microsoft Iowa Antitrust Settlement Results in Cash Benefits to Consumers

August 14, 2007

Zelle Hofmann served as Plaintiffs' co-lead counsel in this indirect purchaser antitrust class action against Microsoft brought on behalf of Iowa consumers and businesses. In February 2007, after seven years of litigation – including three trips to the Iowa Supreme Court and three months of trial – the parties reached a settlement under which Microsoft will provide up to \$179.95 million in cash and vouchers to members of the Iowa class. Unique among all the indirect purchaser settlements with Microsoft to date, the Iowa settlement includes a substantial cash component and many class members are eligible to receive a cash payment. Class members who are volume licensees and/or Iowa state and local governmental entities and who will likely have substantial claims will be compensated in vouchers allowing them to purchase hardware and software for their business needs. The vouchers *do not* have to be redeemed for Microsoft products. The settlement's value, on a per license basis, is the highest in any of the other Microsoft consumer class actions. Moreover, the settlement has, by far, the highest per capita payout of any other Microsoft class action settlement.

Comes v. Microsoft Corp. was filed on February 18, 2000. Plaintiffs alleged that Microsoft unlawfully monopolized the markets for Intel-compatible PC operating system software, word processing software, and spreadsheet software in violation of the Iowa Competition Law. Plaintiffs further alleged that, as a result of Microsoft's illegal monopolies, indirect purchasers of Microsoft's desktop operating systems (MS-DOS and Windows) and applications software (Word, Excel, and Office) paid higher prices for that software than they would have paid in markets unaffected by Microsoft's exclusionary conduct.

Microsoft filed a motion to dismiss Plaintiffs' action arguing that indirect purchasers do not have standing under the Iowa Competition Law. After the trial court dismissed the action, on the basis that indirect purchasers did not have standing under the Iowa Competition Law, Plaintiffs appealed to the Iowa

Supreme Court. The Iowa Supreme Court reversed the trial court's decision and affirmed the right of all Iowa consumers – including indirect purchasers – who are harmed by illegal, anticompetitive conduct, to bring an action under the Iowa Competition Law. See *Comes v. Microsoft Corp.*, 646 N.W.2d 440 (Iowa 2002).

The trial court subsequently certified two Iowa software classes: an operating systems class and an applications class. Microsoft unsuccessfully challenged the trial court's certification order, which the Iowa Supreme Court affirmed on appeal. See *Comes v. Microsoft Corp.*, 696 N.W.2d 318 (Iowa 2005).

When Plaintiffs obtained a ruling that precluded Microsoft from re-litigating various legal and factual issues that had been decided in the government action, *United States v. Microsoft Corp.*, Microsoft appealed that decision. After the Iowa Supreme Court remanded with instructions regarding the standard to be applied, see *Comes v. Microsoft Corp.*, 709 N.W.2d 114 (Iowa 2006), Plaintiffs renewed their motion and obtained a ruling that precluded Microsoft from disputing over 140 factual findings made in the government action, or from challenging the determination that certain conduct violated the antitrust laws. Microsoft again sought to appeal that decision to the Iowa Supreme Court, but Microsoft's request was denied.

Plaintiffs engaged in extensive pre-trial preparation, including propounding 286 discovery requests on Microsoft and bringing ten motions to compel discovery. As a result of these efforts, Microsoft produced more than 25 million pages of documents.

Plaintiffs retained twelve experts for trial on issues such as software code, the economics of the software industry, injury to competition, causation, and damages. Plaintiffs also retained experts and obtained evidence supporting injury resulting from increased security vulnerabilities caused by Microsoft's alleged anticompetitive conduct. Zelle Hofmann attorneys worked closely with these experts.

Microsoft filed eight motions for partial summary judgment on various theories of liability and damages. The court denied all but one of Microsoft's dispositive motions. Zelle Hofmann attorneys took the lead in briefing and arguing the

majority of these and other motions.

Trial began on November 13, 2006. A twelve-member jury was empanelled on November 30, 2006. Opening statements lasted more than two weeks. The trial court admitted more than 3,300 of Plaintiffs' trial exhibits as evidence against Microsoft. Plaintiffs also presented live testimony from four witnesses, and prior deposition and/or trial testimony from fourteen additional witnesses. A settlement was reached only after three months of trial. The settlement received final approval in August 2007.

Fifty percent of any unclaimed funds from the \$179.95 million settlement will be provided to needy Iowa public schools in the form of vouchers. In addition, 100 percent of any claimed but unredeemed vouchers will be given to Iowa public schools. These vouchers may be redeemed for hardware and software technology which these schools may use to help close the digital divide in Iowa. Microsoft also agreed to pay \$1 million to the Iowa Legal Aid Society for its charter purposes.