

Zelle Hofmann Defeats Inadequate Microsoft Antitrust Settlement in Wisconsin Forcing Microsoft to Pay More to Consumers

March 1, 2007

Zelle Hofmann served as co-lead settlement class counsel in this indirect purchaser antitrust class action against Microsoft brought on behalf of Wisconsin consumers, businesses and local governments.

In 2003, the *Bettendorf* Plaintiffs filed suit on behalf of two broad Wisconsin classes that included indirect purchasers of Microsoft operating systems and office productivity applications software. The classes included both private and public indirect purchasers. The *Bettendorf* Plaintiffs alleged that Microsoft had monopolized the markets for Intel-compatible PC operating system software, word processing software, and spreadsheet software, in violation of the Wisconsin Antitrust Law.

On March 16, 2006, counsel for plaintiffs in two other actions informed the *Bettendorf* Plaintiffs' that a settlement had been reached with Microsoft on behalf of *all* Wisconsin indirect purchasers. Attorneys from Zelle Hofmann and their economists reviewed the terms of the proposed settlement and determined that the deal, with a "face value" of \$204.5 million, would deliver, at best, no more than \$45 million to the Wisconsin class. After conferring with their clients, the *Bettendorf* Plaintiffs and their counsel decided to oppose the proposed settlement.

Zelle Hofmann attorneys subsequently exposed the shortcomings of the March 2006 settlement in extensive briefing – put together in very short order – and oral argument. On May 5, 2006, the court agreed with the *Bettendorf* Plaintiffs and denied the joint motion of the *Spence/Capp* Plaintiffs and Microsoft to grant preliminary approval to the terms of their proposed settlement, which the court observed was "not adequate, nor within the ballpark of settlement values that a court could reasonably find adequate even at this preliminary stage."

A new settlement was negotiated in September 2006 that was vastly superior to the previously rejected settlement proposal. It is virtually identical, in fact, to

the favorable settlement negotiated with Microsoft in Minnesota, where Zelle Hofmann was co-lead counsel in the first indirect purchaser action against Microsoft to go to trial.

Under the terms of the September 2006 settlement, which received final approval in March 2007, Microsoft will provide the Wisconsin class with up to \$223.896 million in consumer vouchers that may be used to obtain reimbursement for a wide variety of computer hardware or software items. The consumer vouchers *do not* have to be redeemed for Microsoft products. Class members will receive vouchers worth \$15 for each license of a qualifying Microsoft operating system, \$23 for each license of Microsoft Office or Excel, and \$10 for each license of Microsoft Word, Works Suite, or Home Essentials.

The inadequate March 2006 settlement proposal did not include any *cy pres* component to deal with unclaimed or unredeemed funds. The September 2006 settlement, in contrast, provides that needy Wisconsin schools will receive fifty percent of any unclaimed funds, and 100 percent of any claimed but unredeemed vouchers. Wisconsin's public schools – like their counterparts in Minnesota – will receive tens of millions of dollars as a result.