

STATEMENT OF THE ISSUES

1. Whether a circuit court may certify a class of indirect purchasers in a monopolization case based only upon the named plaintiffs' proffer of an expert's untested theories for proving antitrust "impact" and damages with classwide proof, when the named plaintiffs and their expert submitted no evidence that the assumptions underlying such theories are valid here and when defendant presented undisputed empirical evidence that those assumptions are invalid.

The circuit court concluded that plaintiffs' proposal of various untested theories – based solely on "economic literature" and not supported by the submission of any empirical evidence – satisfied their burden to demonstrate that they can establish both "impact" and damages through common proof. The circuit court reached that conclusion despite the fact that Microsoft had presented "real world" evidence that the critical assumptions underlying plaintiffs' theories are incorrect.

2. Whether a circuit court may certify a class of indirect purchasers in a monopolization case even if plaintiffs cannot demonstrate with classwide proof that each class member was injured by the defendant's alleged conduct.

The circuit court held that plaintiffs were not required to show that class members were injured by Microsoft's alleged conduct.

3. Whether a circuit court may certify a class of indirect purchasers in a monopolization case using a relaxed standard of proof that would permit damages to be proven on an aggregate basis for the class as a whole.

The circuit court held as a matter of law that plaintiffs were not required to present a method to calculate each class member's damages, but could rely on a theory known as "aggregate damages."