

Opinion

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When competing successfully is a "Crime"

Jury verdict on auto parts a victory for consumers

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On Friday, November 4th, U.S. District Thomas Penfield Jackson issued a 207 page decision that contained findings of fact in the government's antitrust lawsuit against Microsoft. These findings of fact are not the judge's final ruling on the case—they are simply his findings as to the basic facts in the case. Now attorneys on both sides will spend months arguing how the law applies to the facts and which facts are most important. Reviewing Judge Jackson's findings of fact makes it clear that he just doesn't get it—and this isn't the first time Judge Jackson failed to get it. Earlier in this same case, an appellate court overturned Jackson and upheld Microsoft's right to design its products as it saw fit. That was not the sort of ruling one would expect a federal judge to get wrong. Judge Jackson's findings of fact seem premised on the notion that Microsoft is a monopoly. All of this may sound plausible to the uninitiated, after all Microsoft is a very large and very successful company. But in reality, most of Judge Jackson's findings of fact are nothing short of absurd. In economics and law being successful or large do not a monopoly make?

Basic economic theory teaches that monopolies dominate the market and use their monopoly power to, among things: (1) increase prices forcing hapless consumers to dramatically overpay for goods because there is no other option; (ii) slow innovation and development of new technologies and processes so that monopoly can better maintain its power and profits, and (iii) provide inferior products to consumers on the assumption that they have no place else to go. If the federal theory government and Judge Jackson are correct that Microsoft is a monopoly, it must be the case that Microsoft is (I) increasing prices, (ii) limiting innovation; and (iii) providing inferior products. Let's examine the facts and see. Microsoft products are now cheaper than ever. Every new releases of software do more and cost less. Microsoft now gives away its browser and its e-mail and contact management software. They update this free software regularly to improve it and make it more powerful software? How are consumers harmed by free software? The computer industry and the Internet are growing so rapidly and new technologies are being

developed at such a dizzying rate it is impossible that Microsoft has limited innovation. In fact, Microsoft has been a leader in making the Internet more accessible to average-everyday computer users. Moreover, Microsoft has been such a powerful innovator that it has pushed other companies such as Netscape and AOL to improve their products. Who gains when Microsoft's competitors improve their product to keep up with Microsoft? Consumers. Finally, Microsoft products are among the best in the industry. Monopolies are not typically known for providing the highest quality. Yet, Windows has simplified computer use for millions of people who were intimidated by DOS's cumbersome operating system. Word, Excel, and Access. Explorer, outlook Express, and power Point are industry leading software applications. The only complaint I've heard about Microsoft products is that they offer too many features and are too powerful. That is like complaining about a dishwasher because it cleans even the dirtiest dishes. Ask yourself how Microsoft offering improved software for lower prices harms consumers? How does Microsoft giving away its web browser harm consumers?

Anyone who drives an automobile, and occasionally find a need to visit a body shop, should be celebrating a pro-consumer jury verdict on October 4th. Jurors in Marion, Illinois ruled in favor of 4 million State Farm policyholder who accused the auto insurer of cheating customers by ordering body shops to use substandard repair parts. The verdict recognized and compensated the victims of State Farm's illegal conduct. More importantly it sent a clear message to the insurance industry that consumers will not tolerate underhanded tactics that fatten the coffers of insurance companies while harming their policyholders. I am well aware of the details of this case. I was a witness for plaintiffs and my Videotaped testimony was shown to a jury. As a body man with 50 years experience, I know my sheet metal and can state without any doubt that the car parts central to this case are not equal to original parts. At issue is what the automobile industry calls non-original equipment manufacture or non-OEM or crash parts. In plain English, they are called after-market, substandard or, perhaps most accurately, counterfeit parts. If you drive a mid-range or lower priced car (Honda, Plymouth, Toyota, Ford) and your car was damaged in the last fifteen years, chance are pretty good the vehicle was repaired with these substandard parts. The after-market crash parts modeled on factory originals but are made without the benefit of factory specifications. The parts are inferior and their use may present safety risks or lower the value of the automobile. Policyholders in Oregon have a right-under Oregon statute and the language of insurance policies- to have repairs made with parts that are factory quality, the same quality as those that are replaced. The purpose of these rights is to insure that the vehicle comes out of the body shop in as close a condition as possible to its pre-accident condition. In other words, when we as consumers purchase insurance, the insurance company promises to make us whole in case of a loss. That's what we expect and the law says we have a right to expect it. After ten weeks of trial, the jury decided that State Farm insisted parts used for its policyholders were not factory quality. This decision was based upon insisted State Farm documents. One internal memo, signed by State Farm executive Bill Hardt in April, 1997 Stated: "We may say it is like kind and quality, but the bottom line is that it is not the same." Hardt's memo was a key document for the jurors. It showed that State Farm officials knew that the parts were inferior, but insisted that they be used anyway. There was no question that such conduct violated the rights of policyholders who are I entitled to receive all the benefit State Farm promises to provide in its insurance contracts. Judge Speroni said: "State Farm... misrepresented concealed, suppressed or omitted material facts concerning non-OEM crash parts with the intent that its policyholders rely upon these deceptions, in violation of the Consumer Fraud Act." The Marion jury's decision benefits not only State Farm policyholders, but other consumers as well. Many other insurance companies also have insisted on the use of after-market parts. Their policyholder now have the ammunition to fight such illegal conduct. That's good news to remember the next time your car is in need of repair.

Letters to the Editor

Across the nation, Toy & Joymakers, — fire departments and their firefighters — have enlisted in the effort to make sure every child can participate in the excitement of the holiday season. One of the best-kept secrets in town is that Portland, Oregon, is the home of the original Toy and Joymakers. Chief Eddie Boatright inspired the idea eighty-five years ago. A firefighter from Portland's Sellwood district, one Christmas he fixed a red wagon for a little neighborhood boy with a tear in his eye. It was an idea that spread like wildfire. "Because every child deserves Christmas," was the thought of the first Toy and Joymakers back in 1914. Today, the joy of giving and receiving is recognized as a traditional part of the holiday season for people of all faiths. Children, especially, look forward to this time of year, when their imaginations are kindled by the anticipation of New Toys! And the volunteer spirit, first ignited by "Good ol' Eddie," is still the driving force of Portland Fire Bureau's Toy & Joymakers. Many organizations, businesses, and members of the community have given their support in many ways. But now the firefighters need the help of the community more than ever before! On January 1, 2000, Toy & Joymakers will have to be out of the present location and we will have no facility for toy storage or office space from which to operate our program! The need for a large building for Toy & Joymakers is imminent! We need your support to help find a building available for year-around use by the Portland Fire Bureau's Toy &

Joymakers. The contribution of such a space, like all contributions to Toy & Joy, may be tax-deductible. Since 1914, because of Eddie Boatright and one little boy, many children's bitter tears have turned to tears of joy. It is still our belief that every child deserves this joy. It is our dream to make it happen for every single one. On their behalf, please join us in our search. Sincerely,
Dean Johnston, CEO, Toy & Joymakers, Portland Fire Bureau
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age. We can do the rest. The law states age cannot be a hiring factor. Yet government forms allow for date of birth information to be requested. Also, the burden of proof for age discrimination lies upon the applicant and is nearly impossible to prove. Won't you help. Thank you.
Sincerely
Jack Albert

Good Day
Older workers are being ignored. My personal experiences have shown that this segment of the population is being turned away from jobs in epidemic proportions. At sixty-one I am unable to even get interviews for jobs I am well qualified to perform. Your station has recently aired news segments from the network that have documented the difficulty employers are having finding workers because of the low unemployment rate. It is also reported that they are paying youth up to \$10.00 per hour even when they have no skills. But you have said nothing about older workers. Shame on you! There are a few agencies in Portland who deal with older persons seeking employment, but they are largely ineffective. We need your help in getting this message to the public. We also need agencies who can send us on job interviews knowing that the prospective employer is aware of our

Imagine this: You're proud of the children you raised. Your grandkids are talented and beautiful, too. The reality of retirement has finally arrived and it's even better than the fantasy.

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