



Attorney General Doug Peterson

News Release

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Second Circuit Affirms Apple's Liability in E-Book Price-Fixing Case

Nebraska Attorney General Doug Peterson is pleased to announce that the U.S. Court of Appeals for the Second Circuit affirmed Apple Inc.'s liability for participating in a per se unlawful price-fixing conspiracy in the e-book marketplace. Last week, the Second Circuit affirmed the District Court's ruling that Apple played a central role in facilitating and executing a conspiracy designed to eliminate retail price competition in order to raise e-book prices.

The e-book antitrust cases involved lawsuits brought by the U.S. Department of Justice, 33 states and territories, including the State of Nebraska, as well as a related class action. In this litigation, both the U.S. Department of Justice and the Plaintiff States filed their complaints against Apple in 2012 alleging an unlawful agreement to fix, maintain or stabilize prices of e-books in violation of federal and state antitrust laws. The trial against Apple, which was overseen by U.S. District Judge Denise L. Cote of the Southern District of New York, began on June 3, 2013. The trial lasted for three weeks, with closing arguments taking place on June 20, 2013. Judge Cote issued her opinion and order on July 10, 2013, finding Apple liable for knowingly participating in and facilitating a conspiracy with the publishers.

On June 30, 2015, the Second Circuit upheld the District Court's decision on Apple's liability in the price-fixing conspiracy. U.S. Circuit Judge Debra Ann Livingston wrote for the majority in a split three-judge panel: "We conclude that the district court's decision that Apple orchestrated a horizontal conspiracy among the Publisher Defendants to raise e-book prices is amply supported and well-reasoned, and that the agreement unreasonably restrained trade in violation of § 1 of the Sherman Act. We also conclude that the district court's injunction is lawful and consistent with preventing future anticompetitive harms."

Apple has the right to seek further appeal to the U.S. Supreme Court, should it see fit to do so. Pursuant to a settlement agreement that the states reached with Apple last summer on the amount of damages, Apple is to pay \$400 million in compensation to e-book consumers and \$50 million in other relief if this ruling withstands any further efforts of appeal.

Any amount received by consumers pursuant to the settlement with Apple will be in addition to those amounts already recovered from several e-book publishers. E-book purchasers nationwide

have already received compensation of \$166 million in settlement funds paid by the five publishers involved in the conspiracy: Penguin Group (USA) Inc. (now part of Penguin Random House); Holtzbrinck Publishers LLC d/b/a Macmillan; Hachette Book Group Inc.; HarperCollins Publishers LLC; and Simon & Schuster Inc. Many e-book consumers received these funds through automatic credits sent by Amazon and other e-book retailers.

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