

# Media Update

**RE:**  
**IOWA COURT CASE**  
**Comes vs. Microsoft, Inc.**

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## Coverage Notes:

1. **Former head of Novell Desktop Systems Group testifies about Microsoft's anticompetitive conduct toward Novell.**
2. **Microsoft controlled customers and independent software vendors by withholding information from them according to former Windows project leader. BROADCAST NOTICE: LANGUAGE 1<sup>st</sup> PARAGRAPH**

## Coverage Details:

1. **Consumers deprived of choice: Testimony about Microsoft's anticompetitive conduct toward Novell opens the week in *Comes v Microsoft*.**

John Edwards, former Executive Vice President of the Desktop Systems Group at Novell, Inc., took the stand today against Microsoft to talk about Microsoft's anticompetitive conduct against Novell. Edwards was the head of the Desktop Systems Group after Novell merged with Digital Research Inc. ("DRI") and was in charge of DR DOS.

Edwards testified that Novell had high hopes for DR DOS after Novell merged with DRI. Novell knew, however, that it had to persuade one or more large Original Equipment Manufacturers ("OEMs") to license and distribute DR DOS if the operating system was to be successful.

Edwards testified that from 1992 to 1993, he attended approximately 30 high-level sales meetings with major OEMs, but they all said that Microsoft's per-processor licensing agreements made the distribution of DR DOS economically unfeasible. The OEMs also told Edwards that they believed Microsoft would never allow DR DOS to succeed, and that Microsoft would retaliate against any OEM that bought DR DOS.

At the same time Microsoft stated publicly that DR DOS would never be compatible with Windows. Based on these and other facts, Novell determined that it would remain locked out of the operating systems market until Microsoft changed its business practices. Novell eventually stopped developing the DR DOS technology and exited the operating systems market, which stifled innovation and deprived consumers of choice.

2. **Phillip Barrett, former project lead for Windows testifies that Microsoft withheld information from customers and independent software vendors to control them and the market. BROADCAST NOTICE: LANGUAGE 1<sup>st</sup> PARAGRAPH**

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Last week, Phillip Barrett, former project lead for Windows at Microsoft, testified by prior videotaped testimony that Microsoft intended to force DRI to continually release new versions of DR DOS to stay compatible. Barrett also testified that Senior Microsoft Executive Brad Silverberg told him there was "no fucking way in hell that Digital Research will ever receive a copy of the 3.1 beta" for Windows.

Barrett testified that withholding critical information from customers or independent software vendors ("ISVs") as a means of controlling them did not bother him, and that he would not hesitate to do so if he thought it advantageous. Barrett stated: "Basically what I'm saying here is we have some information that they don't have access to and that we can use that to control them, basically to get them to do what we want to do or not do what we don't want them to do."

#### **Case background:**

*Comes v. Microsoft* is an Iowa state court class action brought by consumers, small businesses, and other indirect purchasers of Microsoft software products. Plaintiffs allege that from May 18, 1994 through June 30, 2006, Microsoft engaged in illegal monopolization and other anticompetitive conduct in the markets for operating systems, word processing, spreadsheets, and office suite software. Plaintiffs contend that Microsoft charged higher prices than it would have charged had it not engaged in the anticompetitive conduct. Plaintiffs also contend that Microsoft's conduct caused its operating systems software to be more vulnerable to security breaches. Plaintiffs seek damages for their injuries. Trial is expected to continue until the spring of 2007.

#### **About the firms:**

Roxanne Conlin & Associates P.C. is owned by Roxanne Barton Conlin, a Plaintiffs' attorney whose practice is focused on personal injury and civil rights cases. Ms. Conlin is a former President of the Association of Trial Lawyers of America and a member of the Inner Circle of Advocates. She is co-editor of a 6-volume treatise, *ATLA's Litigating Tort Cases*, published by West Publishing Company (June, 2003). She has also served as United States Attorney for the Southern District of Iowa.

Zelle, Hofmann, Voelbel, Mason & Gette LLP is a national dispute resolution and litigation law firm with offices in Boston, Dallas, Los Angeles, Minneapolis, San Francisco and Washington, D.C. The Zelle Firm handles complex litigation and disputes on a national and international basis. The Firm has about 85 attorneys and represents both defendants and plaintiffs in its trial and dispute resolution practice. The Firm's broad litigation experience includes antitrust, banking, business torts, class action, commercial, employment, environmental, ERISA, financial services, insurance coverage, intellectual property, mass tort, mold claims, personal injury, product liability, professional liability, reinsurance, securities, subrogation third-party recovery, unfair business practice and unfair competition litigation. Co-Lead Counsel Rick Hagstrom has successfully pursued Microsoft in two other class actions. In 2004, Rick, as co-lead counsel, was successful in reaching a settlement with Microsoft of \$182 million on behalf of Minnesota businesses and consumers. In 2006 on behalf of Wisconsin businesses, consumers, school districts, and governmental entities, Rick and co-lead counsel reached a \$224 million settlement with Microsoft. In 2005, Rick was honored as a Minnesota Attorney of the Year.