

Media Update

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

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Coverage Notes:

1. **Unfair Microsoft campaign dooms DR DOS according to former Novell Desktop Systems Group head.**
2. **Former Windows project lead testifies that Microsoft favored “uncompetitive” vendors. Did this lock out “competitive” independents?**
3. **Linnet Harlan, former general counsel for DRI, Inc., testified regarding Microsoft’s use of vaporware and restrictive licensing.**

Coverage Details:

1. **John Edwards, former head of Novell Desktop Systems Group, concludes his testimony.**

John Edwards, former head of Novell Desktop Systems Group, was shown an internal Microsoft document during his testimony in which Microsoft employees and public relations people discussed combating good reviews about DR DOS by "trashing" DR DOS to the media and planting disparaging stories about DR DOS.

Edwards testified that Microsoft disseminated erroneous stories about DR DOS as part of its FUD (“fear, uncertainty, and doubt”) campaign against DR DOS. He believed that the campaign created consumer confusion, depressed DR DOS sales, and caused a large number of users to call Novell (which acquired the DR DOS product) with concerns about the quality of DR DOS. He further testified that any real problems reported in the articles were promptly remedied. At the same time, Microsoft made public statements that it would not resolve incompatibilities with DR DOS, which caused Original Equipment Manufacturers (“OEMs”) to refuse to ship DR DOS. This precluded Novell from selling into the OEM channel, which was by far the largest segment of the operating system software market- well over 80% of sales.

Edwards also testified about Microsoft’s anti-competitive conduct against DR DOS and Novell. He was shown an internal Microsoft email thread noting that a company called Znix had spoken favorably about DR DOS in a Novell press release and indicated that it would partner with DRI. Brad Silverberg of Microsoft responded in the email: "Look what Znix is doing. Cut those fuckers off." (Plaintiffs’ Exhibit 1324). Microsoft sued Znix soon after, and Znix ultimately declared bankruptcy. Edwards concluded his testimony Tuesday.

2. **Phillip Barrett, former project lead for Windows testified about favorable treatment to “uncompetitive” independent software vendors (“ISVs”) over “competitive” ISVs.**

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Phillip Barrett, former project lead for Windows, testified about favorable treatment given to Microsoft developers and "uncompetitive" ISVs over "competitive" ISVs. This favorable treatment included early access to Windows betas, access to "interim" betas, "direct" fixes of bugs rather than resolution via the "bug tracking" system, early access to information later released to other ISVs in software development kits, and other advantages.

3. Linnet Harlan, former general counsel for DRI, testified regarding vaporware, Microsoft's restrictive licensing, and the FTC investigation of Microsoft in the early 1990s.

Linnet Harlan, former general counsel for DRI and senior corporate counsel for Novell, testified via videotaped deposition that Microsoft planted information with specific reporters about non-existent Microsoft products. Harlan further testified that when Microsoft learned DR DOS 5.0 was coming out, Microsoft "lied" about having a new product and extolled the features of the product, when the new product did not exist and Microsoft had no actual plan for such a product. This "vaporware" had a negative effect on DRI and had a significant unfavorable effect on end users.

Harlan also testified that some OEMs had restrictive per processor licenses "forced on them" by Microsoft. This meant OEMs would be "penalized" for using DR DOS, since these OEMs had to pay Microsoft for MS-DOS whether they shipped it or not. DRI's DR DOS per processor license terms differed from Microsoft's in two ways: (1) DRI had exclusions for various types of hardware--but Microsoft had no exclusions, and (2) DRI had low volume commitments (e.g., 5000 units) while Microsoft had huge minimums, like 100,000 or 200,000.

According to Harlan, Microsoft retaliated against OEMs who assisted in the FTC investigation against Microsoft in the early 1990s. Referring to the FTC investigation, Harlan testified: "Frankly, my experience at that time was that it was probably easier to get somebody to testify against the Mafia than against Microsoft."

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

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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.