

Media Update

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

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Coverage Notes:

1. Weekly preview: former Novell General Counsel will take the stand to testify about Microsoft's anticompetitive conduct.
2. Exhibits of interest: PX09092, PX9094, and PX9096, three of the more than 3,100 trial exhibits now available on www.iowaconsumercase.com, show that Microsoft's ActiveX created "a really grim situation."

1. Weekly preview: Former Novell General Counsel David Bradford will testify about Microsoft's anticompetitive conduct.

This week, David Bradford, former General Counsel for public software company Novell, will testify live about Microsoft's anticompetitive conduct against Novell and DR DOS. He tell the jury that Novell, which manufactured multi-platform network operating systems, announced in July of 1991 that it would merge with Digital Research, Inc. ("DRI"), the manufacturer of DR DOS. Bradford will recount that Bill Gates of Microsoft called Novell immediately after the announcement and said that Microsoft wanted to merge with Novell, but that Novell would have to abandon its merger with DRI. DR DOS was a rival product to Microsoft's MS-DOS.

Novell acquired DRI but kept the two companies separate while discussing a merger with Microsoft. Merger talks between Novell and Microsoft dragged on for months until Microsoft, without notice, acquired a different company. Novell concluded that Microsoft initiated the merger talks as simply a ploy to prevent Novell from fully integrating DRI. Bradford will also testify about Microsoft's response to Novell's 1994 acquisition of WordPerfect, and other matters.

2. Exhibits of interest: PX09092, PX09094, and PX09096, three of the more than 3,100 trial exhibits now available on Plaintiffs' web site.

Last week, Plaintiffs posted more than 3,100 trial exhibits on their *Comes* web site. Most of these exhibits have never before been publicly available.

Many exhibits of importance can be found in the Admitted Exhibits of Interest portion of the web site. But this section by no means contains all of the interesting or relevant exhibits. For example:

PX9092 is a series of internal Microsoft emails in 1997 discussing security vulnerabilities in ActiveX, which was used to incorporate applet-like functionality to Internet Explorer. One email notes that a web site discussed the fact that a hostile web page could obtain a

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user's password file and send it to a hostile email address, where the password file could then be cracked at leisure. There was also internal recognition that "we desperately need to deliver a patch to IE3 that plugs the rash of security holes opened by controls incorrectly marked 'Safe for Scripting.'"

PX9094 is another 1997 string of internal Microsoft emails discussing dangerous security flaws in ActiveX controls for Internet Explorer 3xx, which needed to be fixed or risk "major embarrassment." After internally discussing various options, Microsoft decided not to fix the problem (which would have delayed the launch of Internet Explorer 4.0) but to "simply say a prayer over this one."

PX9096 is yet another string of internal Microsoft emails from around the same time, also discussing security issues with ActiveX and the need to keep quiet about those vulnerabilities. One email to Bill Gates states: "if McNeally or the press get a hold of this, ActiveX is dead." "McNeally" is a reference to Scott McNeally, co-founder and Chief Executive Officer of Sun Microsystems, a rival company. Another email in the string observes: "This is a really grim situation."

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.