

# Media Update

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

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## Coverage Notes:

1. **Trial resumes on Tuesday, January 30 at 8:30 a.m.**
2. **Former CEO of competitor travels from Belgium to Iowa to tell jury about Microsoft's threats and intimidation.**
3. **Week in review: former General Counsel for software company Novell testifies about Microsoft's anticompetitive conduct against Novell and DR DOS.**

## Coverage Details:

1. **Trial in *Comes v. Microsoft* resumes on Tuesday, January 30.**

After a planned long weekend the *Comes v. Microsoft* trial will resume on Tuesday, January 30, 2007, at 8:30 a.m. with live testimony.

2. **The former CEO of one of Europe's largest OEM's will testify about Microsoft threats and intimidation.**

Theo Lieven, the co-founder and former Chief Executive Officer of Europe based Vobis, has traveled from Belgium to testify against Microsoft.

Lieven will tell the jury that Vobis, one of Europe's largest original equipment manufacturers, wanted to offer its customers a choice between DR DOS and MS-DOS. Microsoft, however, insisted that Lieven sign a "per processor" license agreement that required Vobis to pay Microsoft a fee for every computer Vobis shipped, regardless of whether the computer had MS-DOS installed. Vobis agreed to the demands after Microsoft threatened to charge Vobis more than twice as much for Windows licenses if it did not agree to the restrictions. Lieven will also testify about incompatibilities that Microsoft introduced into Windows, his ongoing licensing disputes with Microsoft, and his decision to begin shipping OS/2 in the mid-1990s, which resulted in an audit by Microsoft and the denial of essential documentation by Microsoft.

If time permits, Plaintiffs will also play the prior videotaped deposition testimony of Stephanie Reichel, a former Microsoft Senior OEM Account Manager in Germany. Vobis was Reichel's main account, and she will corroborate much of Lieven's testimony. She will testify about Microsoft's per-processor licensing strategies--including the selling of Windows alone at a price greater than if the OEM licensed Windows and MS DOS together--and that the strategies were designed to block DR DOS. Reichel will also testify that she was at the Redmond meeting

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where Microsoft offered Lieven cash to stop shipping DR DOS. She will testify that Lieven accepted Microsoft's offer and that both Bill Gates and Steve Balmer were aware of the deal.

### **3. Week in review: former General Counsel for software company Novell testifies about Microsoft's anticompetitive conduct against Novell and DR DOS.**

David Bradford, former General Counsel for software company Novell, took the stand last week to testify about Microsoft's anticompetitive conduct against Novell and DR DOS.

Bradford testified about Microsoft's anticompetitive tactics in the early 1990s, including FUD, vaporware, and the deliberate introduction of incompatibilities into Windows to foreclose the ability of DR DOS to compete with MS DOS. Bradford described as "startling" an internal email from a Microsoft executive stating: "We need to create the reputation for problems and incompatibilities to undermine confidence in DR-DOS 6. So people will make judgments against it without knowing details or [facts]."

Bradford further described as "unbelievable" an email thread in which a Microsoft executive speculated about future problems with DR DOS, and Microsoft's Jim Allchin responded: "You should make sure it has problems in the future." Bradford also recalled a specific instance in which a Microsoft executive vice president publicly announced that Microsoft would "ensure the incompatibility of" DR DOS and Windows.

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#### **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.