

# Media Update

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

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## Coverage Notes:

1. Plaintiffs officially notify the U.S. Department of Justice and the Iowa Attorney General of Microsoft's noncompliance with the 2002 Final Judgment in *United States v. Microsoft*.
2. Exhibit of interest: **PX7278** shows that Vista evangelists at Microsoft raved about Apple's Mac Tiger in 2004. **WEB AND BROADCAST EDITORS PLEASE NOTE LANGUAGE IN THIS SECTION BEFORE PUBLISHING**
3. Former General Counsel for software company Novell testifies about Microsoft's anticompetitive conduct against Novell and DR DOS.

### **1. Plaintiffs notify the Department of Justice and Iowa Attorney General Tom Miller of Microsoft's non-compliance with the 2002 Final Judgment in *United States v. Microsoft*.**

Today, Roxanne Conlin, co-lead counsel for the Plaintiffs in *Comes v. Microsoft*, sent a letter to Thomas Barnett of the United States Department of Justice and Iowa Attorney General Tom Miller, informing them that the *Comes* Plaintiffs have obtained confidential discovery materials from Microsoft showing that Microsoft is not complying with, and is circumventing, its disclosure obligations under the 2002 Final Judgment entered by the federal court in *United States v. Microsoft*.

The 2002 Final Judgment requires Microsoft to fully disclose applications programming interfaces ("APIs") and related documentation used by Microsoft. An expert retained by Plaintiffs analyzed source code and other materials produced by Microsoft in the *Comes* matter, and has concluded that a large number of Windows APIs used by Microsoft middleware remain undocumented. Because of the important public policy considerations associated with Microsoft's obligations under the 2002 Final Judgment, Plaintiffs received permission from the Polk County District Court to discuss the matter with appropriate authorities.

### **2. Rave reviews of Apple's Mac Tiger by Vista evangelists in 2004 were "hard to take," according to Microsoft's Jim Allchin. NOTE LANGUAGE**

A series of e-mail messages from June 2004 show that "evangelists" for Microsoft's Vista operating system and others at Microsoft secretly conceded the superiority of Apple's Mac Tiger operating system. In one email, Microsoft "evangelist" Lenn Pryor raved about the functionality of Mac Tiger, which he called "fucking amazing." Pryor stated, "it is like I just got a free pass to Longhorn land today," a reference to the code name for Microsoft's Vista, which would not be released for another two and half years. After another Microsoft employee

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remarked, “interesting reaction from one of our LH [i.e. Longhorn] evangelists,” Jim Allchin, Product Manager for Vista, responded, “I know. It is hard to take.” See **PX7278** at [www.iowaconsumercase.com](http://www.iowaconsumercase.com).

### **3. 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 today to testify about Microsoft’s anticompetitive conduct against Novell and DR DOS.

Bradford testified that Bill Gates tried to initiate merger talks between Microsoft and Novell after Novell announced it was merging with Digital Research, Inc. (“DRI”). Bradford testified that Microsoft made it a condition of merger talks that Novell keep its newly-acquired operating systems competitor at arm’s length while the merger talks continued, and then dragged the talks out for several months. Bradford said as a result, the first critical months after the merger with DRI were wasted. Novell stopped the negotiations when Microsoft acquired a different company without notice to Novell. In retrospect, Bradford said Novell came to believe that the talks with Microsoft were a mistake and that Microsoft sought the talks only to prevent Novell from fully integrating DRI.

#### **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.