

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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Case Number: CV-S-04-0237-RCJ-LRL

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THE SCO GROUP, INC. v. AUTOZONE, INC.

THE SCO GROUP, INC.,  
a Delaware corporation.

Plaintiff,

v.

AUTOZONE, INC.,  
a Nevada corporation,

Defendant.

REPORT OF PLAINTIFF THE SCO GROUP, INC. REGARDING DISCOVERY  
PURSUANT TO THE ORDER OF THE COURT DATED AUGUST 6, 2004

**FILED SEPARATELY**

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## INTRODUCTION

1  
2 Plaintiff, The SCO Group, Inc. ("SCO") submits this report regarding discovery pursuant  
3 to the Court's August 6, 2004 Order, as amended, granting SCO limited discovery to determine  
4 whether or not it is necessary to move for preliminary injunctive relief against Defendant  
5 AutoZone, Inc. ("AutoZone"). In light of the many extensions of discovery that have been  
6 requested from the Court, the recent written submission of AutoZone and the substantial time  
7 which has elapsed since the entry of the Court's Order, SCO believes it is necessary and  
8 appropriate to submit this formal report to the Court regarding the current status of this action.  
9

10 Contrary to public statements by AutoZone in open court and an Internet posting of  
11 AutoZone's former Senior Technology Advisor to the effect that no SCO libraries were copied  
12 during AutoZone's migration to Linux, the limited discovery ordered by this Court has  
13 uncovered extensive copying (over 110,000 copies) of what SCO believes to be programs  
14 containing SCO proprietary OpenServer code. However, after the copying of these programs  
15 was revealed in discovery, AutoZone has sworn that it has voluntarily removed all such  
16 programs from its Linux servers or certified that such programs have been recompiled without  
17 such code and SCO has confirmed such removal.<sup>1</sup> Accordingly, SCO has elected not to file for  
18 preliminary injunctive relief at this time.  
19

20 SCO reserves its right to conduct additional discovery and to seek injunctive relief, if  
21 appropriate, and to pursue claims for damages for the copying that has occurred once the Court  
22 lifts the stay in this matter. Given that this initial discovery phase concluded only approximately  
23 two weeks ago, SCO continues to evaluate the data and information provided by AutoZone in  
24 discovery to determine whether it is necessary and appropriate to file a motion for relief from the  
25

26 <sup>1</sup> While SCO requested that AutoZone produce the original source code for binaries running on its Linux system,  
27 AutoZone objected and refused to do so on various grounds including undue burden. (See AutoZone's Response to  
28 SCO's First Request For Production of Documents Request Response No. 2; Ex. F to Decl. of David S. Stone).  
Accordingly, the conclusions set forth in this report are based upon review of the programs in binary form and  
related documents and data produced by AutoZone.

1 stay for the purpose of allowing SCO to pursue copyright infringement and related claims based  
2 solely on AutoZone's migration to Linux which are not implicated or involved in the matters  
3 encaptioned: *The SCO Group, Inc. v. International Business Machines Corporation*, Case No.  
4 2:03CV0294 DAK (D. Utah); *The SCO Group, Inc. v. Novell, Inc.*, Case No. 2:04CV00139 (D.  
5 Utah) or; *Red Hat, Inc. v. The SCO Group, Inc.*, Case No. 03-772-SLR (D. Del.)

### 6 **PROCEDURAL AND FACTUAL BACKGROUND**

7  
8 SCO instituted this action against AutoZone on March 3, 2004 when it filed a Complaint  
9 alleging, among other things, that AutoZone has infringed SCO's copyrights by "using, copying,  
10 modifying, and/or distributing parts of the copyrighted materials, or derivative works based on  
11 the copyrighted materials in connection with its implementation of one or more versions of the  
12 Linux operating system inconsistent with SCO's exclusive rights under the Copyright Act." (See  
13 Complaint ¶ 21). In essence, SCO alleged that, when AutoZone migrated its 3500 store  
14 computers and other computers located in its headquarters from SCO's proprietary OpenServer  
15 UNIX-based operating system to the Linux open source operating system, it violated the  
16 copyright laws by using SCO's proprietary OpenServer materials to facilitate this migration  
17 process and by copying or modifying SCO's proprietary OpenServer materials during the  
18 migration. In addition to this allegation, SCO also alleged that the version of Red Hat Linux  
19 which AutoZone was using contained SCO proprietary OpenServer materials for which  
20 AutoZone did not have a license. (See Complaint ¶ 1).

21  
22 On April 23, 2004, AutoZone filed a motion to stay this action or, in the alternative, for a  
23 more definite statement, and a motion to transfer venue from this Court to the United States  
24 District Court for the Western District of Tennessee. In its motion papers and at oral argument,  
25 AutoZone aggressively asserted that SCO had "no cause of action against AutoZone" and further  
26 that discovery into AutoZone's alleged infringement "ultimately will not be fruitful." (See July  
27

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1 12, 2004 Oral Argument Tr. 13:21-22, 27:22-28:1).<sup>2</sup> The Court denied AutoZone's motion for a  
2 more definite statement and to transfer venue and granted AutoZone's motion to stay, in part, in  
3 light of ongoing related proceedings in the United States District Court for the District of Utah  
4 and the United States District Court for the District of Delaware which also involve SCO. (See  
5 August 6, 2004 Order).

6 In response to SCO's claim that it had a reasonable basis to believe that it may be  
7 irreparably harmed if AutoZone continued to use SCO proprietary materials during the pendency  
8 of the stay, the Court ordered that the parties should conduct limited discovery to permit SCO to  
9 determine whether or not it was appropriate for SCO to move for a preliminary injunction at this  
10 time. (See July 12, 2004 Oral Argument Tr. 22:12-19, 24:9-10, 25:8-12). While the Court did  
11 not explicitly limit discovery, the Court indicated it did not wish SCO to impinge upon copyright  
12 issues which were implicated in the matters encaptioned: *The SCO Group, Inc. v. International*  
13 *Business Machines Corporation*, Case No. 2:03CV0294 DAK (D. Utah); *The SCO Group, Inc. v.*  
14 *Novell, Inc.*, Case No. 2:04CV00139 (D. Utah) or: *Red Hat, Inc. v. The SCO Group, Inc.*, Case  
15 No. 03-772-SLR (D. Del.), but, rather, to focus on the issue of AutoZone's migration to Linux  
16 and its possible use of SCO licensed materials in connection with that migration. (See, e.g., July  
17 12, 2004 Oral Argument Tr. 22:3-14; September 9, 2004 Oral Argument Tr. 5:1-6:1).

18  
19  
20 However, shortly after the Court entered its August 6, 2004 Order providing for such  
21 discovery, AutoZone again attempted to prevent such discovery from occurring by filing a  
22 "Emergency Motion To Stay All Remaining Proceedings Related To The Issue Of Preliminary  
23

24  
25 <sup>2</sup> SCO has submitted what it believes to be the most relevant sections of pertinent documents referenced in this  
26 report as Exhibits to the Declaration of David S. Stone which has been submitted herewith. However, given the  
27 relatively voluminous nature of the record and the fact that SCO has elected not to file for a preliminary injunction  
28 at this time, SCO has not submitted every document from discovery which is referenced in this report. However,  
SCO has prepared a comprehensive appendix which contains the entire record of the discovery which has been  
conducted and will, of course, provide portions of such appendix or the entire appendix to the Court and AutoZone's  
Counsel should either desire to review them. Defendant AutoZone has copies of all of the underlying documents  
and, indeed, is the author of many of them.

1 Injunctive Relief” claiming SCO’s intent to pursue discovery – and thereby determine whether or  
2 not AutoZone was indeed infringing its OpenServer code – was “nothing more than a fishing  
3 expedition.” (See Defendant AutoZone, Inc.’s Memorandum of Law in Support of its  
4 Emergency Motion to Stay p. 1). Previously, Jim Greer, one of AutoZone’s Senior Technology  
5 Advisors, and one of the primary AutoZone developers in charge of the migration had posted a  
6 statement on the Internet denying categorically that AutoZone had copied any SCO files or code  
7 during the migration process. (See Deposition of James Greer Tr. 20:22-21:3, 84:20-85:24,  
8 151:24-153:22; Ex. D to Decl. of David S. Stone). Defendant alluded to this public posting to  
9 justify its emergency motion for a stay. (See September 9, 2004 Oral Argument Tr. 6:7-10).<sup>3</sup>

11 At oral argument on September 9, 2004, in response to a query from the Court as to why  
12 SCO should not be allowed to take the limited expedited discovery previously ordered by the  
13 Court, Counsel for AutoZone represented to the Court that SCO had not shown why AutoZone  
14 couldn’t have “written around those libraries” and “didn’t need them” (i.e., copyrighted SCO  
15 OpenServer libraries). (See September 9, 2004 Oral Argument Tr. 6:7-17). Therefore,  
16 AutoZone claimed, the Court should not allow SCO to conduct discovery into the alleged  
17 copyright infringement. (See September 9, 2004 Oral Argument Tr. 6:7-10). In rejecting  
18 AutoZone’s arguments and denying its emergency motion to stay, the Court made clear that the  
19 purpose of the limited discovery was to permit SCO to get access to the code and other materials  
20 in AutoZone’s possession to determine whether infringement had occurred and whether or not  
21 irreparable harm existed. (See September 9, 2004 Oral Argument Tr. 9:15-16, 10:1-4). SCO’s  
22 counsel advised the Court and AutoZone at that oral argument that it intended to report to the  
23 Court at the end of discovery on its findings and whether or not it intended to file for a  
24 preliminary injunction motion. (See September 9, 2004 Oral Argument Tr. 14:17-22).

27 <sup>3</sup> In his deposition, Mr. Greer, contrary to his well-publicized Internet post, admitted that AutoZone had copied  
28 certain files in its migration process to Red Hat Linux which AutoZone later admitted were statically linked to SCO  
libraries. (See Deposition of James Greer Tr. 124:21-126:10; Ex. D to Decl. of David S. Stone).

## DISCOVERY FINDINGS

1  
2 The Court-Ordered limited discovery related to AutoZone's migration from OpenServer  
3 to Linux and its possible use of SCO licensed materials in connection with that migration  
4 (including depositions of Mr. Greer, the author of the Internet posting, and Bob Celmer, a senior  
5 AutoZone Information Technology Officer) has now been completed after several extensions by  
6 consent of the parties of the original discovery period ordered by the Court. The reason for these  
7 extensions was the substantial amount of material uncovered by SCO in discovery which  
8 demonstrated that, contrary to AutoZone's denials and public statements that it "wrote around  
9 the SCO libraries," (See September 9, 2004 Oral Argument Tr. 6:7-10) in fact, AutoZone made a  
10 substantial number of copies of files containing SCO's proprietary code during the migration  
11 process.

12  
13 Initially, AutoZone claimed in response to SCO's Interrogatories and Requests for  
14 Admissions that it had copied only a "few minor programs . . . onto [AutoZone's] Linux image"  
15 and further, that two such programs had not been used "since 2003." (See Defendant AutoZone,  
16 Inc.'s Responses to Plaintiff's First Set of Interrogatories, Response No. 3; Ex. F to Decl. of  
17 David S. Stone). However, AutoZone later admitted that the copying was far more expansive.  
18 Indeed, discovery later revealed that during the migration process and subsequent to the process,  
19 AutoZone created over 110,000 copies<sup>4</sup> of OpenServer files in the COFF format<sup>5</sup> onto its various  
20 Linux servers located in its headquarters and its 3500 stores in the United States and Mexico, the  
21 vast majority of which, based on SCO's review of the files produced in discovery, contain SCO  
22  
23

24 <sup>4</sup> The total number of copies referenced takes into account that some files were copied onto every one of  
25 AutoZone's 3500 servers throughout the United States and Mexico. (See, e.g. Deposition of Bob Celmer Tr. 67:7-  
21, 68:16; 80:1-9; Ex. A to Decl. of David S. Stone).

26 <sup>5</sup> As AutoZone has admitted, COFF files "are executable files in a format that is normally used only on SCO  
27 OpenServer computers." (See November 24, 2004 Letter from David J. Stewart to David S. Stone; Ex. B to Decl. of  
28 David S. Stone). Because COFF files are created to work with SCO's OpenServer, they generally contain portions  
of SCO proprietary code including static libraries to allow them to run efficiently (See Deposition of Bob Celmer  
Tr. 20:25-23:23, 29:25, 54:7-14, 57:1-12; 57:21-25; Ex. A to Decl. of David S. Stone).

1 proprietary code. (See, e.g., November 24, 2004 Letter from David J. Stewart to David S. Stone;  
2 Ex. B to Decl. of David S. Stone; March 4, 2005 Letter from Douglas L. Bridges to David S.  
3 Stone and enclosures thereto; Ex. E to Decl. of David S. Stone). Discovery further revealed that  
4 virtually all of these files were “statically linked” during the “compiling” process to SCO  
5 proprietary libraries or portions thereof. (See, e.g., Deposition of Bob Celmer Tr. 20:25-23:23;  
6 Ex. A to Decl. of David S. Stone; March 4, 2005 Letter from Douglas L. Bridges to David S.  
7 Stone and enclosures thereto; Ex. E to Decl. of David S. Stone).

8  
9 Furthermore, it is not surprising that such copying occurred since SCO’s discovery also  
10 revealed that the AutoZone migration process was carried out in an ad hoc manner by developers  
11 who had worked with and were familiar with SCO’s proprietary OpenServer code and materials  
12 with no formal controls in place to protect those materials. (See, e.g., Deposition of James Greer  
13 Tr. 36:18-37:17; Ex. D to Decl. of David S. Stone; Deposition of Bob Celmer Tr. 16:13-18:9,  
14 146:17-148:13; Ex. A to Decl. of David S. Stone). For example, at his deposition, Mr. Greer  
15 admitted that, contrary to the implication of his Internet posting, no formal protections had been  
16 put in place at AutoZone to protect SCO’s proprietary software and that he never examined the  
17 binaries (or underlying source code) on AutoZone’s Linux servers after the migration to  
18 determine if they included any SCO code. (See Deposition of James Greer Tr. 71:24-72:6, 88:25-  
19 89:8; Ex. D to Decl. of David S. Stone). Furthermore, neither Mr. Greer nor Mr. Celmer  
20 consulted copyright counsel or any counsel prior to or during the porting process nor did they  
21 have knowledge that anyone had consulted AutoZone’s licenses with SCO to determine if  
22 AutoZone’s planned migration procedures were permitted by the relevant licenses. (See, e.g.,  
23 Deposition of Bob Celmer Tr. 16:13-17:3, 17:22-18-9; Ex. A to Decl. of David S. Stone;  
24 Deposition of James Greer Tr. 69:9-12, 77:7-15; Ex. D to Decl. of David S. Stone). Indeed, Mr.  
25 Celmer testified that he and others responsible for implementing the migration were not focused  
26  
27  
28

1 on protecting SCO's OpenServer copyright materials and were, instead, focused on the most  
2 efficient way to modify the binaries AutoZone created to work on OpenServer so that they would  
3 run on Linux. (See Deposition of Bob Celmer Tr. 37:13-38:18; Ex. A to Decl. of David S.  
4 Stone).

5  
6 SCO's discovery to date has now confirmed that AutoZone engaged in the following  
7 activities which SCO has reason to believe violated AutoZone's licenses and the federal  
8 copyright laws:

9 1. AutoZone developers copied 1,681 separate COFF files onto 387 AutoZone store  
10 machines located throughout the United States. (See November 24, 2004 Letter from David J.  
11 Stewart to David S. Stone; Ex. B to Decl. of David S. Stone).

12 2. AutoZone developers copied 28 COFF files consisting of sort files and help utilities  
13 and other miscellaneous files onto all 3500 of its machines located in AutoZone's stores located  
14 in the United States and Mexico. (See, e.g., Deposition of Bob Celmer Tr. 76:8-80:12, 114:11-  
15 19; Ex. A to Decl. of David S. Stone; November 24, 2004 Letter from David J. Stewart to David  
16 S. Stone; Ex.B to Decl. of David S. Stone).

17  
18 3. AutoZone copied two COFF files "CompX and DecompX" which were programs that  
19 it had licensed from a third party which contained proprietary SCO code onto all 3500 of its  
20 machines located in the United States and Mexico and has been using those files since at least  
21 January 2000 until AutoZone deleted them during the Court-ordered discovery process. (See,  
22 e.g., November 24, 2004 Letter from David J. Stewart to David S. Stone; Ex. B to Decl. of David  
23 S. Stone; Deposition of Bob Celmer Tr.33:18-37:7, 114:20-22; Ex. A to Decl. of David S.  
24 Stone). When AutoZone deleted CompX and DecompX from its Linux servers, the replenishment  
25 system used by AutoZone to replace inventory from its warehouses failed on approximately 650  
26 of AutoZone's store machines as a result. (See, e.g., November 24, 2004 Letter from David J.  
27



1 Stewart to David S. Stone; Ex. B to Decl. of David S. Stone; Deposition of Bob Celmer Tr.  
2 36:20-37:3; Ex. A to Decl. of David S. Stone).

3 4. AutoZone's machine load computer was found to contain a program entitled d-  
4 expand.x that was compiled under SCO's proprietary OpenServer operating system. (See, e.g.,  
5 Deposition of Bob Celmer Tr. 96:23-100:11; Ex.A to Decl. of David S. Stone; November 24,  
6 2004 Letter from David J. Stewart to David S. Stone; Ex.B to Decl. of David S. Stone).

7 5. Based upon SCO's review of materials and data produced by AutoZone in discovery,  
8 AutoZone copied over 4,500 programs that were compiled to run on OpenServer onto  
9 AutoZone's "Spirit Server" which was used to store AutoZone's source code located in  
10 AutoZone's headquarters. (See March 4, 2005 Letter from Douglas L. Bridges to David S. Stone  
11 enclosing an image of the Spirit Server bates-stamped AZ00473-AZ00475; Ex. E to Decl. of  
12 David S. Stone). The vast majority of these programs contain some portion of SCO's proprietary  
13 static libraries. Id. AutoZone has admitted to copying at least 1,130 programs compiled to run  
14 on OpenServer onto Spirit. (See November 24, 2004 Letter from David J. Stewart to David S.  
15 Stone; Ex. B to Decl. of David S. Stone).

16 6. In addition, as a result of a script written by SCO's technical consultant, AutoZone  
17 discovered an additional 15 SCO-Elf and Xenix files which were also compiled to work on SCO  
18 proprietary operating systems (earlier versions of OpenServer that were licensed by AutoZone)  
19 which AutoZone admits "likely also exist on all 3500 AutoZone store servers." (See January 11,  
20 2005 E-Mail from David J. Stewart to David S. Stone; Ex. C to Decl. of David S. Stone).

21 7. SCO's review of materials and data produced by AutoZone in discovery reveals that  
22 AutoZone copied approximately 370 programs onto its Linux development machine known as  
23 "Wrangler." (See March 4, 2005 Letter from Douglas L. Bridges to David S. Stone enclosing an  
24 image of the Wrangler Server bates-stamped AZ00480-AZ00483; Ex. E to Decl. of David S.  
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1 Stone). The majority of these programs appear to contain some portion of SCO's proprietary  
2 static libraries. Id.

3 8. AutoZone developers copied numerous SCO files, the precise number of which has  
4 not been disclosed in discovery, onto AutoZone's "Vision" server which was used in part by  
5 AutoZone to compare the output of programs that it was porting from OpenServer to the Linux  
6 operating system to ensure that the output was identical. (See Deposition of Bob Celmer Tr.  
7 118:1-13, 139:11-140:11; Ex A to Decl. of David S. Stone).  
8

### 9 **CONCLUSION**

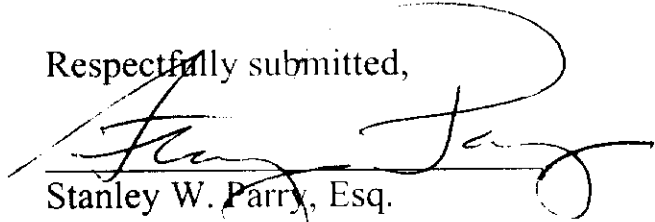
10 In conclusion, as a result of the discovery ordered by this Court, and contrary to the  
11 representations by AutoZone to this Court in its motion papers and even in AutoZone's  
12 preliminary responses to SCO's initial discovery requests, SCO has now established that during  
13 its migration process to Linux, and subsequent to that process, AutoZone copied and otherwise  
14 used substantial amounts of SCO proprietary code during the migration process from SCO's  
15 proprietary OpenServer operating system software to Red Hat Linux. Discovery has shown that  
16 AutoZone made over 110,000 copies of programs, binaries and/or files created to be used with  
17 SCO's proprietary OpenServer operating system, the vast majority of which contained SCO  
18 proprietary code, and placed those files on its machines running the Linux operating system.  
19

20 Accordingly, this Court was well warranted in ordering the limited discovery requested.  
21 Although the limited discovery thus far conducted has not established precisely how many of  
22 these "copied" files were being used by AutoZone and at which stores, such discovery  
23 conclusively shows that some of these files clearly were being used by AutoZone in its business  
24 up until they were disclosed in discovery in this case. As a result of this Court's Order,  
25 AutoZone and SCO were able to identify the files in question and ensure that they were deleted  
26 or recompiled so that no further future use of those files on any AutoZone Linux servers would  
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1 occur. Based upon the foregoing, although SCO reserves all of its rights to pursue damages  
2 against AutoZone for the extensive copying and alleged copyright or related violations that have  
3 occurred, based on AutoZone's sworn representations that it has removed and is not currently  
4 using programs or files containing SCO proprietary materials in any of its Linux operating  
5 system servers and will not do so in the future, SCO does not believe preliminary injunctive  
6 relief is necessary at this time. SCO has reason to believe that AutoZone may also be violating  
7 SCO's copyrights and other intellectual property rights as a result of its use of the Linux  
8 operating system itself. However, it is SCO's understanding that the Court has stayed discovery  
9 and other proceedings relating to these issues pending further order of the Court and/or the  
10 resolution of the *SCO v. IBM* and/or *Red Hat v. SCO* matters which implicate these issues.  
11 Accordingly, SCO reserves its right to pursue appropriate remedies for these alleged violations  
12 once the Court has lifted the stay on these proceedings.  
13

14 Respectfully submitted,



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(973) 218-1111  
Attorneys for Plaintiff The SCO Group, Inc.

24 DATED this 27<sup>th</sup> day of May, 2005  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 27th day of May, 2005, a copy of the foregoing, Report of Plaintiff the SCO Group, Inc. Regarding Discovery Pursuant to the Order of the Court Dated August 6, 2004, was served via HAND-DELIVERY on:

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An employee of Curran & Parry

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6. Attached hereto as Exhibit E is a true and correct copy of the relevant pages of the March 4, 2005 Letter from Douglas L. Bridges to David S. Stone.

7. Attached hereto as Exhibit F is a true and correct copy of the relevant pages of Defendant AutoZone, Inc.'s Responses to Plaintiff's First Set of Interrogatories and First Request for Production of Documents.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
DAVID S. STONE

DATED this 27<sup>th</sup> day of May, 2005

1 IN THE UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

---

3 THE SCO GROUP, INC.,  
4 A DELAWARE CORPORATION,

5 Plaintiff,

6 VS.

Civil Action File No.  
CV-S-04-0237-RCJ-LJL

7 AUTOZONE, INC., A NEVADA  
8 CORPORATION,

9 Defendant.

---

10 VIDEOTAPED DEPOSITION OF BOB CELMER

11 MAY 9, 2005

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21 ALPHA REPORTING CORPORATION  
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Page 2

1 The videotaped deposition of BOB CELMER,  
 2 taken on behalf of the Plaintiff, pursuant to Notice,  
 3 on May 9, 2005, beginning at approximately 9:00 a.m.,  
 4 in the law offices of Baker, Donelson, Bearman &  
 5 Caldwell, 165 Madison Avenue, Suite 2000, Memphis,  
 6 Tennessee.

7 This deposition is taken in accordance  
 8 with the terms and provisions of the Federal Rules of  
 9 Civil Procedure.

10 All forms and formalities are waived, and  
 11 objections alone as to relevancy, materiality and  
 12 competency are reserved, to be presented at or before  
 13 the hearing. Objections as to the form of the  
 14 question must be made at the time of the taking of the  
 15 deposition. The signature of the witness is not  
 16 waived.

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24  
25

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1 VIDEO SPECIALIST: Today is May 9th,  
 2 2005, 9:05. Location is Baker, Donelson, Bearman &  
 3 Caldwell, 165 Madison Avenue in Memphis, Tennessee.  
 4 My name is Will Smith, certified video specialist with  
 5 Alpha Legal Productions, located in the lobby of the  
 6 100 North Main Building in Memphis.

7 This case is entitled The SCO Group, Inc. versus  
 8 AutoZone, Inc. Our deponent today is Mr. Bob Celmer.  
 9 This video deposition is requested by the plaintiff's  
 10 counsel, Mr. David Stone. Will counsel and all present  
 11 please identify themselves for the record at this time.

12 MR. STONE: David Stone and Chris  
 13 Iannicelli from Boies, Schiller & Flexner for the  
 14 plaintiff, SCO Group.

15 MR. McBRIDE: Kevin McBride for the  
 16 plaintiff.

17 MR. TIBBITTS: Ryan Tibbitts, general  
 18 counsel, and John DuBois, both from the SCO Group.

19 MR. STEWART: David Stewart and Doug  
 20 Bridges, Alston & Bird for the defendant, AutoZone.

21 MS. BALLOU: Rebecca Ballou from  
 22 AutoZone.

23 MR. CELMER: Bob Celmer, senior  
 24 technology advisor for AutoZone.

25 VIDEO SPECIALIST: The deponent may now



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1 be sworn in by Ms. Korian Neal of Alpha Reporting  
 2 Corporation.  
 3 BOB CELMER,  
 4 having been first duly sworn, was examined and testified  
 5 as follows:  
 6 DIRECT EXAMINATION  
 7 BY MR. STONE:  
 8 Q. Good morning, Mr. Celmer. How are you?  
 9 A. Good. How are you?  
 10 Q. I don't need to tell you my name because I  
 11 already told you my name. So we'll cross that off my  
 12 list. You're here today for a deposition. Have you  
 13 ever been deposed before?  
 14 A. Yes, I have.  
 15 Q. Okay. So you're familiar with how depositions  
 16 proceed, that I'm going to ask you questions, you're  
 17 going to answer the questions. From time to time, your  
 18 counsel may object, and you still must answer the  
 19 question unless he instructs you not to answer the  
 20 question. You understand that?  
 21 A. Right.  
 22 Q. You also understand that you're here under all  
 23 the oaths of pains and penalties of perjury that would  
 24 apply if you were testifying in court.  
 25 A. Right.

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1 (WHEREUPON, A DOCUMENT WAS MARKED AS  
 2 EXHIBIT NO. 32, AND IS HERETO  
 3 ATTACHED.)  
 4 Q. Mr. Celmer, I'm going to show you what's been  
 5 marked as Celmer Exhibit 32, which is a letter from  
 6 myself to Mr. Stewart along with a notice for a 30(b)(6)  
 7 deposition, ask you if you've ever seen that before  
 8 today.  
 9 A. Yes.  
 10 Q. And you had an opportunity to review it before  
 11 you are appearing here today?  
 12 A. Yes.  
 13 MR. STONE: And I understand,  
 14 Mr. Stewart, that the defendant has filed certain  
 15 objections to this notice, and I'm not meaning to  
 16 ignore those objections by not referring to them or  
 17 marking them. I just don't happen to have them here.  
 18 But you know, I understand you have your objections,  
 19 and you'll raise them at the appropriate time.  
 20 MR. STEWART: That's fine.  
 21 Q. (BY MR. STONE) Mr. Celmer, the purpose of  
 22 this deposition is to find out facts pertaining to  
 23 SCO code from an operating system called OpenServer.  
 24 Are you familiar with that operating system?  
 25 A. Yes, I am.

Page 8

1 Q. And you're familiar with the fact that  
 2 AutoZone migrated or moved from using that system to  
 3 using a type of a Linux operating system at some point  
 4 in the past?  
 5 A. Yes.  
 6 Q. And currently, is AutoZone using Linux systems  
 7 on all of its store servers?  
 8 A. Not all of its store servers.  
 9 Q. So some of the store servers use other types  
 10 of operating systems?  
 11 A. Yes.  
 12 Q. And were you involved in any way in that  
 13 migration process?  
 14 A. Yes.  
 15 Q. Okay. Well, why don't we start out by you  
 16 giving me a little bit of your history. Start with your  
 17 education. Where did you go to college?  
 18 A. I went to Southern Illinois University as an  
 19 undergraduate and was awarded my master's degree from  
 20 Memphis State University here in town.  
 21 Q. When did you graduate from Southern Illinois?  
 22 A. 1984.  
 23 Q. And when did you achieve your master's?  
 24 A. 1990.  
 25 Q. And what was your master's in?

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1 A. Computer science.  
 2 Q. Did you study -- when you were studying for  
 3 your master's, did you study the Linux operating system?  
 4 A. No, we didn't.  
 5 Q. Did you study the OpenServer operating system?  
 6 A. No.  
 7 Q. Did you study Unix-based operating systems?  
 8 A. Yes.  
 9 Q. When you -- well, what is the first job that  
 10 you held?  
 11 A. First job I held was a lot boy on a used car  
 12 lot.  
 13 Q. Okay. And when --  
 14 MR. STEWART: Do you mean first job after  
 15 college?  
 16 Q. (BY MR. STONE) What was the first job  
 17 after college that you held?  
 18 A. Construction laborer.  
 19 Q. Okay. And for how long did you have that job?  
 20 A. Nine or ten months, I suppose.  
 21 Q. And what's the next job that you held?  
 22 A. Security guard supervisor.  
 23 Q. Okay. And how long did you have that job?  
 24 A. Four years.  
 25 Q. So tell me what year we're in now.

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1 A. 1989 --

2 Q. Okay.

3 A. -- I believe is when I left that job.

4 Q. And what job did you hold after that job?

5 A. Let's see. I was a programmer for a company

6 whose name I can't recall right now. It was a company

7 here in town that provided software for credit unions.

8 I'm sorry. I'm drawing a blank on the name of the

9 company right now.

10 Q. And so you programmed software that assisted

11 credit unions?

12 A. Right.

13 Q. How long did you hold that job?

14 A. About -- less than a -- less than a year.

15 About six to nine months.

16 Q. And where did you go next?

17 A. Malone & Hyde, a grocery distributor.

18 Q. And you programmed software for them?

19 A. Right.

20 Q. Where did you go next?

21 A. AutoZone.

22 Q. And what year was that?

23 A. December of 1990.

24 Q. So the first time you joined AutoZone was in

25 December of 1990?

Page 11

1 A. Right.

2 Q. And what was your position at that time?

3 A. Programmer.

4 Q. And did you -- what were your responsibilities

5 as a programmer?

6 A. The development and maintenance of programs

7 for our store systems.

8 Q. And at that time, was AutoZone using

9 OpenServer systems?

10 A. No. At that time, we were using Zenix.

11 Q. And was Zenix a Unix-based operating system?

12 A. I believe Zenix is a Unix-based operating

13 system.

14 Q. Do you know who you were licensing Zenix from?

15 A. The Santa Cruz operation.

16 Q. And what's the next job you held after

17 programmer?

18 A. My first title change after programmer I

19 believe was project leader.

20 Q. And when was that, approximately?

21 A. 1993, probably.

22 Q. And how did your responsibilities change as a

23 project leader from a programmer?

24 A. The only real change in responsibility was the

25 review of junior personnel in an official capacity.

Page 12

1 Q. So you took on certain management

2 responsibilities that you didn't previously have? Is

3 that correct?

4 A. That's right.

5 Q. Did you receive any further promotions after

6 that time?

7 A. Yes.

8 Q. When's the next promotion you received?

9 A. Probably 1998 or so, I was given the title of

10 technical fellow.

11 Q. And technical fellow, what were your

12 responsibilities as a technical fellow?

13 A. I really had two responsibilities as technical

14 fellow. One is, it was an experimental position. We

15 wanted to find out whether it was appropriate to create

16 a separate technical track for the developers at

17 AutoZone, technical career track. And so a large part

18 of my responsibility was to outline duties and

19 responsibilities at the upper end of that track.

20 Other than that, I was involved with Y2K

21 preparations, and I was investigating a

22 multi-dimensional database product for use in data

23 mining.

24 Q. Okay. And did you receive any further

25 promotions after that date?

Page 13

1 A. No. My current title is sort of a

2 standardization of that technical fellow title.

3 Q. Okay. When is the first time that you recall

4 that AutoZone began using any version of the OpenServer

5 operating system?

6 A. I really don't recall the year. When we

7 migrated from Zenix to Unix, it wasn't called

8 OpenServer. And then with the subsequent -- subsequent

9 release of the operating system, SCO changed the name, I

10 believe, to OpenServer.

11 Q. Okay. So for some period of time, you were

12 using a new operating system that was different than

13 Zenix, and then at some point, the name of that

14 operating system was changed to OpenServer. Is that

15 correct?

16 A. Right.

17 Q. Do you recall when that happened?

18 A. No. I'm sorry, I don't.

19 Q. Was it some time between 1995 and 2000?

20 A. I really don't remember when it was.

21 Q. Okay. And then at some point, AutoZone

22 decided that it was going to migrate again or change

23 again the operating system it was using to Linux. Is

24 that correct?

25 A. We wanted to explore -- to investigate Linux

Page 14

1 to see whether it was sufficiently stable and reliable  
 2 for our use. And one of the tests that we wanted to  
 3 make of Linux was to see whether it would support at  
 4 least our most critical applications and to find out how  
 5 difficult it was to port the software.  
 6 Q. And when did you first begin those inquiries  
 7 about Linux?  
 8 A. I think we began to port the software around  
 9 1999.  
 10 Q. And -- but before you began to port the  
 11 software, you did some investigation, is that correct,  
 12 into Linux?  
 13 A. Yes.  
 14 Q. And approximately when did you begin your  
 15 investigation, if you recall?  
 16 A. Very fairly early on, we had a copy of Linux,  
 17 early 90s, '93, '94, I believe.  
 18 Q. So you believe you were at least looking at  
 19 the possibility of an alternative of Linux as an  
 20 operating system as early as '94, '95?  
 21 A. I think so. Yes.  
 22 Q. Were you actually involved in the decision to  
 23 migrate AutoZone's machines to the Linux operating  
 24 system?  
 25 A. Yes.

Page 15

1 Q. Who made that decision?  
 2 A. Our senior management at AutoZone would have  
 3 had to make the decision. So that would have been one  
 4 of the vice presidents at that time.  
 5 Q. Do you recall who the person -- the name of  
 6 the person?  
 7 A. In general for critical decisions, we tend to  
 8 act as a team. And so our CIO at that time clearly  
 9 would have, you know, been on the hook for the ultimate  
 10 decision. That would have been -- we had a CIO  
 11 transition around that time. I don't remember whether  
 12 Bruce Clark was the CIO or whether Steve Valentine was  
 13 the CIO. But in either case, they would have had  
 14 support from the other vice presidents, Jon Bascom and  
 15 Jim Etzkorn.  
 16 Q. Who is the last person you mentioned?  
 17 A. Jim Etzkorn.  
 18 Q. Could you please spell that name?  
 19 A. E-T-Z-K-O-R-N.  
 20 Q. Okay. And these were all vice presidents at  
 21 AutoZone during that time period?  
 22 A. Around that time period. I really don't  
 23 remember when either Jim Etzkorn started -- it was five  
 24 or six or seven years ago -- or Bruce Clark, who also I  
 25 believe started somewhere around the same time.

Page 16

1 Q. Are you familiar with an individual named Jim  
 2 Greer?  
 3 A. Yes.  
 4 Q. Did he play a role in this decision to migrate  
 5 from OpenServer to Linux?  
 6 A. Yes.  
 7 Q. And were you his supervisor at that time?  
 8 A. No, I was not.  
 9 Q. Was he equivalent to you, or was he above you  
 10 in the --  
 11 A. He was equivalent to me, same title, I  
 12 believe.  
 13 Q. Now, you understood, did you not, that  
 14 OpenServer was a proprietary operating system that  
 15 AutoZone was licensing from SCO? Correct?  
 16 A. Yes.  
 17 Q. Do you know if anybody at AutoZone consulted  
 18 an attorney, a copyright attorney, before deciding to  
 19 migrate from OpenServer to Linux?  
 20 A. I don't know.  
 21 Q. To your knowledge, did they?  
 22 A. I don't know. I'm not aware of any  
 23 consultation.  
 24 Q. Do you know if anybody reviewed the licenses  
 25 with SCO to determine whether it was appropriate or

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1 legal under those licenses to port binaries created for  
 2 the OpenServer operating system to the Linux operating  
 3 system?  
 4 MR. STEWART: Hang on just a second  
 5 before you answer that. Korian, can I ask you to read  
 6 that back?  
 7 (WHEREUPON, THE LAST QUESTION WAS READ  
 8 BACK BY THE COURT REPORTER.)  
 9 MR. STEWART: I'm going to object to the  
 10 question on the grounds that it's outside the  
 11 deposition notice. But I'll allow you to answer.  
 12 Answer just the question asked, though, so that we  
 13 avoid getting off into any attorney/client issues.  
 14 A. I believe the answer is I don't know.  
 15 Q. (BY MR. STONE) Well, that makes it easy.  
 16 Okay. So you don't have any knowledge about anybody  
 17 doing that one way or the other. Is that fair to  
 18 say?  
 19 A. I don't know whether we specifically  
 20 investigated the porting of binaries to any operating  
 21 system from any operating system.  
 22 Q. Well, then let me make that a more general  
 23 question, because I didn't want to somehow limit it. Do  
 24 you know if anybody at AutoZone examined the license  
 25 agreements with SCO regarding OpenServer operating

1 system to determine whether the migration from  
2 OpenServer to Linux was appropriate or legal under  
3 those licenses?

4 MR. STEWART: Same objection as my prior  
5 objection. But you can answer.

6 A. I'm sorry. I still -- I don't know. I don't  
7 have firsthand knowledge of, or even secondhand  
8 knowledge, of whether or who might have investigated our  
9 SCO licensing with respect to the Linux port.

10 Q. (BY MR. STONE) Okay. Do you know what a  
11 developer kit is?

12 A. My definition of the developer kit is a set of  
13 software tools that we use to create the software or  
14 translate the software from source code to executable  
15 form. So it involves things like compilers, linkers,  
16 debuggers.

17 Q. Do you know whether AutoZone had licensed a  
18 developer kit from SCO when it was utilizing the  
19 OpenServer operating system?

20 MR. STEWART: Same objection. You can  
21 answer.

22 A. I believe we had developed a kit license.

23 Q. (BY MR. STONE) I'm going to ask you a  
24 question. Answer me in your own words. This is sort  
25 of what I'm getting at here. What I want to

1 understand is, AutoZone licensed the OpenServer  
2 operating system. That was an operating system that  
3 was on certain machines at AutoZone. Is that  
4 correct?

5 A. Yes.

6 Q. Then AutoZone created its own code, correct,  
7 that was going to then work on the OpenServer operating  
8 system? Is that right?

9 A. Say that again.

10 Q. I probably said it wrong. Let me try it a  
11 different way. AutoZone programmers created programs  
12 that would run on the OpenServer operating system.  
13 Correct?

14 A. Yes.

15 Q. You actually wrote your own programs at  
16 AutoZone. Correct?

17 A. Yes.

18 Q. And you wrote a lot of them. Is that right?

19 A. Yes.

20 Q. I mean, you have like 8 -- currently somewhere  
21 near like 8 million lines of code or something like  
22 that? Does that sound right?

23 A. I really don't know how much code we have.

24 Q. Okay. But it's -- it's a lot of them.  
25 Correct?

1 A. Right.

2 Q. Now, if I refer to those programs as binaries,  
3 is that also -- do you understand what I mean, or am I  
4 being technically incorrect by doing that?

5 A. The programs that we write are written in  
6 programming languages that are human readable.

7 Q. Which is source code?

8 A. Which is source code. The development tools  
9 turn that source code into binaries, which can then be  
10 loaded and run on the computer itself.

11 Q. So am I correct that you first write the  
12 program in some programming language? Correct?

13 A. Yes.

14 Q. And then that's what's called the source code?

15 A. Right.

16 Q. And then you create -- you either create or  
17 you're given some kind of compiler which is another type  
18 of software which turns that source code into a binary  
19 or an executable that the computer can execute? Is that  
20 right?

21 A. Right.

22 Q. Binaries are like zeros and ones? Is that  
23 right?

24 A. Right.

25 Q. Okay. So this is the part I need your help

1 with: When you go from a -- from the source code to a  
2 binary or an executable, what do you add -- do you add  
3 things to the source code that are not written by you?

4 Do you add pieces of, for example, libraries or  
5 something else that allows the program to run on the  
6 particular operating system that you're dealing with?

7 A. You can link your -- the binary that's created  
8 from your source code with existing library code.

9 Q. Okay. So when you would write an executable  
10 or a binary for OpenServer, if it was the type of  
11 program that needed a library, you would then link it  
12 with one of the OpenServer libraries. Is that right?

13 A. That's correct.

14 Q. Well, now, would those libraries actually be  
15 in OpenServer, or would you have pieces of them that you  
16 could somehow with this developer kit link by using this  
17 compiler?

18 A. It actually can work either way. You can have  
19 library code that already exists on a running machine  
20 and then link with it at the time you try to run the  
21 program, or you can link code from the library directly  
22 into the executable that's created as a result of the  
23 compile.

24 Q. Is the first example that you gave me referred  
25 to as a dynamic library?

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1 don't know if I could say that again.  
 2 (WHEREUPON, THE LAST QUESTION WAS READ  
 3 BACK BY THE COURT REPORTER.)  
 4 A. Yes.  
 5 Q. (BY MR. STONE) Now, when you decided --  
 6 by you, I mean AutoZone, the group you've mentioned  
 7 already at AutoZone -- to migrate to Linux, were you  
 8 going to take these binaries that you'd written to  
 9 work on the SCO OpenServer operating system and  
 10 modify them so they would work on the Linux  
 11 operating system?  
 12 A. No. We were going to recompile the source  
 13 code to run natively on Linux.  
 14 Q. Okay. So you weren't going to take -- because  
 15 the binaries, the final versions, ran on OpenServer.  
 16 Correct?  
 17 A. Right.  
 18 Q. Am I right that it would be rare that you  
 19 would be able to take a binary that ran on OpenServer  
 20 and simply run it on Linux without doing something to  
 21 it?  
 22 MR. STEWART: Object to form. You can  
 23 answer.  
 24 A. I don't know. At the time, we believed that  
 25 many SCO binaries would run natively on Linux. But we

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1 A. (Witness nods affirmatively.)  
 2 Q. Were there thousands of programs?  
 3 A. Counting scripts and so forth, yes.  
 4 Q. And you weren't going to just rewrite all the  
 5 programs and create a completely new way of doing  
 6 business at AutoZone. Correct?  
 7 A. Right.  
 8 Q. The idea was to, with slight modifications,  
 9 take those programs you had already written and use them  
 10 on this new operating system. Correct?  
 11 MR. STEWART: Object to form. You can  
 12 answer.  
 13 A. Yes.  
 14 Q. (BY MR. STONE) Okay. Now, you were  
 15 involved also after this lawsuit was filed in  
 16 reviewing what was actually on the AutoZone servers  
 17 to determine whether SCO code or COFF files had been  
 18 copied on to them. Is that right?  
 19 A. Yes.  
 20 Q. Were you the primary person responsible for  
 21 doing that?  
 22 A. I was responsible for coordinating the  
 23 identification of those files.  
 24 Q. Yeah. Let me clarify. I didn't mean that you  
 25 went and did it all yourself. I meant, you were the top

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1 weren't interested in, you know, risking odd behavior of  
 2 running a non-native format on Linux.  
 3 Q. (BY MR. STONE) And when you're talking  
 4 about a non-native format, are you talking about the  
 5 COFF format versus some other format?  
 6 A. Versus whatever is produced when you develop  
 7 something natively on Linux.  
 8 Q. For example, an ELF file? Would that be one?  
 9 A. That would be one.  
 10 Q. Okay. So you were going to take the source  
 11 code that you used to compile these binaries that ran on  
 12 OpenServer, and then you were going to compile it with a  
 13 different compiler that would now put it in this format  
 14 so it would run on Linux. Is that correct?  
 15 A. Right.  
 16 Q. But you were going to continue to use the  
 17 programs that you'd written to perform essentially the  
 18 same functions that they performed when you were using  
 19 the OpenServer operating system. Is that right?  
 20 A. We were going to modify the source code to the  
 21 extent that the Linux environment differed from the  
 22 OpenServer environment.  
 23 Q. Okay. Let me try that question a different  
 24 way. You'd written all these programs. There were like  
 25 hundreds. Right?

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1 person coordinating the people that were doing it. Is  
 2 that correct?  
 3 A. Yes.  
 4 Q. Now, we've talked about a COFF file. Can you  
 5 tell me what a COFF file is?  
 6 A. I believe it's a format for arranging the  
 7 pieces of a program in its binary form.  
 8 Q. Okay. So -- and that would be a format that  
 9 would work with a particular operating system that the  
 10 compiler was designing to work with. Is that right?  
 11 A. Yes.  
 12 Q. And was it -- am I correct that the COFF file  
 13 format was a format that was used specifically for SCO  
 14 licensed operating systems, to your knowledge?  
 15 A. I don't know about the -- I don't know how  
 16 common a COFF file format is. I believe the acronym  
 17 stands for common object file format, but I'm -- I'm not  
 18 sure about that. So also, I don't know whether a COFF  
 19 format -- COFF formatted file is proprietary format or  
 20 not.  
 21 Q. Okay. Actually, I don't think I asked you  
 22 whether it was a proprietary format. But let me try to  
 23 rephrase my question because I think it may have been  
 24 unclear.  
 25 AutoZone, when it wrote binaries in the COFF file

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1 MR. STEWART: Object to form. You can  
2 answer.  
3 Q. (BY MR. STONE) Would you refer to the  
4 first example that you gave me as a dynamic library  
5 or something else?  
6 A. Typically, I would refer to it as a shared  
7 library.  
8 Q. Okay. Is that because other programs can  
9 share the library?  
10 A. Simultaneously.  
11 Q. Okay. And the other example you gave me,  
12 would that be like a static library?  
13 A. Yes.  
14 Q. So when you use the word statically linked,  
15 that would be linking a static library to source code to  
16 create a binary to run on an operating system? Is that  
17 right?  
18 A. Yes.  
19 Q. And some of the binaries that AutoZone wrote  
20 to run on OpenServer were statically linked. Is that  
21 right?  
22 A. Yes.  
23 Q. So does that mean that the libraries that were  
24 statically linked were somehow separate from the  
25 OpenServer operating system, that they were on a, you

Page 23

1 know, a CD or machine or something, and then you linked  
2 them so they became part of the program?  
3 A. I'm not sure I understand the question.  
4 Q. Probably because -- let me ask it so you can  
5 just answer it. When you link these static libraries,  
6 where do you get them from to link them to the source  
7 code that you were writing?  
8 A. I believe the libraries are a part of the  
9 operating system distribution.  
10 Q. So you could, for example, copy them into your  
11 binary or something like that? Is that what you're  
12 saying?  
13 A. The linker --  
14 MR. STEWART: Object to form. You can  
15 answer.  
16 A. The linker would copy them into the object  
17 that it creates.  
18 Q. (BY MR. STONE) So you'd run this -- this  
19 compiler. And as part of the compiler, it would  
20 find that library and copy it into your executable.  
21 Is that right?  
22 A. On a typical compile with static library,  
23 that's right.  
24 Q. Are you familiar with something called a  
25 header file?

Page 24

1 A. Yes.  
2 Q. Can you tell me what it is?  
3 A. Header files are source code that are made  
4 available for developers' use in writing a software.  
5 Q. So this would be source -- let me go back for  
6 a second. To your knowledge, did AutoZone have a source  
7 code license for all the source code to OpenServer?  
8 A. No.  
9 Q. So do I take your answer to mean that some of  
10 the sources -- you had a license to use some of the  
11 source code from OpenServer or that was proprietary to  
12 SCO, to use these header files in your -- creating your  
13 binaries?  
14 A. Yes.  
15 Q. And in some cases, you would use header files  
16 in the binaries when you did this compiling process? Is  
17 that right?  
18 A. Yes.  
19 Q. So that's another thing that you might link to  
20 your source code that you wrote to create a binary. I  
21 probably -- link is probably the wrong word.  
22 A. Yes.  
23 MR. STEWART: Yes, it's the wrong word or  
24 yes to the question?  
25 Q. (BY MR. STONE) Yes, it's the wrong

Page 25

1 word --  
2 A. Yes to the question.  
3 Q. Yes to the question. Okay. Other than  
4 libraries and header files, was there anything else that  
5 AutoZone licensed from SCO that you would have linked  
6 into the binaries when you create -- when you created  
7 them that wasn't written by AutoZone?  
8 MR. STEWART: Object to form. But you  
9 can answer.  
10 Q. (BY MR. STONE) If you don't understand  
11 it, I can --  
12 A. I can't think of anything --  
13 Q. Okay.  
14 A. -- other than headers and libraries.  
15 Q. Okay. So you understood that you had a  
16 license that allowed you to use these header files and  
17 these libraries to create your binaries to run on the  
18 OpenServer operating system. Correct?  
19 MR. STEWART: I'm going to object to the  
20 extent it calls for a legal conclusion --  
21 MR. STONE: Right.  
22 MR. STEWART: -- but allow him to testify  
23 as to his knowledge or understanding.  
24 A. I'm sorry. Say that again.  
25 MR. STONE: Could you read it back? I

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1 format, was writing them to operate on the open SCO  
2 licensed OpenServer operating system. Right?  
3 A. Yes.  
4 MR. STEWART: Object to form.  
5 Q. (BY MR. STONE) Yes?  
6 A. Yes.  
7 Q. Okay. And different operating systems often  
8 use different file formats? Is that what you call them,  
9 file formats?  
10 A. Yes.  
11 Q. And Linux, you've told me, used a different  
12 file format, one of which was ELF. Is that right?  
13 A. Yes.  
14 Q. Do you know what ELF stands for?  
15 A. I do not. Or if I know, I can't remember  
16 right now.  
17 Q. Does L stand for linking?  
18 A. I don't remember.  
19 Q. Just stuck in my head. Okay. Now, would it  
20 be fair to say that if you didn't have the source code  
21 from which a binary was created, you couldn't recompile  
22 the binary in a different file format?  
23 A. If you don't have the source code, yeah, you  
24 can't recompile for another environment.  
25 Q. And some of the binaries that AutoZone used

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1 were licensed from third parties, and AutoZone did not  
2 have access to the source code. Is that correct?  
3 A. That's true.  
4 Q. So it, therefore, couldn't recompile those  
5 binaries?  
6 A. Right.  
7 Q. Okay.  
8 MR. STONE: Do you have the  
9 interrogatories?  
10 Q. (BY MR. STONE) By the way, if you get  
11 tired and need to take a break for some reason or  
12 another, you know, you're not a prisoner here. You  
13 can let me -- let me know. Okay?  
14 A. Thank you.  
15 MR. STONE: Would you mark that as --  
16 what's the next number?  
17 MR. IANNICELLI: 33.  
18 MR. STONE: Celmer 33. I'm just going in  
19 order of the exhibits, you know, since we marked 31 of  
20 them at Greer.  
21 MR. STEWART: Okay. Great.  
22 MR. STONE: Okay. But I'm putting the  
23 name on it so we know whose --  
24 MR. STEWART: I was curious about that.  
25 (WHEREUPON, THE ABOVE-MENTIONED

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1 DOCUMENT WAS MARKED AS EXHIBIT NO. 33,  
2 AND IS HERETO ATTACHED.)  
3 Q. (BY MR. STONE) Okay. I'll show you what  
4 I have marked as Celmer Exhibit 33, Mr. Celmer, and  
5 ask you if you've seen that before.  
6 A. I think I have.  
7 Q. I hope you have, because I think you're the  
8 one who gave the answers for some of these. But we'll  
9 get into it in a minute. I'll represent to you that  
10 these are responses to interrogatories and request for  
11 production that we served upon your counsel in this  
12 case. Take a look at Interrogatory Number 3.  
13 MR. STEWART: It starts on top of Page 5.  
14 Q. (BY MR. STONE) It starts on the top of  
15 Page 5. Correct. It says, States whether you or  
16 anyone on your behalf or at your direction copied  
17 all or any part of the SCO OpenServer operating  
18 system or any other Unix-based operating system or  
19 used any part of a SCO OpenServer operating system  
20 or any other Unix-based operating system with a  
21 Linux-based operating system, including but not  
22 limited to any SCO OpenServer for Unix-based  
23 software, source code, object code, libraries and/or  
24 programming tools, and identify any aspect of the  
25 SCO OpenServer operating system and any other

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1 Unix-based operating system that was copied or was  
2 used with a Linux-based operating system by you or  
3 on your behalf or at your direction. Do you see  
4 that?  
5 A. I do.  
6 Q. Have you seen that question before?  
7 A. I don't specifically remember seeing this  
8 question --  
9 Q. Do you recall --  
10 A. -- before.  
11 Q. I'm sorry. Do you recall whether or not you  
12 were the person that was requested to look into this and  
13 answer this question?  
14 A. In general, I'm not sure I was called upon to  
15 answer specifically any of these questions. Rather, I  
16 was given a set of tasks around gathering data that  
17 would provide the answers.  
18 Q. Okay. Well, let's try it this way: If you  
19 take a look at the response, it says, AutoZone copied  
20 two third-party applications, CompX and DecompX, from  
21 its OpenServer installation on to its Linux  
22 installation. You see that?  
23 A. Yes.  
24 Q. Were you the person who went back and looked  
25 for CompX and DecompX on AutoZone's Linux installation?

1 A. I went and looked for any COFF files on our  
 2 store system.  
 3 Q. And were Compx and Decompx two of the files  
 4 that you found?  
 5 A. Yes.  
 6 Q. Okay. And then it goes on to say, because  
 7 AutoZone does not have the source code for these  
 8 programs, it cannot determine whether any OpenServer  
 9 libraries were compiled with the software or not.  
 10 AutoZone has not used Compx or Decompx programs since  
 11 2003. Do you see that?  
 12 A. Yes.  
 13 Q. Now, is that what we were talking about  
 14 before, Compx and Decompx programs are third-party  
 15 programs for which AutoZone didn't have access to the  
 16 source code?  
 17 A. That's right.  
 18 Q. And these were programs that were written in  
 19 the COFF format to work on OpenServer? Is that correct?  
 20 A. I believe they were COFF files, yes.  
 21 Q. And how did you determine that Compx or  
 22 Decompx programs had not been used since 2003?  
 23 MR. STEWART: Object to form. You can  
 24 answer.  
 25 A. I'm not sure I can place this date. But the

1 use of Compx and Decompx became unnecessary with an  
 2 upgrade to our distribution center software.  
 3 Q. (BY MR. STONE) Do you know when that  
 4 upgrade occurred?  
 5 A. I do not. I believe it's a 2003 date, but I  
 6 don't know for sure when that happened.  
 7 Q. So you don't believe you were the person that  
 8 checked specifically the date this upgrade occurred, as  
 9 you sit here today?  
 10 A. I don't know if I provided that date. I do  
 11 remember looking into what changes were made on the  
 12 distribution center software side that made it  
 13 unnecessary for us to use Compx and Decompx. And I  
 14 certainly could have, you know, found this date and  
 15 provided it. I don't specifically remember whether I  
 16 did that.  
 17 Q. That's fine. Can you tell me what Compx and  
 18 Decompx were intended to do, those programs?  
 19 A. These programs performed two primary  
 20 functions. One is to compress and decompress data to  
 21 make it easier to transfer and house. But the other  
 22 feature they have is the translation of file formats,  
 23 for example, from EBCDIC to ASCII or Big Indian to  
 24 Little Indian, that sort of thing.  
 25 Q. So they can also help you translate formats?

1 Is that what you said?  
 2 A. Yes.  
 3 Q. And would it be fair to say you moved -- you  
 4 moved -- AutoZone moved to Linux or migrated to Linux  
 5 some time around 2000? Is that right?  
 6 A. I believe that's right.  
 7 Q. So from 2000 to 2003, Compx and Decompx were  
 8 used by AutoZone on its servers. Correct?  
 9 A. Yes.  
 10 Q. And those were COFF files. Correct?  
 11 A. Yes.  
 12 Q. Those were files that you did not recompile in  
 13 the Linux format. Correct?  
 14 A. That's right.  
 15 Q. Now, am I also correct that this statement  
 16 here, you later learned to be inaccurate and in fact  
 17 that Compx and Decompx were being used on at least some  
 18 of your store servers after 2003?  
 19 A. Yes.  
 20 Q. And you learned that because when you tried to  
 21 delete those files from your 3500 store servers, 650 of  
 22 the machines had their replenishment system fail. Is  
 23 that right?  
 24 A. I believe that's right.  
 25 Q. So I take it you concluded from that, that

1 Compx and Decompx were in some way being used by those  
 2 650 machines. Is that right?  
 3 A. That's right.  
 4 Q. Can you tell me when those files were deleted  
 5 from your 3500 store systems?  
 6 A. I don't remember the dates.  
 7 MR. STONE: You know, why don't we just  
 8 take a five-minute break.  
 9 VIDEO SPECIALIST: Off the record 9:53.  
 10 (SHORT BREAK)  
 11 VIDEO SPECIALIST: Back on the record at  
 12 10:05. This is the beginning of Tape Number 2.  
 13 Q. (BY MR. STONE) Mr. Greer [sic], would it  
 14 be fair to say that when you were doing this  
 15 migration to Linux for AutoZone and the people at  
 16 AutoZone that were performing it, you weren't  
 17 focused on the legal issue of whether you could use  
 18 SCO libraries or code in the programs that you were  
 19 porting to Linux? You were concerned with making  
 20 the programs function efficiently on Linux.  
 21 A. That's true.  
 22 Q. And would it be also true that -- how many  
 23 programs do you have working on this migration to Linux  
 24 when you had -- at its height, let's say?  
 25 A. Well, it was a fairly long process, and we had



1 other things that we had to do. So I imagine at its  
2 height, there were 12 or 15 developers working on it  
3 simultaneously. But that -- that burst of energy, I  
4 don't know how long that would have lasted. It was more  
5 of a lengthy process with relatively few people cycling  
6 in and out of the project.

7 Q. Were these developers located in different  
8 locations around the country, or were they all in the  
9 same building or something else?

10 A. They all would have been in our building, I  
11 think.

12 Q. Was anybody monitoring to make sure that these  
13 various developers were not copying COFF binaries when  
14 they were doing the porting to Linux onto the Linux  
15 machine?

16 A. I don't know.

17 Q. You weren't doing it. Is that fair to say?

18 A. I was not doing it.

19 Q. I'm going to refer you back to an exhibit.

20 MR. STONE: I believe it's 32? Is that  
21 right?

22 MR. IANNICELLI: 33.

23 Q. (BY MR. STONE) 33, which is your -- the  
24 first set of interrogatory answers that we received  
25 from you in this case. And we already referred to

1 operating system on the store server, they would call  
2 this support group and ask them their question?

3 A. Yes.

4 Q. Where was the support group located?

5 A. In our corporate offices.

6 Q. Is that in Memphis?

7 A. Yes.

8 Q. And would these programs be on the -- have  
9 been on the store servers, or would they have been on  
10 some other server or both?

11 A. Probably both.

12 Q. So these would have been programs that were  
13 utilized by SCO store support group in dealing with  
14 support questions from the field? Is that right?

15 A. Yes.

16 Q. And so if you copied these programs on to your  
17 store servers, it would have been on all 3500 machines?  
18 Is that right?

19 A. Yes.

20 Q. Then it says, And programs for the sorting  
21 module of the store management system. What is the  
22 sorting module of the store management system?

23 A. AutoZone uses a file access product that  
24 creates indexes into our data files. And in the  
25 terminology of that product, the creation of an index

1 the statement about CompX and DecompX before the  
2 break. Do you recall that?

3 A. Yes.

4 Q. I'm on Page 5. You go on to say in this  
5 response, In preparing its response to this  
6 interrogatory, AutoZone discovered a few minor programs  
7 that were originally compiled on OpenServer had errantly  
8 been copied on to its Linux image, an image that  
9 contains approximately 700 programs. Is that right?

10 A. Yes.

11 Q. Did you later learn that it was more than a  
12 few minor programs that had been copied on to the store  
13 machines?

14 A. I'm not sure of the timing of this document.  
15 But we went through two investigative exercises, and we  
16 did find additional files the second time.

17 Q. Okay. I'm going to go through some of those  
18 with you and see if we can't understand what you did.  
19 Now, again, in this response to Interrogatory Number 3,  
20 you say that several of these programs are programs for  
21 the SCO store support group. Can you tell me what the  
22 SCO store support group is?

23 A. I believe this refers to our help desk which  
24 is the front line of technical support for our stores.

25 Q. So if somebody had a problem with the

1 file is called sorting because it makes this pile look  
2 as if it's been sorting.

3 Q. So this is something that creates indexes of  
4 the files that are on the store machines? Is that  
5 right?

6 A. That's right.

7 Q. And it says AutoZone has not used this since  
8 it converted to Linux. Was that an accurate statement  
9 or --

10 A. I believe that is an accurate statement.

11 Q. And what does AutoZone now use to create these  
12 indexes?

13 (BRIEF INTERRUPTION)

14 Q. (BY MR. STONE) Go ahead.

15 A. We still write individual programs that  
16 understand these data formats and create the indexes. I  
17 believe what this statement means is that these  
18 particular programs that create the indexes for these  
19 particular data files have not been used.

20 Q. Okay. So you still do -- you do something  
21 which performs this function, but you don't believe  
22 these particular programs have been used since  
23 converting to Linux?

24 A. I don't believe so.

25 Q. And how did you determine that they had not

1 been used since you converted to Linux?

2 A. Well, there are --

3 MR. STEWART: Object to form. You can  
4 answer.

5 A. There are two things. One is, these files --  
6 let me see if I can remember correctly. There are  
7 really three issues. One is that these files very  
8 rarely change. And when I say very rarely, I mean, you  
9 know, they might change every several years.

10 Another issue is that when we change these files,  
11 we know they have to be changed everywhere because it's  
12 the same file in every store. And so what we typically  
13 do is include that file as part of what we call a  
14 release, just basically attached to our system. And so  
15 we send out this file as a -- we send it out intact.  
16 There's no need to run the program to create the index  
17 because we're sending the index to the store.

18 And then the third issue is I'm not certain these  
19 programs would run on our installation of Linux.

20 Q. (BY MR. STONE) Have you tried to run  
21 them?

22 A. I tried to run some of the programs that we  
23 found just out of curiosity. Many of them would not  
24 run. I don't remember specifically whether these would  
25 run or not.

1 Q. Did some of them run that you tried to run?

2 A. Some of them -- some of them tried to run.  
3 However, some of them were also pre-Y2K programs. So  
4 even had they run, they would not have been able to  
5 correctly interpret the data. I don't remember whether  
6 these were pre-Y2K or not.

7 Q. It says here, the next sentence, eight of the  
8 programs are still in sporadic use as part of the  
9 sorting module for AutoZone store management system. So  
10 there were eight programs that still were being used?  
11 Is that right?

12 A. The sporadic use probably refers to these same  
13 programs. Because in the event that we have file  
14 corruption, if it became necessary for the help desk to  
15 recreate the index, this is how they would have tried to  
16 do it.

17 Q. So would it be fair to say that you made a  
18 guess about whether or not, you know, an educated guess,  
19 about whether these programs have been used, but you  
20 have no way to know since you converted to Linux whether  
21 these programs were or were not used by servers at  
22 AutoZone?

23 MR. STEWART: And by you, do you mean the  
24 witness?

25 MR. STONE: I just mean the witness.

1 Yes.

2 A. If we try to run these programs and find out  
3 that they won't load or run, then clearly, they could  
4 not have been used. Barring that, it is -- if they will  
5 run and if they will run correctly, then it is possible  
6 that they may have been used.

7 Q. (BY MR. STONE) And you also made an  
8 educated guess that CompX and DecompX had not been  
9 used since 2003, and you turned out to be wrong  
10 about that. Correct?

11 A. That's correct.

12 Q. Okay. You go on to say that AutoZone has  
13 recompiled the programs in Linux, and AutoZone is now in  
14 the process of deleting from its store image all the  
15 OpenServer compiled programs that it no longer uses and  
16 replacing the eight OpenServer compiled sort programs  
17 with Linux compiled versions. And it says AutoZone  
18 anticipates that testing and rule out will be completed  
19 within one week.

20 Was it you who carried out these -- under your  
21 direction, carried out this work?

22 A. Yes.

23 Q. Okay. When you say AutoZone recompiled the  
24 programs in Linux, can you be specific about which  
25 programs you recompiled?

1 A. I don't remember the names of the programs,  
2 but they were the programs that were identified by our  
3 first investigation of COFF files.

4 Q. And how exactly did you go about recompiling  
5 them in Linux?

6 A. We simply checked the source code out of our  
7 source code repository on to our Linux development  
8 machine and invoked the GCC compiler to create the  
9 binaries for Linux.

10 Q. And did you have to link that source code with  
11 anything other than whatever that compiler linked it  
12 with?

13 MR. STEWART: Object to form. You can  
14 answer.

15 A. Yes. To the extent that we have libraries of  
16 code that understand the file formats themselves. So we  
17 had our source code which contains the logic for  
18 creating the index file.

19 Q. (BY MR. STONE) Right.

20 A. We have a repository of code that understands  
21 these data files formats, these index files and data  
22 files, that it was necessary to link with that code so  
23 that our logic would work. And it was necessary to link  
24 with operating system libraries so that the program  
25 would run at load time.

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1 Q. And the operating system libraries that you  
2 linked with, were those ELF libraries?  
3 A. Yes.  
4 Q. Were any of them statically-linked libraries?  
5 A. I don't think so. No.  
6 Q. Do you know what a flag is?  
7 A. A flag?  
8 Q. Yes. I don't mean the one that you --  
9 A. Right.  
10 Q. -- raise up and salute.  
11 A. In common usage, it's a small indicator of  
12 something. It typically is an on/off kind of deal.  
13 Some functionality is enabled or disabled.  
14 Q. When you write a source code to create a  
15 binary, do you put flags in it?  
16 A. Yes.  
17 Q. And what is -- what is the purpose of those  
18 flags?  
19 A. There can be many purposes for flag. You can  
20 allow the program itself to take some action or not,  
21 depending on the condition of that flag, which  
22 represents some business meaning. You can also create  
23 the ability for the compiler itself to determine which  
24 code should be compiled and which code should not be  
25 compiled into an object.

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1 Q. So you could put in a flag that tells the  
2 compiler something. Is that right?  
3 A. That's right.  
4 Q. To do or not do something?  
5 A. That's right.  
6 Q. When you recompile these programs to run on  
7 Linux, do you have to go in and change flags in the  
8 source code because you were using a different compiler?  
9 A. Sometimes the -- either the program logic or  
10 the compiler itself or the operating system will demand  
11 different things. And the presence of these flags  
12 allows us to have one source code that is understandable  
13 by either compiler.  
14 Q. I'm trying to figure out what you just said.  
15 You said the presence of these flags allows the --  
16 allows the operating system? Say it again. I'm sorry.  
17 A. Just as the source code describes a set of  
18 actions that the program should take --  
19 Q. Right.  
20 A. -- you can use these flags to instruct the  
21 compiler which pieces of source code it should compile  
22 versus which pieces of source code it should ignore.  
23 Q. Okay. So for example -- I think I understand  
24 this now. So you could write source code which might be  
25 compiled to work on Linux or work on OpenServer but just

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1 have different flags to tell the compiler which pieces  
2 of the source code to use? Is that right?  
3 A. That's right.  
4 MR. STONE: Can you mark this as the next  
5 exhibit?  
6 (WHEREUPON, THE ABOVE-MENTIONED  
7 DOCUMENT WAS MARKED AS EXHIBIT NO. 34,  
8 AND IS HERETO ATTACHED.)  
9 Q. (BY MR. STONE) Can you take a look at  
10 what's been marked as Exhibit 34. It's an e-mail  
11 that was produced to us by your counsel, which we  
12 believe is e-mail relating to the porting process.  
13 But all I really want you to do is read it. And if  
14 you can explain to me, explain to me what these  
15 people are talking about in this e-mail.  
16 A. I think this e-mail is a suggestion by one of  
17 our contractors for a way to simplify the port.  
18 Q. When you say contractors, what do you mean  
19 contractors?  
20 A. Just one minute.  
21 Q. Sure. Take your time.  
22 (Brief pause )  
23 A. Okay. I'm sorry. I remember either this  
24 e-mail or one very much like it. Because there was some  
25 concern about how we were going to manage to compile

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1 things two ways. The context for this one, though, is  
2 the Y2K project. We needed to be able to compile our  
3 code in pre-Y2K format in order to support our existing  
4 operation and also in post-Y2K format in order for the  
5 preparation of the rollout of the software and data that  
6 would be used subsequent to Y2K.  
7 Q. And that's what you believe this e-mail is  
8 talking about, how to accomplish that?  
9 A. That's right. We wanted to make things as  
10 simple for the developers as possible. Because it's  
11 much easier to have the system always work the same way  
12 rather than educate our entire staff to do things one  
13 way under a certain set of circumstances and a different  
14 way under another set of circumstances.  
15 And so we were trying to figure out how we could  
16 allow our developers to do nothing more than issue the  
17 same make command that they always have issued in the  
18 past but allow the system to intelligently determine  
19 what kind of compile they really needed to do and which  
20 set of AutoZone include files they needed to use for  
21 that compile.  
22 Q. Let me ask you a question about what you said  
23 in your -- I think it was the previous answer to this  
24 answer. Am I correct that with some of these programs  
25 that you recompiled in Linux, rather than rewriting the

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1 source code, you added source code and changed flags or  
2 added flags so that the source code could run both on  
3 OpenServer -- I mean, they could be compiled on both  
4 OpenServer and Linux? Is that right?  
5 A. That's right.  
6 Q. So you would go in and you'd make these  
7 modifications to your source code, and then the compiler  
8 would -- it would tell the compiler take like this part  
9 if you're going to do it on Linux and take this part if  
10 you're going to do it on OpenServer. Is that right?  
11 A. That's right.  
12 Q. Did you do that with most of the programs, or  
13 was that just only in a few rare cases or something  
14 else?  
15 A. I think that probably half of our programs,  
16 just programs, needed those kinds of flags. That's just  
17 a guess, though, really.  
18 Q. And you don't remember how many programs it  
19 was that you actually ported?  
20 A. I'm sorry. I don't remember.  
21 Q. Do you remember like less than a thousand,  
22 more than a thousand?  
23 A. I'm sure it was more than a thousand if you  
24 include scripts, which I do because we had to port them.  
25 Q. Okay. When you include scripts, was it more

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1 than 2,000?  
2 A. I don't think so.  
3 Q. So your --  
4 A. I really don't know.  
5 Q. -- best recollection would be somewhere  
6 between a thousand and 2,000 if you include scripts. Is  
7 that right?  
8 A. Yes. But I'm not very confident in that  
9 answer.  
10 Q. I understand you're giving me the best of your  
11 recollection. Could you move to Page 7 of Exhibit 33,  
12 please. You see there it says interrogatory number --  
13 by the way, if you see Interrogatory Number 6, it says  
14 identify each person who provided the information for  
15 use in answering these interrogatories. And the  
16 response is Bob Celmer. So if you hadn't seen these  
17 before, I would be a little concerned. But you believe  
18 you either saw them or the substance of what was in them  
19 was communicated to you. Is that fair to say?  
20 MR. STEWART: I object to the question  
21 because that's not a complete response to  
22 Interrogatory Number 6. But subject to that  
23 objection, you can answer.  
24 Q. (BY MR. STONE) That's true. It also  
25 says -- I want to be fair. It says, additionally,

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1 certain information used to respond to these  
2 interrogatories is derived from information provided  
3 to SCO by Jim Greer during his deposition.  
4 A. I'm not sure whether this is the specific  
5 document I have seen before. But these questions and  
6 responses are not unfamiliar to me.  
7 Q. Okay. So Interrogatory Number 7 says, state  
8 whether you have used any static-shared libraries and  
9 any dynamic-shared libraries, and if so, identify each  
10 of them. Then it goes on to ask other questions about  
11 them. Do you see that?  
12 A. Yes.  
13 Q. Then there's a bunch of objections. And it  
14 says, Subject to and without waiving the foregoing  
15 objections, AutoZone states that it has not used  
16 OpenServer static-shared libraries or dynamic-shared  
17 libraries based upon definitions of those terms  
18 contained on SCO's website. Do you see that?  
19 A. Yes, I do.  
20 Q. Do you now know that statement to be  
21 inaccurate?  
22 A. I now know that CompX and DecompX were being  
23 used when I previously did not believe that they were  
24 being used.  
25 Q. Okay.

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1 A. And if CompX and DecompX contained library  
2 code, then that exception -- yeah, that statement would  
3 not be true.  
4 Q. Wasn't AutoZone using some COFF sort files  
5 that were loaded on to its Linux image for some period  
6 of time?  
7 A. Are you referring to the eight that we talked  
8 about a minute ago?  
9 Q. I don't know because it's confusing because I  
10 got three different responses from you and AutoZone, and  
11 it's hard to tell whether they're referring to the same  
12 responses or not. So I can go through the responses,  
13 and we'll try to clarify that. But I guess my question  
14 stands. And you know, whichever ones you're referring  
15 to, just tell me, and you can answer it that way.  
16 A. I'm sorry. Would you repeat the question,  
17 please.  
18 Q. That there were nine COFF sort files that were  
19 loaded on to the Linux image that were on 3500 of your  
20 machines until they removed -- they were removed some  
21 time in October of 2004, that were being used in some  
22 form.  
23 A. I think that refers to the same files that we  
24 were just talking about earlier. And I don't know that  
25 that or whether those files were being used.

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1 Q. You just don't know one way or the other  
 2 whether they were being used. Is that correct?  
 3 A. I don't know one way or the other whether they  
 4 were being used. But I do know that they were on the  
 5 image machine and that's how it got propagated to all  
 6 those stores.  
 7 Q. And do you also know whether any of those  
 8 files contains statically-linked libraries?  
 9 A. I believe those programs were statically  
 10 linked under OpenServer.  
 11 Q. So if they were being used, then AutoZone  
 12 would have been using statically-linked libraries.  
 13 Correct?  
 14 A. Yes.  
 15 Q. Okay. Do you not -- I'm trying to understand  
 16 the statement in here about static-shared libraries. Do  
 17 you not use the term static-shared libraries?  
 18 A. I have not used the term static-shared  
 19 libraries.  
 20 Q. So what do you call those libraries that  
 21 you -- that AutoZone linked statically to its source  
 22 code when it was creating OpenServer binaries?  
 23 A. I just call them static libraries.  
 24 Q. Okay. So when you were answering this  
 25 question, were you answering it based on some

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1 distinction you were making between a static-shared  
 2 library and a static library?  
 3 MR. STEWART: Object to form. You can  
 4 answer.  
 5 Q. (BY MR. STONE) Or were you talking about  
 6 what you understood to be the libraries that  
 7 AutoZone had linked when it created binaries to run  
 8 on OpenServer?  
 9 MR. STEWART: Same objection.  
 10 A. I frankly don't know because I've had to  
 11 change my definition of what this term means. I don't  
 12 know when that change came about, to be honest with you.  
 13 Q. (BY MR. STONE) Well, would it be fair to  
 14 say that when you first responded to discovery  
 15 request and did what you call your first run through  
 16 of the AutoZone files to determine what COFF files  
 17 might be there, you believed that no static  
 18 libraries that you had linked when you created these  
 19 binaries to work on OpenServer had been used in the  
 20 Linux operating system at AutoZone.  
 21 A. That's right.  
 22 Q. And you later found out that that may not be  
 23 true as to Decompx and Compx, and you don't know whether  
 24 it's true as to the nine COFF sort files that we've been  
 25 discussing. Is that correct?

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1 A. That's correct.  
 2 Q. Okay.  
 3 MR. STONE: Mark this as the next  
 4 exhibit, please.  
 5 (WHEREUPON, THE ABOVE-MENTIONED  
 6 DOCUMENT WAS MARKED AS EXHIBIT NO. 35,  
 7 AND IS HERETO ATTACHED.)  
 8 Q. (BY MR. STONE) Mr. Celmer, I'm showing  
 9 you what I've marked as Exhibit 35, which is  
 10 denominated as AutoZone's responses to our first set  
 11 of requests for admissions. Actually, to Defendant  
 12 AutoZone, Inc. and supplemental interrogatory. So I  
 13 guess I guess it's both. You were answering our  
 14 requests for admissions, and you were also  
 15 responding to a supplementary interrogatory that we  
 16 had sent you. Do you recall seeing this document  
 17 before?  
 18 A. Yes, or one just like it.  
 19 Q. Okay. Refer you to Page 5. Request for  
 20 admission number 10 requests, Admit that you copied,  
 21 referenced, or relied upon some portion or part of the  
 22 Unix-based operating system as part of your conversion  
 23 from the use of a Unix-based operating system to the use  
 24 of a Linux-based operating system. You see that?  
 25 A. Yes.

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1 Q. And then the response was, AutoZone denies  
 2 that it referenced or relied upon any portion of a  
 3 Unix-based operating system as part of AutoZone's  
 4 conversion of its store servers to Linux. AutoZone  
 5 admits that it errantly copied a few minor programs to  
 6 its Linux store image that were compiled under  
 7 OpenServer and therefore included some code from five  
 8 basic OpenServer static libraries. AutoZone is in the  
 9 process of deleting or recompiling all of these files.  
 10 Process should be completed within one week. Do you see  
 11 that?  
 12 A. Yes.  
 13 Q. Would it be fair to say that you later learned  
 14 that there were other files that had been copied on to  
 15 AutoZone's Linux operating system that you did not know  
 16 about when you responded to this request for admission  
 17 number 10?  
 18 MR. STEWART: Objection. Asked and  
 19 answered.  
 20 Q. (BY MR. STONE) You can answer.  
 21 A. Yes.  
 22 Q. And in fact, you found that there were 1681  
 23 COFF files on 387 AutoZone store machines at a later  
 24 date. Correct?  
 25 A. That sounds about right.

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1 Q. Now, this reference to the few minor programs,  
2 are we again talking about the 19 unused COFF files and  
3 9 used COFF files that you advised SCO about, or are we  
4 just talking about the 8 or 9 files we've been talking  
5 about previously?  
6 MR. STEWART: Object to form. You can  
7 answer.  
8 A. I think this refers to all of those.  
9 Q. (BY MR. STONE) So did you go through and  
10 determine that some of these files had OpenServer  
11 static libraries statically linked to them?  
12 A. I think so.  
13 Q. I'm just referring to the statement which says  
14 it included some code from five basic OpenServer static  
15 libraries. And I'm asking you were you the person who  
16 either determined or caused someone to determine that  
17 that was the case.  
18 A. I did investigate what might have been linked  
19 into these programs. I'm not certain that this response  
20 is a result of those investigations.  
21 Q. Because you don't recall what point in time  
22 that happened with respect to when this response was  
23 sent to us.  
24 A. That's right.  
25 Q. Okay.

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1 MR. STONE: Just for the record, this  
2 response is dated October 20th, 2004.  
3 Q. (BY MR. STONE) Can you tell me what the  
4 five basic OpenServer static libraries that are  
5 referred to in request for admission response  
6 Number 10 are?  
7 MR. STEWART: Object to form. You can  
8 answer.  
9 A. No. I'm sorry. I don't know what they are.  
10 Q. (BY MR. STONE) Is that written down  
11 somewhere to your knowledge that -- did you go  
12 through and write down the different OpenServer  
13 static libraries that you determined were linked to  
14 files which had been copied on to the Linux AutoZone  
15 server?  
16 MR. STEWART: Object to form. You can  
17 answer.  
18 A. I don't know. But because we've quoted an  
19 exact number here, it's likely that it was written down  
20 some place.  
21 MR. STONE: I'll make a request, and  
22 we'll follow it up with a letter to get that  
23 information of which libraries are being referenced.  
24 MR. STEWART: And just for the record, my  
25 silence is not an indication that we will provide

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1 those. We'll review it when we get your letter.  
2 MR. STONE: As we've done in the past,  
3 I'll make requests; I'll follow them up with letters.  
4 And I presume that your silence does not mean that  
5 you're necessarily going to give me what I'm asking  
6 for.  
7 MR. STEWART: Fair enough.  
8 MR. STONE: Okay.  
9 Q. (BY MR. STONE) When you -- when you went  
10 through and found out that these programs had been  
11 copied on to the Linux image, could you determine  
12 who actually copied them?  
13 A. Sometimes, yes; most of the time, no.  
14 Q. How could you determine?  
15 A. I remember there were some small number of  
16 programs, you know, two, three, four, something like  
17 that, that were copied into the Linux image by mistake  
18 as part of the creation of one of our software releases.  
19 The -- I don't remember the name of the application.  
20 But at that time, we were having to create two releases,  
21 one for our stores and one for a small set of Linux test  
22 stores.  
23 And whatever this release was called, there was  
24 another version called Linux, whatever that name is.  
25 And it was supposed to have the Linux versions of those

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1 programs, and it had the SCO version of those programs.  
2 And so that release was sent to the stores from which we  
3 made -- subsequently made the images.  
4 Q. And that's the 3500 stores?  
5 A. As I remember it, it was during our test  
6 period where there were only four stores.  
7 Q. So you believe that release was sent to the  
8 four stores?  
9 A. That's right.  
10 Q. And how many -- how many COFF files were in  
11 that release?  
12 A. I believe there was a number like two or three  
13 or four.  
14 Q. If you'll turn to Page 7. You see it's a --  
15 request is that you admit you copied binary files from a  
16 SCO OpenServer operating system. And your response was,  
17 AutoZone denies copying binary files from a SCO  
18 OpenServer operating system to a computer running in  
19 Linux-based operating system except inasmuch as binary  
20 files from an SCO OpenServer operating system were  
21 statically linked inside errantly copied non-operating  
22 system binary files with eight minor sort files. Do you  
23 see that?  
24 A. Yes, I do.  
25 Q. And this is again the response that we also

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1 referred to in your answer to interrogatories that you  
2 later learned to be inaccurate, correct, that there were  
3 additional files that you did not include in this  
4 response. Correct?  
5 A. There were additional files we didn't know  
6 about. That's right.  
7 Q. And then if you look at request for admission  
8 Number 21, which is on Page 8 at the bottom, and your  
9 response on Page 9, am I correct that again, we're  
10 referring to those eight files that we've discussed at  
11 some length in this response and at that time, you  
12 didn't realize that there were other files that you  
13 later located. Is that right?  
14 A. That's right.  
15 Q. So this admission -- this response to this  
16 admission is inaccurate. And today, as you sit here,  
17 you would modify it. Correct? It's incomplete is a  
18 better way of putting it.  
19 A. It is incomplete.  
20 Q. Can you explain to me what computers exist at  
21 AutoZone, where they're located, and what operating  
22 system they have on them? I mean, is everything at --  
23 and let me be clear what I mean by that. Is everything  
24 at AutoZone on a Linux operating system, or are there  
25 computers that use other operating systems, and if so,

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1 what are they?  
2 A. We have a fairly broad IT organization. So we  
3 have quite a lot of computers. For example, we have  
4 desktop computers, which might be diskless workstations.  
5 They may have an imbedded operating system. We have  
6 Windows-based PCs on desktops. We have Windows servers.  
7 We have IBM servers running AIX. We have a mainframe  
8 computer running IBM's MVS operating system. We have  
9 Linux servers. We have a number of computers that serve  
10 security functions such as firewalls. And of course, we  
11 have the stores which are running Linux.  
12 Q. So you've got the 3500 stores that are out  
13 there, and they have a serve -- each store has a server  
14 in it which is running Linux? Is that right?  
15 A. That's right.  
16 Q. And do they then have workstations that work  
17 off of that server, or is it just that one server that's  
18 in the store that really runs the Linux?  
19 A. The hardware layout of our stores is changing.  
20 Historically, we had a server which ran all the  
21 programs. And attached to that server were dumb  
22 terminals and a few cash registers which themselves were  
23 some variety of PC with extra circuitry to support cash  
24 drawers and display bars and so forth. Those machines  
25 ran DOS. And all they did was operate the hardware and

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1 run a terminal -- terminal immolator. The program  
2 itself was run on the central server.  
3 That arrangement is changing today in that we do  
4 have more thin clients and fewer dumb terminals and --  
5 struggling for the name of the device -- hand-held  
6 computers that use wireless networking and connect with  
7 the server.  
8 Q. You mean, trios or something or --  
9 A. Actually, I believe Symbol Technologies makes  
10 the device. But they are a PDA like device.  
11 Q. So you use some kind of satellite to send  
12 programs out or to send images out to these Linux  
13 stores? Is that right?  
14 A. The network connectivity that we have with  
15 almost all of the stores is satellite.  
16 Q. And how long have you had that?  
17 A. It's been a long time. Almost ten years,  
18 probably.  
19 Q. So you had it when you had OpenServer.  
20 Correct? When you were using OpenServer as your  
21 store -- on your store machines?  
22 A. Yes.  
23 Q. And so when you would send images to your  
24 store machines or new releases, you would do it with  
25 this satellite? Is that right?

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1 A. That's right.  
2 Q. So you would create it in your -- your IT  
3 department would create it in Memphis, and then you'd  
4 beam it out over the satellite to the various stores?  
5 A. Right.  
6 Q. Did anybody ever go to the stores to then see  
7 whether the servers were receiving it correctly, or how  
8 did you determine that it worked?  
9 A. Our release process involves a number of  
10 steps. So when you say how did you verify whether it  
11 works, it's sort of a long answer because it's a  
12 complicated process.  
13 We begin with the developer who assembles all of  
14 the components of this -- that release and then puts  
15 them on to one of our test stations. Our test stations  
16 are built very much like a store, so that we're able to  
17 test what the developer believes to be his entire  
18 package.  
19 The release -- skipping forward to just the use of  
20 the release system in the satellite, what we would  
21 typically do is transmit that package by satellite to a  
22 store where part of that package is a script that does  
23 the installation, the installation being the copying of  
24 the executable programs into their production locations  
25 along with whatever other steps were necessary like the

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1 creation of data files or addition or deletion of data  
2 so that the system itself would work once the script  
3 completes.  
4 So as long as we have a script, we're able to allow  
5 the script to be intelligent and tell us about errors.  
6 But it is incumbent upon the developer typically to  
7 manually verify the proper operation of the software or  
8 at least review error logs that are produced in the  
9 stores to see whether errors occurred.  
10 Q. Am I correct that if a program is copied on to  
11 the Linux stored image that is in your, you know, IT  
12 department and beamed out over this satellite to the  
13 stores, that essentially 3500 copies of that program  
14 will then be copied on to each one of these servers  
15 that's in each one of the 3500 stores, in other words,  
16 one on each of the 3500?  
17 A. While it's possible to use the satellite  
18 technology in that way, we typically don't as a way of  
19 risk management. We would not want to make a mistake in  
20 every store at the same time.  
21 Q. So how do you do it, then?  
22 A. Typically, we begin, as I mentioned before,  
23 with a single store or a very small group of stores.  
24 And then we expand the test, and we further expand the  
25 test. And our typical rollout would involve one week of

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1 increased beta testing up to, say, a hundred stores or  
2 200 stores. And then we would take an additional two  
3 weeks to make that change in all of the rest of the 3500  
4 stores.  
5 Q. So you do it -- you phase it in?  
6 A. (Witness nods affirmatively.)  
7 Q. But at the end of this process, these -- this  
8 file, let's say, if it was in the store image and you  
9 decided that it was working and you were going to use  
10 it, there would be one copy of that file in each of  
11 these 3500 servers. Is that right?  
12 A. If that change was to be sent to the entire  
13 chain, that's true.  
14 Q. So would that be true for, for example, CompX  
15 and DecompX that we talked about before?  
16 MR. STEWART: Object to form. You can  
17 answer.  
18 A. That would be true for CompX and DecompX if we  
19 were going to send CompX and DecompX out to our stores.  
20 Then it would follow the release pattern I've just  
21 described.  
22 Q. (BY MR. STONE) Well, didn't you send  
23 CompX and DecompX out to your stores?  
24 A. I don't know for sure. But I believe that  
25 CompX and DecompX were installed on the initial four

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1 stores, and that subsequently -- subsequently, we  
2 created an image from one of those stores, and that  
3 image was eventually broadcast to every store.  
4 Q. So when you went back pursuant to this process  
5 that you've described in your discovery responses to us,  
6 you found that CompX and DecompX were copied on every  
7 one of the 3500 servers that you had in your stores, and  
8 that's when you deleted them. Is that right?  
9 MR. STEWART: Object to form. You can  
10 answer.  
11 A. That's right.  
12 Q. (BY MR. STONE) And that's when you  
13 deleted them and you found that 650 of those  
14 machines had their replenishment system fail.  
15 Correct?  
16 A. That's right.  
17 (WHEREUPON, A DOCUMENT WAS MARKED AS  
18 EXHIBIT NO. 36, AND IS HERETO  
19 ATTACHED.)  
20 Q. (BY MR. STONE) I'll show you what's been  
21 marked as Exhibit 36 and ask you if you've seen that  
22 document before. It's a letter dated  
23 November 24th, 2004 from Mr. Stewart to me.  
24 A. I believe I have seen it. Yes.  
25 Q. Okay. Before I ask you about the letter, just

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1 getting back to what you were telling me about the  
2 Linux systems and where they were, there's one in each  
3 of the stores. Correct?  
4 A. That's right.  
5 Q. Then are there -- how many Linux servers are  
6 there in your headquarters?  
7 A. A dozen, perhaps.  
8 Q. And --  
9 A. No. There would be a dozen plus some number  
10 of test machines that also run Linux, which may be, I  
11 don't know, another half dozen, probably somewhere in  
12 the list of ten.  
13 Q. So somewhere between 12 and 24 if you include  
14 the test machines? Is that right.  
15 A. Sounds reasonable. Yes.  
16 Q. Did you look at those machines when you were  
17 looking to see if COFF files had been copied on to  
18 Linux operating systems?  
19 A. Yes.  
20 Q. So you looked at those however many it was  
21 machines, Linux operating system machines that were in  
22 the headquarters, as well?  
23 A. Yes.  
24 Q. And would that include -- that included Spirit  
25 and Wrangler? Is that right?



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1 A. Yes.

2 Q. Other than Spirit and Wrangler, did you find

3 COFF files on any of the other machines in your

4 headquarters?

5 A. Other than Spirit or Wrangler. I really don't

6 remember specifically where we found COFF files. Seems

7 that we may have -- I just don't know. We may have

8 found them on other machines. I just don't remember

9 right now.

10 Q. If you found them on other machines, did you

11 produce discovery to us which would allow us to

12 determine what the files were and what machines you

13 found them on?

14 A. Yes.

15 Q. Am I right that Spirit and Wrangler were

16 machines that you used when you -- when AutoZone made

17 the migration to Linux?

18 A. Yes.

19 Q. And am I correct that what you did is you --

20 you had the Spirit machine was running OpenServer and

21 the Wrangler machine was running Linux?

22 A. Right.

23 Q. And that Mr. Greer told us -- and that's why

24 I'm saying it -- you can tell me if you understand that

25 to be the case -- that you were running these two

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1 machines simultaneously and using them to help port the

2 source code that had been written for the OpenServer

3 system to the Linux system. Is that right?

4 A. Wrangler was the development machine on which

5 we did compile and editing of source. Spirit was the

6 source code repository. So we would have checked code

7 out of the repository from Spirit on to Wrangler, made

8 our changes on Wrangler, and then put those changed

9 files back on to Spirit to safe keep source.

10 Q. And Spirit also had SCO licensed code on it,

11 as well. Correct? It didn't just have your source

12 code?

13 A. It was an OpenServer machine. Yes.

14 Q. Right. And you kept those machines till -- to

15 the date of filing of this lawsuit. And when you looked

16 as those machines, you found that there were COFF files

17 that that been compiled for OpenServer on both those

18 machines. Correct?

19 A. That's right.

20 Q. And I'll get into it in the letter. But you

21 found that. Correct?

22 A. Yes.

23 Q. Is Spirit currently being used for any purpose

24 by AutoZone or was it prior to the filing of this

25 lawsuit?

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1 MR. STEWART: I'm sorry. Which question?

2 MR. STONE: Well, let's start with the

3 first one.

4 Q. (BY MR. STONE) Is it currently being used

5 for any purpose?

6 A. Yes, it is.

7 Q. What is it used for?

8 A. It is still our source code repository.

9 Q. So this is the source code that you wrote

10 during the time that you were licensing the OpenServer

11 software that you used to compile binaries to work on

12 the OpenServer software stored on the Spirit server. Is

13 that right?

14 A. Yes.

15 Q. And then there's additional source code you've

16 written since that time since you migrated to Linux? Is

17 that right?

18 A. Yes.

19 Q. Is that -- yes?

20 A. Yes.

21 Q. Is that also stored on the Spirit server?

22 A. Yes.

23 Q. And is the Wrangler machine currently being

24 used?

25 A. Yes, it is.

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1 Q. What is it being used for?

2 A. It is still a Linux development machine.

3 Q. So was it used as a Linux development machine

4 from the time that you first started using it when you

5 began the porting process until this date, essentially?

6 A. Yes.

7 Q. Have you heard of a machine called Vision?

8 A. Yes.

9 Q. Tell me what that is.

10 A. It was the development machine for SCO

11 development.

12 Q. So that was the equivalent of Wrangler for

13 Linux? Is that right?

14 A. That's right. It was the machine that

15 developers used while we were using SCO.

16 Q. And does Vision still exist?

17 A. Yes, it does.

18 Q. And is it still used for any purpose?

19 A. It doesn't get much use. But the files that I

20 made copies of before deleting them from our stores are

21 housed on Vision. And it probably gets occasional use

22 but not much.

23 Q. Do you know if Vision was used during the

24 porting process by AutoZone?

25 A. It was definitely in use during the porting

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1 process because we were still using SCO in our stores.  
2 And so we were still doing development on that machine.  
3 Q. Did you look at the Vision machine -- I guess  
4 you're telling me the Vision machine had the OpenServer  
5 operating system on it, then?  
6 A. That's right.  
7 Q. So it had SCO license code on it, as well?  
8 A. Yes.  
9 Q. And have you produced to us whatever code you  
10 found on that Vision machine? Do you know?  
11 A. I doubt it.  
12 Q. Okay. So the code that you produced to us is  
13 the only code that you found on Linux server machines  
14 and on Spirit. Is that right?  
15 A. That's right.  
16 Q. All right. Let's take a look at Exhibit 36.  
17 You recall that after the previous exhibits we looked  
18 at, you went back and you looked further at what  
19 OpenServer compiled programs might be in the Linux  
20 operating system at AutoZone?  
21 A. Say that again.  
22 Q. We've discussed, you know, the request for  
23 admissions and the interrogatories. Correct?  
24 A. Right.  
25 Q. And we went through the answers that you gave

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1 on behalf of AutoZone in those. Correct?  
2 A. Right.  
3 Q. And you agree that you later learned that  
4 those were incomplete. Correct?  
5 A. Right.  
6 Q. And in some cases, they were inaccurate where  
7 you, for example, denied using a program which you later  
8 learned was used, for example, Decompx and Compx.  
9 Correct?  
10 A. Right.  
11 Q. What I'm talking about now is that this  
12 Exhibit 36 was the document by which you were informing  
13 us of this additional information that you'd learned  
14 since the previous exhibits that we've discussed. Okay?  
15 A. Okay.  
16 Q. And what I was asking you is, in order to come  
17 up with the information in Exhibit 36, did you go back,  
18 and did you look at the store servers and the servers in  
19 AutoZone to discover whether there was additional COFF  
20 files that were compiled for OpenServer on Linux  
21 machines?  
22 A. Again, I'm not sure of the timing. But we  
23 have -- after the initial release that identified and  
24 removed the COFF files on the very first round, we did  
25 go back to the stores just to verify that they were all

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1 gone, and we went back through the Linux servers in the  
2 corporate offices, also.  
3 Q. Okay. All right. Well let's just look at the  
4 document and go from there. It says in the second  
5 paragraph under the word store servers. Do you see  
6 that?  
7 A. Yes.  
8 Q. It says, On October 19th, 20th, and 21,  
9 AutoZone sent the release of its software to its store  
10 servers that updated the store servers to replace 9 COFF  
11 files with Linux files and to delete 19 unused COFF  
12 files. Do you see that?  
13 A. Yes.  
14 Q. So does this refresh your recollection that  
15 there were 9 COFF files that were used up until that  
16 date in the store servers and that there were 19 files  
17 that you believed were unused?  
18 MR. STEWART: Object to form. You can  
19 answer.  
20 A. There were 9 COFF files, which -- let me start  
21 at the other side. There were 19 that we were never  
22 going to use. They were just useless files. There were  
23 9 that we might some day need. Therefore, they were not  
24 obsolete programs. So we needed to replace them in case  
25 they were needed.

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1 Q. (BY MR. STONE) Okay. Let me -- with that  
2 clarification, let me ask the question again. When  
3 you referred to the 19 unused COFF files, you were  
4 confident that they hadn't been used based on your  
5 review of those files. Is that correct?  
6 A. That's right.  
7 Q. With respect to the 9 COFF files referred to  
8 here, we discussed this before, you're not sure, as you  
9 sit here today, whether or not they may have been used  
10 at some time. Is that correct?  
11 A. That's right.  
12 Q. Okay. And you had to rewrite them because  
13 they were needed for -- well, you had to do something  
14 with them -- I don't want to use the wrong term. But  
15 you had to do something with them because this type of  
16 program was needed for your stores. Is that right?  
17 MR. STEWART: Object to form.  
18 A. It might be needed for the stores. In  
19 particular, I keep saying might because of those sort  
20 programs.  
21 Q. (BY MR. STONE) Okay. And these nine  
22 programs, you recompiled for Linux. Is that right?  
23 A. That's right.  
24 Q. And are these programs that as we discussed,  
25 you went in and modified the source code so it would

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1 work both on -- would compile both for Linux and  
2 OpenServer, if you recall?  
3 A. I don't recall whether any of them had to be  
4 modified, but then, I didn't change them myself. It is  
5 possible that we had to put in some flags in order to  
6 allow Linux and SCO compiles. I just don't know for  
7 sure.  
8 Q. And the 19 files, you deleted using this  
9 satellite? Is that right?  
10 A. That's right. We used the satellite to  
11 distribute the release which contained the instructions  
12 to find and remove the files.  
13 Q. Okay. So you're here today to tell me that  
14 the nine COFF files that you located are no longer being  
15 used by AutoZone. Correct?  
16 MR. IANNICELLI:  
17 MR. STEWART: Object to form. He's here  
18 today to testify in response a 30(b)(6) deposition  
19 notice.  
20 MR. STONE: He can answer the question.  
21 MR. STEWART: You can answer the  
22 question.  
23 A. We replaced the nine files because they might  
24 be needed.  
25 Q. (BY MR. STONE) Right.

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1 A. The others were deleted.  
2 Q. The 19 were deleted, and the other 9 were  
3 recompiled with a Linux compiler. Is that right?  
4 A. That's right.  
5 Q. And can you represent to me, as you sit here  
6 today, that none of those files contain any licensed SCO  
7 code or libraries?  
8 A. I don't believe any of those files contain any  
9 licensed SCO.  
10 Q. Okay. Then you go on in the letter to say,  
11 Two other COFF programs, CompX and DecompX, were also  
12 deleted in this release. You see that? We've talked  
13 about CompX and DecompX.  
14 A. Yes.  
15 Q. So this was when you deleted them by using the  
16 satellite. Is that right?  
17 A. That's right.  
18 Q. And you deleted them from all 3500 stores.  
19 A. That's right.  
20 Q. Okay. Then you say the nine replaced COFF  
21 files were on the store servers because they were  
22 inadvertently included in a Linux only release in  
23 November of 2001. Is that what you had referred to  
24 earlier in this deposition?  
25 A. I believe so.

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1 Q. Okay. So I think you earlier told me that  
2 there were -- there was a Linux release, and there was  
3 some other kind of release, and somehow, the COFF files  
4 got in the Linux release. Is that right?  
5 A. Right.  
6 Q. As you sit here today, do you recall how many  
7 machines those nine COFF files were on before they were  
8 deleted?  
9 A. I believe they were on all of our store  
10 servers.  
11 Q. Okay. So all 3500?  
12 A. Right.  
13 Q. Okay. You can see now why -- I don't mean  
14 this in a derogatory. But what's confusing about this  
15 is that you go on and you talk about these 19 unused  
16 COFF files. You say most were help utilities used  
17 outside of AutoZone store management system that were  
18 errantly omitted from the original conversion schedule  
19 and loaded into the Linux load image. Do you see that?  
20 A. Yes.  
21 Q. Is this again referring to the file -- some of  
22 the files that you have already told us about, the eight  
23 or nine files that were in your earlier response?  
24 That's what I'm trying to understand. Or is this 19 new  
25 files?

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1 A. I think that throughout these documents, we're  
2 referring to two sets of files. Those were -- that were  
3 deleted because we simply didn't need them and the  
4 smaller set that we chose to replace because we might  
5 need them. So these 19 consisted of a number of  
6 different kinds of programs, some of which were used by  
7 our help desk when we were using SCO. So they were  
8 SCO-related utilities.  
9 Q. So are these 19 COFF files, files that you  
10 discovered after you answered our request for admissions  
11 and after you answered our answers to interrogatories  
12 that are in addition to the 9 files that you discussed  
13 in your answers to admissions?  
14 MR. STEWART: Object to form. If you  
15 need to go back and take a look at the exhibits, go  
16 ahead and do so.  
17 MR. STONE: Yeah, sure.  
18 Q. (BY MR. STONE) This is where my confusion  
19 arises. So if you could clarify it for me, I'd  
20 appreciate it. Let me see if I can help you. If  
21 you look at admission Number 17, Page 7.  
22 A. Okay.  
23 Q. Do you see it says SCO OpenServer operating  
24 system worst -- I'm sorry. Binary files from SCO  
25 OpenServer operating system were statically linked

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1 inside errantly copied non-operating system binary files  
2 or eight minor sort files, as described in response to  
3 request Number 10 above. So it talks about eight files.  
4 And actually, request Number 10 doesn't talk about  
5 eight files. So this is the only place that I saw eight  
6 files.  
7 So is this eight files the nine files? Is this  
8 eight files some other files? I'm trying to understand  
9 how I organize these files.  
10 A. I believe that the eight files in this  
11 document are intended to refer to the same files that  
12 the nine files in this document are intended to refer  
13 to.  
14 Q. Okay. So the eight files became nine files,  
15 and then you found an additional 19 files. Is that  
16 right?  
17 A. I think we found the eight or nine and the 19  
18 all at the same time.  
19 Q. Okay.  
20 A. The distinction between them is not in the  
21 timing but in what we did about them.  
22 Q. Oh, okay. So you didn't believe -- you didn't  
23 include those 19 in these responses because these  
24 responses were requesting information about using  
25 static-shared library files, and you'd concluded that

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1 you hadn't used those 19? Is that --  
2 MR. STEWART: Object to form. You can  
3 answer.  
4 A. That doesn't sound right.  
5 Q. (BY MR. STONE) We never learned of  
6 these -- to my knowledge, we didn't learn of these  
7 19 files until we got this November 24th letter.  
8 A. Okay. Let me think for a minute.  
9 Q. Okay.  
10 A. I think I remember what happened.  
11 Q. All right.  
12 A. I think what happened was that I originally  
13 identified, by checking a small number of stores, a set  
14 of COFF files. How confident am I in this answer?  
15 Q. It's okay.  
16 A. I'm having trouble --  
17 Q. Yeah. It's okay.  
18 A. -- remembering the order.  
19 Q. So am I correct that as you sit here today,  
20 you don't remember exactly which eight files were  
21 referred to in this response to request to admission but  
22 that I can be confident that the 19 and the 9 referred  
23 to in the November 24th letter include those 8 files?  
24 A. Yes.  
25 Q. Okay. And you believe it's within the nine

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1 files. Is that right?  
2 A. I believe so.  
3 Q. Okay. And then if you look -- you turn the  
4 page of Exhibit 36, it says it is likely that many of  
5 these programs would not run under Linux due to  
6 compatibility issues for the fact that these programs  
7 predated year 2000 and would not have operated correctly  
8 with the new Autozone data format in use after the year  
9 2000. Do you see that?  
10 A. Yes.  
11 Q. That's actually why I asked you at the  
12 beginning of the deposition about whether COFF files  
13 would run on Linux. Is this -- in your understanding,  
14 is this an accurate statement that it's lucky that --  
15 it's likely that many of these COFF programs would not  
16 run under Linux due to compatibility issues?  
17 MR. STEWART: Object to the form. That's  
18 not what the statement in this letter says.  
19 MR. STONE: Well, I read the whole  
20 statement.  
21 MR. STEWART: Well, the question you just  
22 asked, though, is only part of that statement.  
23 MR. STONE: Right. I understand that.  
24 Q. (BY MR. STONE) There's also the issue of  
25 this 2000 format. Correct?

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1 A. Right.  
2 Q. That you -- that you brought in for the Y2K.  
3 A. Right.  
4 Q. I guess what my question to you is, is there  
5 something about these binaries that would make them --  
6 putting aside the Y2K issue that you told me about, you  
7 said that probably would make it difficult for them to  
8 run. Is there something about these particular binaries  
9 that you looked at them and determined that they  
10 wouldn't run under Linux due to compatibility issues, or  
11 was that a statement about OpenServer binaries in  
12 general?  
13 MR. STEWART: Object to form. You can  
14 answer.  
15 A. It was a statement about these programs in  
16 particular.  
17 Q. (BY MR. STONE) Okay. What was it about  
18 them that you saw that suggested to you that they  
19 would not -- they would have compatibility issues?  
20 A. I believe that I tried to run some of these  
21 programs just to see what they were or what they did.  
22 And some of them exited with an error that they couldn't  
23 be loaded. Some of them immediately died with an error.  
24 As opposed to printing an error message, they just died  
25 with an error.

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1 And then others, I already knew what they did, and  
2 the files that they were intended to use either were  
3 obsolete and no longer exist on our servers or the dates  
4 on the files were for Y2K conversions. So they could  
5 not have used our updated data files structures.  
6 Q. Okay. Then you go on here and you say in  
7 addition to the help utilities, there were four SCO  
8 compiled programs that were copied to the Linux machines  
9 errantly because the programs were not located in the  
10 proper directory for binary files prior to Linux  
11 conversion. Correct?  
12 MR. STEWART: Objection. And just for  
13 clarification, Mr. Celmer didn't write this letter. I  
14 did.  
15 MR. STONE: I'm sorry. I meant AutoZone  
16 goes on to say.  
17 Q. (BY MR. STONE) But you said you've read  
18 the letter and you were part of the process of  
19 compiling information. Correct?  
20 A. That's right.  
21 Q. Were you the one that was responsible for  
22 determining that these programs were not located in the  
23 proper directory?  
24 A. Yes.  
25 Q. Just because they weren't in the proper

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1 directory wouldn't mean they wouldn't run. Correct?  
2 A. I don't know. The reason I don't know is that  
3 if you were to invoke them from the command line, they  
4 might run. However, our stores don't have access to a  
5 command line. They run software from the menu. And  
6 just by invoking the program name, you wouldn't get  
7 these. You would get one of the files that was in its  
8 proper location.  
9 Q. Now, are these part of the -- this is all a  
10 description with regard to the 19 unused COFF files? Is  
11 that right? I'm just trying to understand what this is  
12 a subset of that you're describing here.  
13 MR. STEWART: Again, same objection.  
14 Q. (BY MR. STONE) That AutoZone is  
15 describing in its letter.  
16 (BRIEF PAUSE)  
17 A. Okay. I just reread this paragraph. And I'm  
18 sorry. But can you ask the question?  
19 Q. (BY MR. STONE) Sure. Actually, you might  
20 want to look at the first two sentences of the  
21 previous page that says, of the 19 unused COFF  
22 files, and then it goes on to say most were help  
23 utilities used outside of AutoZone's store  
24 management system. And then you go on with the rest  
25 of this paragraph. So it was my understanding,

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1 unless you're going to tell me differently, that  
2 this refers to the 19 unused files. Is that right?  
3 A. I believe that's right.  
4 Q. Okay. And the next paragraph goes on to say  
5 that deletion of Compx and Decompx programs in the  
6 October 19 and 21 release caused the replenishment  
7 system to fail on some of the AutoZone store servers.  
8 Replenishment system is a program used by AutoZone store  
9 servers to order and receive new inventory from the  
10 distribution centers.  
11 Replenishment system failed with regard to the  
12 store service by distribution centers 66 and 77,  
13 approximately 650 of AutoZone's 3500 stores. And it  
14 says, investigation failed to reveal that the store  
15 servers served by these distribution centers still use  
16 the Compx and Decompx programs. In connection with the  
17 replenishment system, AutoZone IT department upgraded  
18 the software in distribution center 66 and 77 to  
19 eliminate the use of Compx and Decompx in all AutoZone  
20 stores. This upgrade occurred one day after the notice  
21 of the failure of the replenishment system. Correct?  
22 A. Correct.  
23 Q. You did this under your direction? Is that  
24 correct?  
25 A. That's right.

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1 Q. Now, am I correct that when you referred to  
2 the upgrade in 2003 of the replenishment system  
3 software, this is the replenishment system software you  
4 were talking about?  
5 A. Yes.  
6 Q. And you had originally believed that Compx and  
7 Decompx were not going to -- were not being used by any  
8 of these 3500 stores because of this upgrade.  
9 A. That's right.  
10 Q. And did you then learn at a later date that  
11 Distribution Center 66 and 77 had not been upgraded?  
12 MR. STEWART: Asked and answered. You  
13 can answer.  
14 MR. STONE: I don't think so.  
15 MR. STEWART: You just asked that  
16 question. You just had him -- you just read this and  
17 asked him if that was right, and he said yes.  
18 Q. (BY MR. STONE) All right. Just answer  
19 the question. Go ahead.  
20 A. Yes.  
21 Q. Okay. So they were using an older version of  
22 your replenishment system.  
23 A. That's right.  
24 Q. What is a distribution center?  
25 A. Warehouse.

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1 Q. So these two -- does this refer to two  
2 different warehouses, 66 and 77?  
3 A. Yes.  
4 Q. So these 650 stores got their parts from 66  
5 and 77 warehouses, is that right, numbers 66 and 77?  
6 A. That's right.  
7 Q. Okay. So this replenishment system was the  
8 way that the stores would tell the warehouse we need  
9 more inventory. Is that right?  
10 A. That's right.  
11 Q. And then the warehouse would send the  
12 inventory to the store?  
13 A. Right.  
14 Q. So you learned that the -- up until this date  
15 that you upgraded the system, those 650 stores had  
16 continued to use CompX and DecompX to perform that  
17 process. Is that right?  
18 A. Right.  
19 Q. When you upgraded the system, did that --  
20 strike that. Based on this upgrade that you made of the  
21 system, can you now represent on behalf of AutoZone that  
22 CompX and DecompX are not in any way being used by those  
23 650 stores?  
24 A. Yes.  
25 Q. And you've deleted them from all of the 3500

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1 stores servers?  
2 A. Yes.  
3 Q. Has CompX and DecompX been deleted to all the  
4 servers at AutoZone with the exception of the server  
5 where you're keeping your copies that you referred to  
6 earlier?  
7 A. I think -- excuse me. I think that we are  
8 still using CompX and DecompX to transfer data between  
9 our mainframe and one of our AIX servers.  
10 Q. And how long have you been doing that, to your  
11 knowledge?  
12 A. Until -- let's see. I really don't know. It  
13 would have -- would have been a number of years.  
14 Q. Would it have been that all the way back to  
15 the time that you were using OpenServer operating  
16 systems on your store servers?  
17 A. I don't know.  
18 Q. And do you intend to continue to use the CompX  
19 and DecompX for that purpose?  
20 A. For some period of time, yes. But since CompX  
21 and DecompX aren't going to be universally used, it's in  
22 our best interest to standardize on something. And if  
23 this isn't it, we should probably get rid of it.  
24 Q. But as you sit here today, you don't know  
25 whether CompX and DecompX contained SCO licensed code.

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1 Is that right?  
2 A. I don't know.  
3 MR. STEWART: Is that for the application  
4 we just talked about, the continuing application?  
5 MR. STONE: Yeah.  
6 Q. (BY MR. STONE) Well, I mean, CompX and  
7 DecompX are programs. Right?  
8 A. Yes.  
9 Q. And is there some different version of the  
10 program that you're using?  
11 A. Yes. Since we don't have source code, we buy,  
12 or bought, the product from the vendor. And we bought  
13 platform specific versions of that software.  
14 Q. Who is the -- who is the vendor?  
15 A. I want to say Compress Software, but I really  
16 don't know for sure.  
17 Q. So you haven't made any -- taken any steps to  
18 determine who that vendor was prior to this deposition?  
19 A. I didn't personally take any steps.  
20 MR. STONE: We're going to request -- do  
21 you need to take a break?  
22 VIDEO SPECIALIST: Yeah. We need to  
23 change tapes.  
24 MR. STONE: Let's take a five-minute  
25 break.

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1 VIDEO SPECIALIST: Off the record at  
2 11:37. This is the end of Tape Number 2.  
3 (SHORT BREAK)  
4 VIDEO SPECIALIST: Back on the record at  
5 11:49. This is the beginning of Tape Number 3.  
6 MR. STONE: Well, off the record, since I  
7 guess that wasn't on the record, I requested the name  
8 of this vendor that you were referring to before we  
9 went off the record. And we'll write a letter, and  
10 Mr. Stewart will do whatever he does.  
11 Q. (BY MR. STONE) Okay. So am I correct  
12 that that was an AIX operating system that this  
13 CompX and DecompX that you're using now runs on?  
14 A. All on one side. MVS on the other, I think.  
15 Q. So does -- can you represent to me that  
16 neither of those programs contain any SCO static  
17 libraries or SCO proprietary code?  
18 A. I don't believe they do.  
19 Q. If you move on to the third paragraph of  
20 Exhibit 36, the November 24th, 2004 letter from  
21 Mr. Stewart to me, it says the release script sent to  
22 the AutoZone stores on October 19th through 21 also  
23 searched each AutoZone store server for the existence of  
24 other COFF files beyond the files we identified to you  
25 previously. So these files that you're going on to

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1 identify in this paragraph are files that weren't  
2 mentioned in any of the other discovery responses we've  
3 referred to. Is that correct?  
4 A. Right.  
5 Q. Okay. And it says -- you go on to say --  
6 AutoZone goes on to say, a total of 1681 additional COFF  
7 files were found on 387 store machines. These programs  
8 had 127 unique file names. Correct?  
9 A. Yes.  
10 Q. And was that done under your supervision?  
11 A. Yes.  
12 Q. So there was a script that you sent out by  
13 your satellite. It asked questions of the machines and  
14 somehow gathered the information that there were these  
15 additional COFF files on 387 of these 3500 machines. Is  
16 that right?  
17 A. That's right.  
18 Q. Did you do anything to try to determine why it  
19 would be that 387 store machines had these files on them  
20 but the other store machines did not?  
21 A. We didn't do anything in particular to figure  
22 out why these files were on these stores. Because if I  
23 remember correctly, none of these files were in the  
24 places where production executables ought to be, or the  
25 names had been changed.

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1 For example -- let me think about this.  
2 Historically, if a store had a program -- problem with a  
3 program, one of the actions that the help desk might  
4 take would be to verify the checks on the executables.  
5 And if they found that that executable was altered in  
6 some way, they would -- they might rename the file to be  
7 dot bad and then send them a new copy, a correct copy of  
8 the file, of the program as a way to fix the problem  
9 with the program.  
10 A number of these files had names like, you know,  
11 dot Bob, dot Joe, dot Steve, which is indicative of one  
12 of these situations where a copy was made for some  
13 reason, and then a fresh copy would typically have been  
14 sent to the store, also.  
15 Q. So those were probably -- you believe based on  
16 what you've seen and your knowledge of how things work  
17 at AutoZone that the reason that these files were on  
18 these 387 store machines were that they were put there  
19 by this support team in connection with some work that  
20 they were doing or question they were answering?  
21 A. Support team or developers. Right.  
22 Q. When you say 1681 files on 387 store machines,  
23 does that mean that a total of 1681? You don't mean  
24 that there's 1681 on each machine. Is that right?  
25 A. No. There's a total of 1681 files sprinkled

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1 across 387 machines.  
2 Q. And of those 1681 files, they have -- 127 of  
3 them have -- I don't know exactly how to say this. But  
4 there's only 127 actual different file names?  
5 A. Right.  
6 Q. But some of the files are actually different  
7 even though they have the same file name? Is that  
8 right?  
9 A. No.  
10 Q. There's many copies of the same file?  
11 A. Yes.  
12 Q. Oh, okay. And you deleted all those files  
13 again using this satellite system on November 1st? Is  
14 that right?  
15 A. Yes.  
16 Q. Or by November 1st?  
17 A. That's right.  
18 Q. So these were additional files that may have  
19 contained SCO licensed codes that were, in fact, copied  
20 on to the Linux OpenServer systems at AutoZone.  
21 Correct?  
22 A. Right.  
23 Q. Then you go on in the next paragraph, or  
24 AutoZone goes on in the next paragraph to say that you  
25 discovered that a machine load computer had a program on

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1 it called dexpand.x -- dot X, that was compiled under  
2 OpenServer. How did that happen? How did you find  
3 that?  
4 A. As part of our release process, once a release  
5 has been sent to the majority of the chain, we're able  
6 to put that same release on the computer that we used to  
7 create new store loads so that before we open a new  
8 store, when we create an image for that store, it gets  
9 created with the latest software.  
10 So as is standard procedure, once I had sent this  
11 release to essentially the chain, I also sent this  
12 release to the store load computer to find and remove  
13 any COFF files that might be on that machine. And this  
14 dexpand program was on the load machine, and the release  
15 did remove it.  
16 Q. Could you tell whether that expand program had  
17 been used during the time that the -- or after the  
18 migration to Linux?  
19 A. I believe it was used after the migration to  
20 Linux.  
21 Q. And do you know whether that expand program  
22 had SCO libraries in it?  
23 A. I believe it was a statically-linked file. So  
24 it probably did have SCO code in it.  
25 Q. And I think you probably said this, but what

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1 did the program actually do?  
2 A. It converted data formats from a pre-Y2K  
3 format, that was in use on the mainframe, to a post-Y2K  
4 format that is required by the stores.  
5 Q. And that was -- was that something that had to  
6 be done every time a program that had that pre-Y2K  
7 format was being sent to the stores?  
8 A. The process of creating an image for a new  
9 store involves loading that image with programs but also  
10 with some of the data that the store is going to need.  
11 So when we decide today's the day to build an  
12 image, part of that process involves running some  
13 programs on the mainframe that generate data. We move  
14 that data to the store image machine. We convert its  
15 format along the way. And that way when the computer  
16 arrives at the store, it already has some foundation  
17 data to go along with the executables.  
18 So that program was used basically once every time  
19 you would open -- every time we wanted to open a new  
20 store.  
21 Q. Okay. So every time you opened a new store.  
22 Then you -- how did you reco -- you say that you  
23 recompiled this program. What did you do to recompile  
24 this program?  
25 A. I didn't personally recompile it. So I don't

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1 know whether there were any code changes necessary. But  
2 I do know it only took a short period of time to  
3 recompile and test. So the changes could not have been  
4 extensive.  
5 Q. And as you sit here today, you can testify  
6 that the current version of this program does not  
7 contain any SCO licensed code?  
8 A. That's right. It was recompiled on the Linux  
9 machine for Linux.  
10 Q. And then what did do you? Did you take a  
11 previous copy and make a copy and put it on the Spirit  
12 machine?  
13 A. Vision.  
14 Q. I'm sorry. The Vision machine?  
15 A. (Witness nod affirmatively.)  
16 Q. Is that what you did with all the -- anything  
17 that you deleted, any program that you deleted?  
18 A. Yes.  
19 Q. And would that copy contain the information  
20 about, you know, when the program was deleted and when  
21 it was loaded on the machine?  
22 A. I don't know. For some of the copies of COFF  
23 files over to Vision, the system administrators used a  
24 utility called CPIO, which may retain the original date  
25 on the file. So that when you load it on to Vision, it

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1 will look as if it's been there for a long time.  
2 For other files, that's not the case. We FTPed a  
3 copy from -- used a utility called FTP to transfer a  
4 file from wherever it was originally on to Vision. And  
5 in that case, it would retain the date on which it was  
6 copied.  
7 Q. Okay. Was dexpan.d a binary that was created  
8 with the SCO developer kit to run on OpenServer?  
9 A. Originally, yes.  
10 Q. By AutoZone?  
11 A. Yes.  
12 Q. Okay. Go on, it says AutoZone's IT personnel  
13 also discovered that the Spirit server had some  
14 OpenServer compiled programs on it because of a recent  
15 restoration of the server after it crashed. The Spirit  
16 server is -- isn't that an OpenServer machine?  
17 A. Spirit was an OpenServer machine. We were  
18 having some problems with Spirit. In particular, we  
19 knew the disks were going bad. And so our system  
20 administrators were preparing a replacement machine.  
21 Well, apparently, they didn't prepare it quickly enough.  
22 Because one evening, Spirit died. And so we worked  
23 through most of the night trying to restore all of  
24 Spirit's data on to that replacement machine.  
25 Q. The replacement machine that was being

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1 prepared?  
2 A. Right.  
3 Q. Is that what you mean?  
4 A. Right.  
5 Q. And in doing that, you loaded 1130 SCO  
6 compiled programs on to the machine? Is that right?  
7 A. Right. We restored everything onto that  
8 replacement machine, and that included some SCO  
9 binaries.  
10 Q. And what was that replacement machine going to  
11 be used for after that?  
12 A. It was going to continue to be used for our  
13 software repository.  
14 Q. Okay. So this is this revision control system  
15 that you had spoken of earlier where you keep your  
16 source code? Is that right?  
17 A. That's right.  
18 Q. So had you originally intended to remove the  
19 SCO code from that machine and only have AutoZone's home  
20 grown codes, so to speak?  
21 A. Right. In an orderly migration, we would have  
22 copied the repository, and then we would have copied  
23 only the other directories that we needed rather than  
24 just a wholesale replacement of everything.  
25 Q. So based on what you've now done, did you do



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1 something to remove all the SCO licensed code from that  
2 machine?  
3 A. Yes.  
4 Q. So that was one machine that these 1130  
5 programs were on. Right? It was not --  
6 A. Right.  
7 Q. Do you know what -- what operating system did  
8 that machine use?  
9 A. It was OpenServer 505, I think, before the  
10 crash, and then it was Red Hat. I don't -- I really  
11 don't know what it is right now. I believe it's 7 dot  
12 2, but it might be Red Hat Version 9. I really don't  
13 know.  
14 Q. So it's some version of Red Hat's Linux  
15 distribution.  
16 A. That's correct.  
17 Q. You switched it from a OpenServer machine to a  
18 Linux machine after the crash.  
19 A. That's right.  
20 Q. But when you did that, you copied these 1130  
21 programs on to the machine?  
22 A. Right.  
23 Q. When did that occur?  
24 A. I'm sorry. I don't remember the date.  
25 Q. Can you give me the year?

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1 A. No. I really can't. I don't know when that  
2 was. I believe it was last year, but I really don't  
3 know.  
4 Q. So there may be a year that you were using  
5 this machine where it had the 1130 -- the 1,130 SCO  
6 files on it. Is that right?  
7 A. I don't know how long that Linux machine was  
8 up before we removed these files.  
9 Q. Do you know whether any of these files were  
10 used during that time period?  
11 A. I don't think any of these files would have  
12 been used because they would have been in individuals'  
13 home directories. And that machine is no longer used as  
14 the machine that people log into to perform work. So...  
15 Q. What machine is used as the machine that  
16 people log in to perform work?  
17 A. Only a machine called Wrangler and a machine  
18 called Jeep for Linux development.  
19 Q. So Jeep and Wrangler are two different  
20 machines?  
21 A. (Witness nods affirmatively.)  
22 Q. Is this something to do with the Jeep Wrangler  
23 or just a coincidence?  
24 A. Our system administrators find it an amusing  
25 policy to name machines after cars.

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1 Q. So Wrangler was the machine that you  
2 originally used, right, to develop Linux?  
3 A. Yes.  
4 Q. Did Jeep come after that or something?  
5 A. Jeep came after that.  
6 Q. Did you look on Jeep to see if Jeep had any  
7 COFF files on it?  
8 A. Yes.  
9 Q. Did you find any?  
10 A. I think we did, but I really don't remember.  
11 Q. But they would be in that -- the CDs or that  
12 hard drive that you produced to us. Is that right?  
13 A. Yes.  
14 Q. It goes on and says, finally, we've reviewed  
15 the relevant OpenServer agreements between SCO and  
16 AutoZone. These agreements are still in place and do  
17 not include any prohibitions on AutoZone's use of  
18 OpenServer compiled code on Linux machines. Did you  
19 have anything to do with that review?  
20 A. I tried to find copies of these agreements.  
21 But no, I didn't have anything to do with the review.  
22 Q. Did you find any copies of the agreements?  
23 A. I did find some documents that I forwarded to  
24 the attorneys.  
25 Q. Can you tell me the names of the documents?

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1 Do you remember?  
2 A. No. I'm sorry. I don't remember.  
3 MR. STONE: Okay. This seems like a good  
4 time to break for lunch. Actually, can we stay on for  
5 one second?  
6 Q. (BY MR. STONE) I just have one question  
7 about something that we had gone over earlier. It's  
8 on Page 2 of Exhibit 36. It says, In addition to  
9 the -- it's in the first paragraph like five lines  
10 down -- five lines down. In addition to the help  
11 utilities, there were four SCO compiled programs  
12 that were copied to the Linux machines errantly  
13 because the programs were not located in the proper  
14 directory. We talked about the fact that that  
15 happened. Correct?  
16 A. Yes.  
17 Q. I just wanted to know what these four programs  
18 were intended to do, if you remember.  
19 A. I'm sorry. I don't remember. I believe they  
20 were located in the directory where we usually keep  
21 data. But I don't -- I don't remember what the programs  
22 were.  
23 Q. You don't remember what they were actually  
24 intended to do? Is that right?  
25 A. That's right.

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1 Q. Okay.

2 MR. STONE: Let's take a break for lunch.

3 VIDEO SPECIALIST: Off the record at

4 12:10.

5 (LUNCH BREAK)

6 VIDEO SPECIALIST: Back on the record at

7 1303.

8 MR. STONE: Would you mark this as the

9 next exhibit, please.

10 (WHEREUPON, THE ABOVE-MENTIONED

11 DOCUMENT WAS MARKED AS EXHIBIT NO. 37,

12 AND IS HERETO ATTACHED.)

13 Q. (BY MR. STONE) Mr. Celmer, I'm showing

14 you a letter dated March 4, 2005 from your counsel

15 to counsel for SCO. And have you seen that before?

16 A. I think so.

17 Q. Now, were you -- were you the person

18 responsible for putting together the data that was

19 produced to us with this letter?

20 A. I did part of it, and I oversaw part of it.

21 Q. Okay. Can you tell me what are the -- the

22 denominations FEP1 through 8, what do those refer to?

23 A. That refers to a set of machines that we use

24 presently and historically to communicate with the

25 stores. Our stores are updated daily with data, and of

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1 course, they send back sales information and so forth.

2 And these are the machines that we use to pass that data

3 back and forth.

4 Q. And did you find some COFF files on these

5 machines? Is that why you produced images from them?

6 A. Yes. I think so.

7 Q. Do you recall whether there's any document

8 which would tell us which -- what COFF files you found

9 on those machines, or have we referred to it already?

10 A. I'm not familiar with a document that

11 describes what was found on these machines.

12 Q. Okay. But whatever you found would be

13 included in what you produced to us. Is that correct?

14 A. That's right.

15 Q. How about the VEGA server? What is the VEGA

16 server?

17 A. I think VEGA is a print server. And

18 evidently, we found one or more COFF files on that

19 machine, as well. VEGA, I believe, used to be an SCO

20 Unix server. So that may be part of the explanation for

21 how a COFF file got there.

22 Q. And was it converted later on to a Linux

23 server?

24 A. I think so. Yes.

25 Q. Do you know when?

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1 A. No. I'm sorry.

2 Q. Where -- is the VEGA server located in your

3 headquarters?

4 A. Yes, it is.

5 Q. What is it -- what is it for?

6 A. It is a print server. I think that our design

7 group uses it throughout their printing.

8 Q. Then if you go to Page 2, Spirit, we talked

9 about. Correct?

10 A. Yes.

11 Q. So this was an image of the Spirit server that

12 we've been referring to which -- I've gotten these

13 confused. One of them was a source code repository, and

14 the other one a Vision or a development machine? Is

15 that right? Which was Spirit?

16 A. Spirit was a source code repository.

17 Q. And Spirit is the one that crashed and that

18 you had to create a new machine for. Is that right?

19 A. That's right.

20 Q. And then you gave us the image for the Jeep

21 server?

22 A. That's right.

23 Q. And that is another development machine? Is

24 that right?

25 A. That's right.

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1 Q. And is that a Linux development machine?

2 A. Yes, it is.

3 Q. And you found COFF files on that, as well?

4 A. Yes.

5 Q. Do you recall how many you found?

6 A. No, I don't. But when Jeep was commissioned,

7 so to speak, as the second Linux development machine,

8 some of the users of Jeep had their directories mirrored

9 between Jeep and Wrangler. So some of the same files

10 that were on Jeep -- I'm sorry -- Wrangler, were copied

11 to Jeep as a result of that mirroring.

12 Q. So if we go to the next item on the list,

13 Wrangler, Wrangler was the original Linux development

14 machine. Correct?

15 A. That's right.

16 Q. You still use it now as a development machine?

17 A. Yes.

18 Q. And that contained COFF files on it which

19 you're saying when they created the Jeep development,

20 Linux development machine, were transferred or copied to

21 that machine as well? Is that right?

22 A. Right.

23 Q. Do you remember how many files were on either

24 the Jeep or the Wrangler machines?

25 A. No. I'm sorry. I don't remember.

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1 Q. Okay. But they would be in addition to the  
2 files that we've discussed to this point in the letters  
3 that I've shown you and discovery responses. Is that  
4 right?  
5 A. Right.  
6 Q. Then it says image of store server releases.  
7 These are releases that were made through your satellite  
8 to the store servers? Is that right?  
9 A. I believe that at one point, we created for  
10 you a list of every software release, not just a list,  
11 but a copy of every software release that we still had  
12 that we'd ever sent to a store. And I think that's what  
13 this is. So really, that's store release server.  
14 Q. Oh, I see.  
15 A. So the server from which we send out releases,  
16 that's what we gave you a copy of.  
17 Q. Okay. And you found that there were COFF  
18 files in those releases. Correct?  
19 A. Right.  
20 Q. In some of them?  
21 A. Right. Originally the stores were SCO Unix.  
22 And so all of our releases contained SCO COFF binaries.  
23 Q. But as well, even afterwards when you switched  
24 over to Linux, some of those releases contained COFF  
25 files, as well. Correct?

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1 A. Some of them did. Certainly during the  
2 transition, we had to support software on both formats.  
3 And then subsequent to the transition to Linux, I  
4 don't -- I don't think we created any more COFF  
5 binaries. There wouldn't have been a need to.  
6 Q. Didn't you tell me that there's at least one  
7 release in which you did release several COFF files?  
8 Whether intentionally or unintentionally, they were  
9 released in one of the releases. Correct?  
10 A. Right. That was during the transition period  
11 while we had both SCO and Linux with the stores.  
12 Q. Okay. And then there are four store servers,  
13 is that correct, images?  
14 A. The -- this document refers to four store  
15 images. Right. You guys had requested five.  
16 Q. Yeah. That's what I thought.  
17 MR. STONE: Do you know, have we only  
18 received four? My associate's telling me that one of  
19 your servers crashed or something and we only got four  
20 instead of five? Is that right?  
21 MR. BRIDGES: Yes.  
22 Q. (BY MR. STONE) So these would be images  
23 of the store servers as they currently exist or as  
24 they existed at the time you made the image which  
25 was after you deleted all the files we've discussed?

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1 Is that right?  
2 A. That's right.  
3 Q. So if we looked at those store server images,  
4 we should not find any files that contain SCO  
5 proprietary code or licensed code. Is that correct?  
6 MR. STEWART: Object to form. You can  
7 answer.  
8 A. I don't think you'd find any COFF files.  
9 Q. (BY MR. STONE) We might find some Zenix  
10 files?  
11 A. Right.  
12 Q. This is the image of the store servers that  
13 you're currently using in your stores as far as you  
14 know? Is that right?  
15 A. Which one is the image?  
16 Q. Well, I thought the idea was that your stores  
17 essentially all use the same image of -- for the Linux  
18 operating system that's in place at that time. Is that  
19 right?  
20 A. That's right.  
21 Q. So that these should be representative of the  
22 other -- I don't remember how to -- if you took 3500 and  
23 then you took four away from it are stores that are  
24 running Linux. Is that right?  
25 A. They would look very much like this.

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1 Q. Okay.  
2 A. Minor differences.  
3 Q. And then you gave us copies of the files that  
4 you identified using the script that we provided to you.  
5 Is that correct?  
6 A. Right.  
7 Q. You understand that our expert provided us  
8 with a script to help you locate additional files and  
9 you agreed to run that. Correct?  
10 A. Yes.  
11 Q. And you did run that, and it identified some  
12 additional files. Is that right?  
13 A. That's right.  
14 Q. And was that 15 ELF and Zenix files, SCO, ELF  
15 and Zenix files? Does that sound correct to you?  
16 A. I don't know how many files that that program  
17 identified. You know, we produced a list of the output  
18 for every store in the chain. And I believe I  
19 summarized it just picking out the ones that were of  
20 interest. But I don't -- I really don't remember the  
21 numbers.  
22 Q. Okay. So this last bullet on Page 2 of the  
23 exhibit output of SCO's search program run on every  
24 AutoZone store server, that's what you're talking about?  
25 A. Yes.

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1 Q. So if we look at that, that should show us  
 2 what files it created. Is that right?  
 3 A. Yes.  
 4 Q. Or it found. Okay. So I just want to go over  
 5 this to make sure I've got everything and that there's  
 6 nothing else you know about. Okay?  
 7 A. Uh-huh (affirmative response).  
 8 Q. There is 1681 COFF files that you found on 387  
 9 AutoZone store machines. Is that correct?  
 10 A. Yes.  
 11 Q. There's 19 unused COFF files that were loaded  
 12 onto the Linux image and were for some period of time on  
 13 3500 of the SCO machines. Correct?  
 14 A. Yes.  
 15 Q. There is nine COFF files that you don't know  
 16 whether they were used or not used that were loaded on  
 17 to the Linux image and for some period of time were on  
 18 the 3500 machines. Correct?  
 19 A. Yes.  
 20 Q. There is two COFF files, Compx and Decompx,  
 21 that were on the 3500 machines. Correct?  
 22 A. Yes.  
 23 Q. There's dexpand dot X, which was on your  
 24 machine load computer which was one machine in the  
 25 headquarters. Is that right?

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1 A. That's right.  
 2 Q. There's 1130 SCO compiled programs that were  
 3 on your Spirit server. Correct?  
 4 A. I don't remember how many were on Spirit.  
 5 Q. I'll represent to you that was the number that  
 6 was given to us.  
 7 A. I believe that number.  
 8 Q. Okay. There's -- and you don't remember  
 9 whether it's 15 or some other number of SCO, ELF, and  
 10 Zenix files. Is that correct? I just asked you about  
 11 those.  
 12 A. I don't know how many ELF and Zenix files we  
 13 found.  
 14 Q. Okay.  
 15 A. SCO ELF, rather.  
 16 Q. Then in addition to that, there would be  
 17 whatever would be on FEP machines that you've produced  
 18 to us. Right?  
 19 A. That's right.  
 20 Q. Whatever would be on the VEGA machine.  
 21 Correct?  
 22 A. That's right.  
 23 Q. Whatever would be on the Spirit, Jeep and  
 24 Wrangler machines. Correct?  
 25 A. Right.

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1 Q. Whatever would be in the store releases.  
 2 A. Right.  
 3 Q. And whatever that script found. Is that  
 4 correct, the script that we provided to you?  
 5 A. Right. We talked about that one.  
 6 Q. Is there any -- all right. One of the -- one  
 7 of my colleagues believes that I may have misspoken and  
 8 said loaded onto the SCO machines. I want to be clear  
 9 that all of the files that I've been talking about were  
 10 loaded on AutoZone machines. Is that correct?  
 11 A. That's correct.  
 12 Q. And are you aware -- other than what I've just  
 13 named, are you aware of any other files on any other  
 14 AutoZone machines that are COFF files or Zenix files?  
 15 A. No.  
 16 Q. Has, to your knowledge, AutoZone disclosed to  
 17 SCO all the files that were at one time copied on to any  
 18 of its Linux operating system machines?  
 19 A. I'm sorry. Say that again.  
 20 MR. STONE: Could you read it back?  
 21 (WHEREUPON, THE LAST QUESTION WAS READ  
 22 BACK BY THE COURT REPORTER.)  
 23 A. Yes.  
 24 Q. (BY MR. STONE) All right. I want to go  
 25 back and ask you a few questions about the migration

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1 process to make sure I understand how it -- how it  
 2 worked. Okay? You started out with binaries that  
 3 were compiled to work on OpenServer. Correct?  
 4 A. Right.  
 5 Q. To operate on OpenServer. And you wanted to  
 6 go to binaries that would run on Linux. Correct?  
 7 A. Right.  
 8 Q. Did you do anything to test or compare the  
 9 binaries that you were creating to run on Linux with the  
 10 binaries that were running on OpenServer to make sure  
 11 that they were creating -- generating the same output?  
 12 A. No. We tested the functionality of the  
 13 programs, but we didn't compare the files.  
 14 Q. What do you mean by saying you've tested the  
 15 functionality of the program?  
 16 A. If given a program that performed some  
 17 function on OpenServer, after recompiling that program  
 18 on Linux, we would execute that program and verify that  
 19 the functionality under Linux is the same as the  
 20 functionality under OpenServer.  
 21 Q. Did do you that by running the open -- the  
 22 program on -- that was written for OpenServer and  
 23 compare the results of the two?  
 24 A. Yes.  
 25 Q. Is that what the -- I know I'm going to get

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1 this wrong -- Vision machine was used for?

2 A. Most of our programs could be run on and

3 tested on Vision being in the development box. Some

4 programs would have needed the fuller environment

5 provided by our test machines, which are more like store

6 computers.

7 Q. Like, to replicate the store environment?

8 A. Right. So most of the time, you can run a

9 program on Vision, find out how it works, take a look at

10 output whether it's on a screen or in a file, and then

11 go to a Linux machine to run the Linux version of that

12 program and verify that the screens look the same and

13 the file output's the same.

14 Q. That was the question I was asking. So is

15 that something that you did when you were porting these

16 binaries to -- I'm sure I'm using it wrong again. When

17 you were -- when you were doing the port process from

18 OpenServer to Linux, you would do whatever you did to

19 create your binaries to run on Linux, and then you would

20 compare that with how the original binaries ran on

21 OpenServer and compare the output?

22 A. Right.

23 Q. Did you need to be able to run those binaries

24 on the same machine to do that, or did you need to be

25 able to read the output on the same machine to do that?

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1 A. No. We almost never work on the actual

2 machine. We work on our machines at our desk, and we

3 simply communicate with these those development

4 machines. So typically, we would have one session which

5 is either on Vision, the OpenServer development machine,

6 or it's connected to one of our OpenServer test

7 machines. And then on a separate machine, we would be

8 connected with Wrangler, the Linux development machine,

9 or else one of the Linux test store machines.

10 And so we would either alternate between them. Or

11 if you were sufficiently familiar with the program, you

12 might not have to refer to the OpenServer version at all

13 because you know what the output's supposed to look

14 like.

15 Q. So you had both these machines up and running,

16 and then you'd call upon them depending on what it is

17 that you needed from your own machine. Is that right?

18 A. Right.

19 Q. And is that one of the ways that you would

20 determine, for example, what flags needed to be put in

21 the source code or what modifications might be needed to

22 make -- be made to the source code so that the source

23 code would compile on both OpenServer and Linux?

24 A. Sometimes. Sometimes you would find

25 differences in the behavior of the programs based on

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1 simply running it and noticing that it's different. You

2 can also, upon finding one of those differences, record

3 it in a list of things to be changed when you do the

4 next port. So if you find that in order to execute some

5 command on OpenServer, it has a certain syntax. But if

6 you want to run the same command on Linux and it has a

7 different syntax, that you add it the list of things to

8 check for in your porting. You look for that first

9 syntax. If you find it, you immediately change it.

10 There's no need to find that same error a second time.

11 Q. When you were doing this, would you refer to

12 the -- to the manuals or the other documents that you

13 had for OpenServer to understand how the programs were

14 supposed to run?

15 MR. STEWART: Object to form. You can

16 answer.

17 A. I suppose if you encountered a command and you

18 didn't know what one of the options for that command

19 was, you might read the man page on the original

20 OpenServer platform and find out what it was doing. And

21 similarly, if you didn't know already the syntax under

22 Linux, you would consult the manual page for the Linux

23 version to find out how to make it do what you wanted it

24 to do.

25 Q. (BY MR. STONE) So what did you do? Did

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1 you take all these binaries and sort of divide them

2 up and say, Developer A, you take these binaries and

3 you make binaries that will work on Linux, and

4 Developer B, you take these, and you just sort of

5 parcelled them out to different people?

6 A. Mostly, that is how it would work. You'd find

7 a collection of programs that work together, and you'd

8 ask someone to change all of them so that you can run

9 all of them and test the inner activity.

10 Q. Did AutoZone ever share its software with any

11 of the other stores that it owned or acquired other than

12 the AutoZone stores?

13 A. There really are only a couple of meaningful

14 subsidiaries to AutoZone, one being a retail truck parts

15 company, and the other being a provider of software to

16 repair shops, software and data to repair shops. The

17 only sharing I can think of right now is there was an

18 effort to make our parts lookup system available to the

19 truck parts company. So we -- I really don't know how

20 much software modification was necessary. But we had to

21 try to make the existing program available for that --

22 for that company.

23 Q. Do you know whether -- did you do anything to

24 determine whether any of those programs that you made

25 available to the truck subsidiary contained COFF files?

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1 A. I don't -- I don't know whether anyone looked  
2 to see whether there were COFF files on that machine.  
3 Q. Okay. Where would that -- where would that  
4 machine be located?  
5 A. AutoZone divested itself of that company a  
6 couple of years ago.  
7 Q. Do you know what happened to the machine?  
8 A. I really don't know what happened to the  
9 machine.  
10 Q. What about -- is there any way for you to  
11 determine what would have been on that machine from  
12 information within Auto -- currently within AutoZone?  
13 A. I don't know. I don't know the extent to  
14 which the hardware is traceable by asset tag, for  
15 example. And I also don't know whether we allowed that  
16 company to continue to have access to all parts lookup  
17 software. So it may have been that we didn't want them  
18 to have that software. So we kept it and the machine.  
19 But I don't know.  
20 Q. How about customers of AutoZone? Did you ever  
21 share any of this software that you used in the stores  
22 or that you used in your headquarters with customers?  
23 A. We talked about allowing some of our  
24 commercial customers to have access to our parts lookup  
25 so that they could look up AutoZone parts and purchase

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1 them from us. I don't know whether we ever installed  
2 one of our computers in any customer location. No.  
3 Q. If -- would your parts lookup software have  
4 contained COFF files? Do you know?  
5 A. It would have depended on the timing. If it  
6 was, you know, while we were using OpenServer, then it  
7 would have been OpenServer software.  
8 Q. But what if you were to have just, you know,  
9 given them programs off your Linux image which contained  
10 COFF files? Is it possible they could have gotten them  
11 that way?  
12 A. If we just created their image from our store  
13 load image, then it is possible that they would have had  
14 COFF files on those machines.  
15 Q. How could we determine whether that occurred?  
16 A. You would have to find out from our commercial  
17 business executives whether we had ever put one of our  
18 computers in a commercial customer location.  
19 Q. Okay.  
20 MR. STONE: I'm going to make a request  
21 for that information. I'll follow it up with a  
22 letter, and you can respond however you respond.  
23 Q. (BY MR. STONE) Just to clarify something  
24 that I asked you earlier, there were occasions which  
25 you would -- in which you would compare the output

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1 that you would get from the Linux binary that you  
2 compiled to work on Linux with the output that you  
3 would get from the OpenServer binary that AutoZone  
4 had compiled to run on OpenServer. Correct?  
5 A. I'm sorry. Say that again.  
6 MR. STONE: Would you read that back?  
7 (WHEREUPON, THE LAST QUESTION WAS READ  
8 BACK BY THE COURT REPORTER.)  
9 A. That's correct.  
10 Q. (BY MR. STONE) And if there was something  
11 different in the output, that would lead you to make  
12 some change to the binary that you had compiled to  
13 work on Linux, so it would create identical output  
14 if possible. Is that correct?  
15 A. That's right. We almost always wanted to  
16 exactly duplicate the functionality under Linux that we  
17 already had under OpenServer.  
18 Q. Was the first implementation that you did of  
19 Linux, you did that through Red Hat? Is that right?  
20 A. The first store implementation. Yes.  
21 Q. And you believe that was some time in the 2000  
22 time frame? Is that right?  
23 A. I think we started porting the software in  
24 '99 or 2000. As I said, we could run most of those  
25 programs on the development machine. So the creation of

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1 the first -- the creation of the first Linux store  
2 machine even for test purposes probably was 2000.  
3 Q. Was that -- do you recall, was that Linux Red  
4 Hat 6.2?  
5 A. Yes, it was.  
6 Q. And did you confer with anybody else before --  
7 before you decided to use Red Hat Linux 6.2 and anybody  
8 else who had used it to see what their experience was  
9 with it?  
10 A. Greer was the one who originally ported our  
11 AutoZone libraries and first couple of critical  
12 applications just to see whether it could be done and  
13 how it worked. He also was responsible for  
14 investigating which version of Linux we were going to  
15 try. And so he's the guy that settled on Red Hat, and  
16 6.2 was a version that was available when he began. And  
17 so it was the version that was stable by the time he was  
18 ready to roll it out.  
19 Q. Did you have any discussions with anybody at  
20 IBM about implementing Red Hat 6.2?  
21 A. I don't think so.  
22 Q. Did they play any role in your implementation  
23 of Red Hat 6.2?  
24 A. Our implementation of -- no.  
25 Q. When you implemented Red Hat 6.2, to your

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1 knowledge, did anybody that you were working with review  
2 SCO licenses in connection with that implementation?  
3 A. I don't know of anybody that reviewed licenses  
4 for the Linux rollout.  
5 Q. Did there come a time when you implemented a  
6 different version of Red Hat Linux?  
7 A. Yes.  
8 Q. When approximately did that happen?  
9 A. In -- I don't remember -- 2001 or 2002, Greer  
10 left AutoZone. When he did, his effort to port our  
11 software to Linux was largely successful. We believe it  
12 to be largely successful. So we were going to go ahead  
13 and roll Linux out to our stores.  
14 One of the things that concerned me most -- and I  
15 took over the -- I took over the responsibility of  
16 rolling out Linux. One of the things that concerned me  
17 most in Red Hat 6.2 was that they were using a file  
18 system that was not journaled. We had a lot of stores,  
19 and they are in sometimes areas where the power is  
20 questionable. And anyway, having a store just sort of  
21 crash without a journaling file system was something  
22 that I didn't really want to go forward with.  
23 By the time we were ready to go forward, Red Hat  
24 7.2 was out, available, and stable in our opinion. The  
25 EXT3 file system was available for that operating

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1 system. So that's what we chose to do. We chose to --  
2 instead of go forward with Red Hat 6.2, we chose to go  
3 forward with 7.2 because of the availability of the  
4 journal file system.  
5 Q. So that was in the 2000 time frame, or when  
6 was that?  
7 A. '01, '02, something like that.  
8 Q. In the 2001 to 2002 time frame?  
9 A. I think so.  
10 Q. That's when you rolled it out to the 3500  
11 stores?  
12 A. That's right.  
13 Q. Did there come a time period after that that  
14 you implemented, yet, a newer version of Red Hat Linux?  
15 A. Not in our stores. There are a number of  
16 fixes that have become available since the time we  
17 rolled that out, and there's some increased  
18 functionality, as well. And so we're always weighing  
19 the benefits of upgrading to a newer and presumably  
20 better operating system versus the cost of doing that  
21 and the risk of doing that.  
22 And so we put Red Hat Version 9, I believe, on  
23 these FEP machines when they were migrated from  
24 OpenServer to Linux. And part of the reason for doing  
25 that was to give us some familiarity with -- with Red

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1 Hat Version 9 to decide whether we could use it in the  
2 stores or should use it in the stores.  
3 Q. So the stores currently are running Red Hat  
4 7.2?  
5 A. Still, yes.  
6 Q. And am I correct that you believe at some time  
7 in 1999 that you first started porting programs to  
8 Linux?  
9 A. I think that's right.  
10 Q. And that the rollout, you believe, occurred --  
11 do you believe it occurred some time in 2001, that it  
12 started, or you just don't recall, as you sit here  
13 today?  
14 A. I really don't remember the dates.  
15 Q. So I take it you don't recall when it ended,  
16 either. Is that correct?  
17 A. Sorry.  
18 Q. I'll just ask this question: What JFS do you  
19 use in Red Hat 7.2?  
20 A. We use EXT3 file systems.  
21 Q. Does that -- does JFS mean journal filing  
22 system?  
23 A. I believe it does.  
24 Q. Do you know what an interprocess communication  
25 capability is?

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1 A. Yes. I think so.  
2 Q. Can you tell me what it is?  
3 A. Interprocess communication capability is  
4 support for allowing one program to communicate in some  
5 way with another program.  
6 Q. Did that exist in OpenServer?  
7 A. Yes, it did.  
8 Q. Do you know, does that exist in Linux?  
9 A. I believe it does.  
10 Q. As you sit here today, could you tell me the  
11 AutoZone programs that utilized this IPC capability?  
12 A. I can't tell you all of them. And we would  
13 have to agree on the definition of IPC. Because to some  
14 extent, any program that writes to a file can be  
15 communicating with any other program that may read from  
16 that same file.  
17 Q. Well, I'll agree that whatever you say IPC is  
18 is what I say it is, because I don't know what it is.  
19 I'll just accept your definition. So with your  
20 definition, could you tell me which AutoZone programs?  
21 A. With that definition, there would be a lot of  
22 communication between programs. So, no, I couldn't.  
23 Q. You would define it broadly?  
24 A. If we were to decide to define it broadly,  
25 then there would be a lot of communication going on.

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1 Q. Do you know where the IPC capability in Linux  
2 comes from?  
3 A. Well, again, we sort of have a problem with  
4 definition. In using the same broad definition, it  
5 would come from the files.  
6 Q. Are you familiar with something called --  
7 that's SCO proprietary product called System 5, System 5  
8 Version 3 and System 5 Version 4?  
9 A. I am familiar with the System 5 Unix.  
10 Q. And that's a version of Unix. Correct?  
11 A. I believe it is.  
12 Q. Do you know if the IPC capability in Linux  
13 comes from System 5?  
14 A. I don't know.  
15 Q. Do you know whether the IPC capability in  
16 OpenServer comes from System 5?  
17 MR. STEWART: I'm going to object to this  
18 continuing down this road unless I see that this is  
19 tying back into the conversion. Because issues  
20 related to infringement in Linux of Unix has been  
21 stayed at this point.  
22 MR. STONE: Okay. You're saying you  
23 object --  
24 MR. STEWART: Can you tie this into the  
25 conversion?

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1 MR. STONE: I have like -- I don't have  
2 many questions on this, and I doubt I'm going to get  
3 any answers. So but --  
4 MR. STEWART: I mean, I'll let it go a  
5 little bit longer, then.  
6 MR. STONE: -- I understand your  
7 objection.  
8 Q. (BY MR. STONE) Do you have an answer to  
9 that question?  
10 THE WITNESS: Can you read it back,  
11 please?  
12 (WHEREUPON, THE LAST QUESTION WAS READ  
13 BACK BY THE COURT REPORTER.)  
14 A. No, I don't.  
15 Q. (BY MR. STONE) Okay. Just to clarify  
16 something I asked you earlier, have you heard of Car  
17 Max and Tire Kingdom?  
18 A. Yes.  
19 Q. Are those commercial customers of AutoZone?  
20 A. Yes.  
21 Q. Do you know whether AutoZone installed Linux  
22 in Car Max and Tire Kingdom servers?  
23 A. I believe we installed Linux in the Car Max  
24 locations. Car Max locations are essentially an  
25 AutoZone store with only one customer, Car Max. I

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1 believe that AutoZone employees run that system, for  
2 example.  
3 Tire Kingdom, I believe, is using a server inside  
4 AutoZone headquarters. Tire King -- or was using. I'm  
5 not sure they're even a customer anymore. I think all  
6 they were doing was parts lookup on that server. And  
7 Car Max locations are a little different. They are --  
8 since they are essentially an AutoZone store, they use  
9 most of the suite of applications. But because they  
10 only have only one customer, they don't necessarily use  
11 all of them.  
12 Q. Now, are these Car Max locations included in  
13 the 3500 AutoZone stores that you referred to earlier,  
14 or are they in addition to those 3500?  
15 A. They're included.  
16 Q. Do you consider them part of the 3500 --  
17 A. Yes.  
18 Q. -- AutoZone stores? And as to Tire Kingdom,  
19 you don't know whether Tire Kingdom would have been  
20 having access to machines containing COFF files as you  
21 sit here today? Is that correct?  
22 A. I don't think they had access to the machines.  
23 Well, I think they only had access to the machines as  
24 users, but it would be a least line at AutoZone.  
25 Q. What about stores in other countries like

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1 Mexico? Does AutoZone have stores in Mexico?  
2 A. Yes.  
3 Q. Is that included in the 3500 stores that  
4 you've referred to?  
5 A. It may or may not have been included in the  
6 store count. We only have 60 or so stores in Mexico.  
7 So I really don't know for any given count whether it  
8 was included.  
9 Q. Did you look on those stores in Mexico to make  
10 sure they didn't have COFF files on them?  
11 A. Yes.  
12 Q. Do you recall whether you found any COFF files  
13 on those stores?  
14 A. We did find COFF files for those stores.  
15 Q. And you -- and you deleted them or --  
16 A. Yes.  
17 Q. -- recompiled them?  
18 A. Right. Treated them just like any other  
19 AutoZone store.  
20 MR. STONE: Let's go off the record for a  
21 minute.  
22 VIDEO SPECIALIST: Off the record 1351.  
23 This is the end of Tape 3.  
24 (SHORT BREAK)  
25 VIDEO SPECIALIST: Back on the record.



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1 The time is approximately 1412. This is the beginning  
 2 of Tape Number 4.  
 3 Q. (BY MR. STONE) Mr. Celmer, just a couple  
 4 of questions off the topic of what I was on before.  
 5 Did you speak to anybody other than your counsel  
 6 before appearing here for your deposition about the  
 7 deposition?  
 8 A. No.  
 9 Q. Did you speak to Mr. Greer at all?  
 10 A. No.  
 11 Q. Did you meet with your counsel prior to  
 12 appearing here today for your deposition?  
 13 A. Yes.  
 14 Q. When did that occur?  
 15 A. Just a few minutes before the deposition.  
 16 Q. You didn't meet with them on any other  
 17 previous occasion to prepare for this deposition?  
 18 A. We had a conference call on Friday, Thursday.  
 19 Thursday, I think.  
 20 Q. And how long did that last?  
 21 A. Couple hours, I suppose.  
 22 Q. Was there anybody other than Mr. Stewart and  
 23 Mr. Bridges on the call, and you?  
 24 A. Becky was on temporarily.  
 25 Q. That's AutoZone's general counsel? Is that

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1 right?  
 2 MS. BALLOU: Assistant.  
 3 MR. STONE: Assistant. Well, I'm trying  
 4 to promote you.  
 5 Q. (BY MR. STONE) Did you review any  
 6 documents before coming here for this deposition?  
 7 A. I think I looked at the deposition notice,  
 8 wherever it is.  
 9 Q. Of Jim Greer?  
 10 A. No. The notice for this deposition.  
 11 Q. Oh, okay. The 30(B)6 notice --  
 12 A. Right.  
 13 Q. -- that I had marked?  
 14 A. Right. That's the one.  
 15 Q. Did you look at Mr. Greer's transcript?  
 16 A. No.  
 17 Q. Are you aware of a web posting that Mr. Greer  
 18 made on a website called Groklaw?  
 19 A. I've heard rumors of such a posting.  
 20 Q. Do you know how that came about?  
 21 A. No. I really don't.  
 22 Q. Did you ever speak to him about it?  
 23 A. We have -- we, you know, sort of joked, slash,  
 24 commiserated about the suit. We've never really talked  
 25 that much about it.

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1 Q. Did you talk to him after he had his  
 2 deposition?  
 3 A. I'm sure I spoke to him after he had his  
 4 deposition. But I didn't really -- we didn't really  
 5 talk about the deposition itself.  
 6 Q. Have you talked with Mr. Greer about this case  
 7 in any substance other than, you know, that it's going  
 8 on and commiserating about it?  
 9 A. Not really.  
 10 Q. Did you review that posting in preparation for  
 11 your deposition?  
 12 A. I don't think I've seen that posting.  
 13 Q. Getting back to some testimony that you gave  
 14 earlier, you were testifying about why in your opinion  
 15 it was preferable to use Linux 7.2 as opposed to 6.2?  
 16 Correct?  
 17 A. Right.  
 18 Q. And you mentioned that 6.2 did not have a  
 19 journal file system? Is that right?  
 20 A. As I recall, we either couldn't use EXT3 at  
 21 all under 6.2, or we would have had to apply some  
 22 patches in order to support it. And rather than do  
 23 either of those things, I thought it best to simply  
 24 upgrade the whole operating system and then simply  
 25 select EXT3 as an option.

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1 Q. And EXT3 is -- what is EXT3?  
 2 A. I believe it's just an extension of the file  
 3 system such that if a computer loses power, for example,  
 4 when the machine powers up, the file system structure  
 5 itself is preserved and doesn't have to be cleaned up.  
 6 You may lose data, but at least the arrangement of files  
 7 on the disk is clean.  
 8 Q. So is this a program or a series of programs?  
 9 A. Well, yes. Effectively, everything on the  
 10 computer is a program. And the part of the operating  
 11 system that manages your files for you is what I'm  
 12 referring to when I talk about EXT2, EXT3.  
 13 Q. And I think you mentioned before, you were  
 14 concerned because you thought some of the AutoZone  
 15 stores were in locations where they might lose power.  
 16 A. Definitely?  
 17 Q. Is it correct that OpenServer 5.05 had a  
 18 journal filing system?  
 19 A. It had a number of file system options, one or  
 20 two of which were journaled, yes.  
 21 Q. So you had that capability when you were using  
 22 OpenServer. But when you moved to 6.2, you didn't have  
 23 it. Is that right?  
 24 A. In the 6.2 -- four 6.2 test stores, we were  
 25 not using a journal file system, and I think that's

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1 because it wasn't -- a reliable version wasn't available  
2 at that time.  
3 Q. Do you know where ETX.3 comes from?  
4 A. No, I don't.  
5 Q. Okay. We were also earlier talking about your  
6 recom -- what AutoZone did to recompile programs that  
7 were in COFF format that you found that you still wanted  
8 to use. Do you recall that?  
9 A. Yes.  
10 Q. In the -- during the discovery process.  
11 A. Yes.  
12 Q. And I think you told me that you recompiled  
13 them in the ELF format? Is that right?  
14 A. Right.  
15 Q. Is that the format that you recompiled all of  
16 the programs that you ported from OpenServer to Linux  
17 when you first did the migration in the 2000 time frame?  
18 A. I think so. Yes.  
19 Q. And is that the format that all the programs  
20 on your 3500 machines that are running Linux operating  
21 systems are in now?  
22 A. I think so. Yes.  
23 Q. Do you know if AutoZone did anything to  
24 determine who owned that format or if somebody had  
25 proprietary rights in that format?

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1 A. I'm not aware of anybody investigating that.  
2 Q. I'm going back and asking follow-ups on things  
3 that you've said. One of the things you talked about was  
4 having a machine and looking at the -- was it the Vision  
5 server -- speaking to the Vision server and speaking to  
6 Wrangler server? Is that right?  
7 A. For example, yes.  
8 Q. So Vision would run on OpenServer, and  
9 Wrangler would run on Linux. Correct?  
10 A. Right.  
11 Q. And you mentioned that you would get output on  
12 occasion from a -- from the Linux machine, and you'd  
13 want to compare it with that same -- the equivalent  
14 binary running on OpenServer. Correct?  
15 A. Right.  
16 Q. Did that output, was that ever in a binary  
17 form?  
18 A. Yes.  
19 Q. So did you write scripts or something to  
20 compare the binary outputs between the two?  
21 A. The binary output I'm talking about is largely  
22 data, data files. They're just not human readable. For  
23 each of those files, we also have utilities that are  
24 used to translate the contents of those files into human  
25 readable forms.

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1 And so what we would typically do is run the  
2 programs to create the data in the files but then use  
3 the utility to display the contents of those files for  
4 us so we could read them.  
5 Q. And then you'd just compare them to make sure  
6 that the output was equivalent.  
7 A. Right.  
8 Q. So you didn't have to write a script that  
9 would like compare line by line or something like the  
10 output was. Is that right?  
11 A. That's right.  
12 Q. All right. I'm going to say a number of  
13 things. I'm not sure I know what any of them mean.  
14 I'll ask the question, and you can try to answer it.  
15 Okay?  
16 A. Uh-huh. Yes.  
17 Q. I asked you some questions before about IPC.  
18 Do you recall that?  
19 A. Yes.  
20 Q. If I were to devine -- define IPC as  
21 Semaphore -- Semaphore's message queues and shared  
22 memory --  
23 A. Okay.  
24 Q. -- could you tell me what AutoZone programs  
25 would utilize IPC?

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1 MR. STEWART: I'm going to object to the  
2 extent this is outside the deposition notice. I'll  
3 allow you to answer it.  
4 MR. STONE: Thank you.  
5 MR. STEWART: I hope we're not going to  
6 go too far down this road.  
7 MR. STONE: We're not going to go too  
8 far.  
9 A. I can certainly tell you some of the programs  
10 that used those mechanisms. I'm not sure I can give you  
11 an exhausted list.  
12 Q. (BY MR. STONE) Let me try this: First,  
13 I'll read some names of programs, and you can tell  
14 me whether it does. Okay?  
15 A. All right.  
16 Q. MQ Series?  
17 MR. STEWART: Same objection. Could we  
18 have a standing objection?  
19 MR. STONE: Yes.  
20 A. I believe MQ series used Semaphores and shared  
21 memory. I don't think MQ series used message queues,  
22 but I'm not certain about that.  
23 Q. (BY MR. STONE) Okay. PayCalc?  
24 A. Say that again.  
25 Q. PayCalc?

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1 A. PayCalc.  
 2 Q. P-A-Y-C-A-L-C?  
 3 A. I'm not sure about that.  
 4 Q. How about PayConf, C-O-N-F?  
 5 A. I'm sorry. I don't remember that one, either.  
 6 Q. So you'll know what we did is you produced to  
 7 us your -- AutoZone produced to us about 700 e-mails.  
 8 And so what I'm trying to do is take some of the  
 9 information that we drew from those e-mails and ask you  
 10 questions in a simpler form than showing you, you know,  
 11 50 different e-mails. Okay?  
 12 A. Okay.  
 13 Q. So we believe that that's what these e-mails  
 14 are saying, and I'm just trying to confirm from your  
 15 knowledge whether I'm accurate or not.  
 16 A. Okay.  
 17 Q. PayConf, you're not familiar with, either?  
 18 A. No, I'm not.  
 19 Q. How about PayCalen, C-A-L-E-N?  
 20 A. No. I don't remember that at all.  
 21 Q. How about PQueue.c, P-Q-U-E-U-E, dot C.  
 22 A. I don't know what that is.  
 23 Q. How about PProdemon.x? I'll spell it. It's  
 24 P-P-R-O-D-D-E-M-O-N dot X.  
 25 A. There should only be one D in that. That one,

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1 I'm familiar with. That one uses -- it uses Semaphores.  
 2 It uses shared memory. I don't recall whether it uses  
 3 message queues or not. I don't think it does.  
 4 Q. How about Parts Pro?  
 5 A. Yes. That one uses shared memory and  
 6 Semaphores. It works with PProdemon. And I don't know  
 7 whether it uses message queues or not.  
 8 Q. What do those programs do?  
 9 A. Parts pro is our parts lookup system.  
 10 Pprodemon was originally written to enhance the  
 11 functionality of Parts Pro to make it faster. Parts Pro  
 12 demon's job was to load some of our smaller databases  
 13 into shared memory so that data could be accessed  
 14 quickly. It was also originally supposed to monitor the  
 15 contents of that memory, looking for errors that might  
 16 develop.  
 17 As I've said, we have some power problems. We have  
 18 a lot of computers in a lot of harsh places. And  
 19 anything can happen. I didn't want to have corrupt  
 20 memory impacting store operations. So this demon loaded  
 21 stuff into shared memory and also computed check zones,  
 22 so that if an error was ever found, it would tell parts  
 23 lookup to go ahead and use data files because we're not  
 24 sure about the contents of shared memory anymore.  
 25 Q. So this is something that worked in

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1 conjunction with your parts lookup software?  
 2 A. That's right.  
 3 Q. And the parts lookup software was what you had  
 4 referred to earlier that you believe may have been  
 5 shared with customers? Is that correct?  
 6 A. Parts lookup system is or was shared with Tire  
 7 Kingdom to the extent that I think they made a  
 8 connection into a server in AutoZone's corporate  
 9 headquarters. I don't know whether we ever put a  
 10 machine containing our parts lookup in a retail customer  
 11 site.  
 12 Q. Okay. POS?  
 13 A. POS. Yes.  
 14 Q. That would be one that had some Semaphores,  
 15 message queues, and shared memory?  
 16 A. I believe it did use Semaphores. It may have  
 17 used -- I remember discussions about shared memory, but  
 18 I don't know whether that code was ever activated or  
 19 used. Message queues, I don't remember whether it uses  
 20 message queues.  
 21 Q. Okay. So you don't know if that code is  
 22 currently being used by AutoZone?  
 23 A. The POS code is definitely being used. The  
 24 code that uses shared memory and message queues and  
 25 Semaphores, I'm not sure whether it currently or really

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1 ever used it in production. I know we at some point  
 2 wrote code to use shared memory to again make it faster.  
 3 But I don't know if it was ever used in production.  
 4 Q. How about warranty? Is that a program?  
 5 A. Warranty is a collection of programs that  
 6 allow us to keep track of our -- allows us to track of  
 7 our customers purchases for warranty purchases.  
 8 Q. Does it -- I'm sorry.  
 9 A. That program does use, or set of programs,  
 10 uses message queues, and I don't know about Semaphores  
 11 or shared memory.  
 12 Q. Okay. How about MESGDRVR dot C?  
 13 A. I'm not certain about that program. I believe  
 14 that it is part of our commercial software. I'm not --  
 15 I don't know what it does or how it does it.  
 16 Q. The programs that you and I have discussed  
 17 that you do recall, are all of those in use in AutoZone  
 18 at this time?  
 19 A. I think all the programs that we've talked  
 20 about are still in use at AutoZone.  
 21 Q. Are there any other major programs that  
 22 AutoZone uses on a daily basis that as you sit here  
 23 today, you can think of that use Semaphores, message  
 24 queues, and shared memory?  
 25 A. I'm sure we have other programs that use some

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1 of those capabilities. One I can think of that uses  
2 message queues is the software that we used to  
3 communicate data to and from our stores. We talked  
4 about the FEP machines.  
5 Q. Uh-huh (affirmative response).  
6 A. The software that runs on those FEP machines  
7 uses a message queue.  
8 Q. Does it have a name, this software, or you  
9 just don't remember?  
10 A. It's called the FEP software. Its name is AZ  
11 FEP.  
12 Q. Okay. Anything else that as you sit here  
13 today that you can think of?  
14 A. I would not be surprised to find that other  
15 programs do. But I'm not -- I can't think of any others  
16 right now.  
17 Q. So to your knowledge with respect to any of  
18 the implementations that we've talked about, the various  
19 versions of Linux that we talked about and the various  
20 binaries which were ported to Linux, to your knowledge,  
21 did anybody at AutoZone consult copyright counsel or  
22 consider the intellectual property implications of what  
23 it was doing when it was making these implementations?  
24 MR. STEWART: Object that that's outside  
25 the notice, but you can answer.

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1 THE WITNESS: Can you read that back,  
2 please?  
3 MR. STONE: Thank you for not asking me  
4 to ask it again.  
5 (WHEREUPON, THE LAST QUESTION WAS READ  
6 BACK BY THE COURT REPORT.)  
7 MR. STEWART: And I'm also going to  
8 object to the form. You can answer.  
9 A. I don't know that we looked into those issues  
10 because we were porting the software. That's it. I  
11 don't know that we looked into those issues.  
12 Q. (BY MR. STONE) How about when you decided  
13 to use these various versions of Linux? Did you --  
14 to your knowledge, did you look into the issues of  
15 whether anything in Linux that you were going to use  
16 may have IP implications?  
17 MR. STEWART: Same objections.  
18 A. No.  
19 Q. (BY MR. STONE) To your knowledge, does  
20 AutoZone have internally any code of ethics about  
21 intellectual property or, you know, checking to make  
22 sure that before it carries out any operation  
23 pertaining to software or computers, that it doesn't  
24 violate intellectual property rights?  
25 MR. STEWART: Same objections.

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1 A. I'm sure we have a code of ethics that  
2 prohibits the unlicensed copying of licensed software.  
3 Q. (BY MR. STONE) Other than that, any other  
4 code of ethics that talks about steps that need to  
5 be taken to insure that you don't copy unlicensed  
6 software or invade intellectual property rights?  
7 MR. STEWART: Same objections. We're  
8 getting pretty far off the ranch here.  
9 MR. STONE: This is my last question on  
10 this issue.  
11 A. Aside from prohibitions against copying, I'm  
12 not familiar with specific processes, policies or  
13 procedures.  
14 MR. STONE: Okay. Let's take another  
15 five-minute break. I think I have a couple more  
16 pieces of areas I want to cover, but I want to do it  
17 efficiently. I've got to break and get the pieces  
18 together.  
19 MR. STEWART: Fine with me.  
20 MR. STONE: Let's take a break.  
21 VIDEO SPECIALIST: Off the record 14:35 .  
22 (SHORT BREAK)  
23 VIDEO SPECIALIST: Back on the record at  
24 1459.  
25 Q. (BY MR. STONE) Mr. Celmer, when you --

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1 when you made your -- AutoZone made its migration to  
2 Linux, did it employ -- other than the Red Hat  
3 people, did it employ any outside consultants or  
4 contractors in making that transition?  
5 A. I don't think so. No.  
6 Q. So you didn't hire any consultants to come in  
7 and show you how to do it, for example?  
8 A. No.  
9 Q. Do you know if you hired any programmers on a  
10 contracting basis, or was it all in-house programmers  
11 that did it?  
12 A. We have a relationship with a couple of  
13 contract programming companies, but I don't think that  
14 any of those guys were involved with the port because  
15 they're usually here for specific assignments. And the  
16 porting of the software for a long time was not really  
17 an organized effort. And once it became an organized  
18 effort, we were sort of in a hurry to do it. So I don't  
19 think we brought -- tried to bring the contractors in on  
20 the port.  
21 Q. So based on your prior testimony, am I -- am I  
22 correct that you began doing this porting process  
23 informally in between other projects that the IT  
24 department was doing?  
25 A. Right.

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1 Q. And Mr. Greer was the person that was  
2 primarily responsible for sort of supervising that  
3 informal process? Is that correct?  
4 A. That's right.  
5 Q. And then it became more and more involved as  
6 time went on?  
7 A. That's right.  
8 Q. But it still was never that you picked a  
9 certain group of people and said you are the Linux  
10 development team and you will do nothing but work on  
11 porting applications from OpenServer to Linux. Is that  
12 correct?  
13 A. Toward the end of the porting effort, it  
14 became a sure enough project where people were dedicated  
15 to it on a full-time basis. And so at that point, there  
16 was a team, but they were all AutoZoners. I don't think  
17 there were any contractors.  
18 Q. Was this before Mr. Greer left or after he  
19 left?  
20 A. Before he left.  
21 Q. When you cre -- when AutoZone created the  
22 binaries -- strike that. When AutoZone ported binaries  
23 it was using on OpenServer to Linux, did it use the  
24 standard errors -- error messages that were provided in  
25 Unix?

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1 A. I don't think I understand what standard error  
2 messages you're talking about.  
3 Q. Are you familiar with a ERRONO dot H header  
4 file -- header file?  
5 A. Yes.  
6 Q. I'm glad you are. That's what I'm talking  
7 about. Did you use the error messages that are  
8 referenced in that file when you ported binaries?  
9 A. Yes. I'm sure that we have some programs that  
10 refer to the standard names for those error numbers.  
11 And those names were available under Linux just as they  
12 were under OpenServer for the most part. There are a  
13 couple of differences.  
14 Q. So now that you -- your store machines are  
15 running on Linux, they're still using many of those same  
16 error messages? Is that right?  
17 MR. STEWART: Object to form. You can  
18 answer.  
19 A. We're still using the same -- I'd rather say  
20 names than messages. Because I believe there's a  
21 separate header file that provides, you know, multi-word  
22 messages. And ERNO dot H is a simple mapping of a  
23 number to a standardized name, one word, just a name.  
24 So changing messages to name, then the answer is, yes,  
25 we're still using those names.

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1 Q. (BY MR. STONE) So like error -- error no  
2 dot H would have in it like the number one, two,  
3 three, or something that would refer to an error  
4 message?  
5 A. That's right.  
6 Q. So like those annoying messages you get on  
7 your computer when it says error number 212 or  
8 something, and you have no idea what it means, that's  
9 the kind of thing we're talking about?  
10 A. Similar.  
11 MR. STEWART: Except Bob does know what  
12 it means.  
13 Q. (BY MR. STONE) When you  
14 ported binaries -- when AutoZone ported binaries  
15 from OpenServer to Linux, did it use the signal  
16 numbers that were defined in the signal dot H header  
17 file?  
18 A. Yes.  
19 Q. And the 3500 stores that are using the Linux  
20 operating system, do they still use those signal  
21 numbers?  
22 A. Yes.  
23 MR. STONE: Would you mark this, please.  
24 (WHEREUPON, THE ABOVE-MENTIONED  
25 DOCUMENT WAS MARKED AS EXHIBIT NO. 38,

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1 AND IS HERETO ATTACHED.)  
2 Q. (BY MR. STONE) I'm showing you what's  
3 been marked Exhibit 38 for identification.  
4 MR. STEWART: Do you have an extra copy?  
5 MR. STONE: No. I didn't have a copy for  
6 myself.  
7 MR. STEWART: Let me take a look at it  
8 first.  
9 Q. (BY MR. STONE) I'll represent to you it's  
10 a printout of the posting that Mr. Greer posted on  
11 Groklaw that I referred to earlier. Could you --  
12 could you review it, please? I'm going to ask you  
13 some questions about it.  
14 (BRIEF PAUSE)  
15 A. Okay.  
16 Q. (BY MR. STONE) Have you had an  
17 opportunity to read it?  
18 A. Yes.  
19 Q. Is that the first time you've ever read that?  
20 MR. STEWART: And I'm going to object, by  
21 the way, to this document to any questioning about the  
22 document on the grounds that it's outside the  
23 deposition notice. But I'll allow the witness to  
24 answer.  
25 A. I think I've seen parts of this, in particular

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1 the first sentence. I seem to remember it.  
2 Q. (BY MR. STONE) Could I have it back for a  
3 second?  
4 A. Sure.  
5 Q. The sentence, I don't know whether to be  
6 pleased or angry at SCO's assertion that IBM must have  
7 assisted AutoZone's transition to Linux, et cetera?  
8 A. Right.  
9 Q. Was -- was Mr. Greer a senior technical  
10 advisor at AutoZone?  
11 A. Senior technology advisor, yes.  
12 Q. That was your title, as well?  
13 A. And is currently. Yes.  
14 Q. Did you note in here where Mr. Greer states  
15 that as many as 35 AutoZone developers were performing  
16 porting work for him?  
17 A. I did note that.  
18 Q. Does that refresh your recollection? I  
19 believe you told me earlier you thought there were no  
20 more than 12 to 15 developers working on this project at  
21 any one time.  
22 A. Yeah. That number surprised me because that's  
23 a lot of folks.  
24 Q. So as you sit here today, do you know whether  
25 your testimony is more accurate or his testimony as to

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1 how many developers were working on this project?  
2 A. Well, there may be some middle ground, as  
3 well. It may be that there were a total of 35 people  
4 on, you know, a particular day or set of days. But it  
5 may not necessarily be the case that that's the only  
6 thing they were working on.  
7 So I was talking about full-time dedicated people.  
8 It may be that he's talking about a short-term  
9 requirement for everyone to pitch in and do porting at  
10 the same time as testing or some other activity. But  
11 this was -- the porting of the software was his  
12 responsibility. And so his recollection is almost  
13 certainly more accurate than mine.  
14 Q. Mr. Greer stated that the developers were also  
15 responsible for testing their individual applications  
16 under both SCO and Linux. Is that what you were  
17 referring to earlier when you were talking about having  
18 the machine on your desk and referring to a development  
19 machine such as Vision and Wrangler and running the  
20 binaries on the two machines?  
21 A. Yes. That's exactly it.  
22 Q. And comparing the output?  
23 A. Right.  
24 Q. And then he refers to performing bills of the  
25 entire AutoZone store on his desktop. Is that the

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1 Wrangler machine, or is that some other machine, if  
2 you -- if you know?  
3 A. I really don't know. Jim was, around that  
4 time, our primary investigator of Linux. He had a keen  
5 interest in Linux. And in fact, his desktop was a Linux  
6 machine. His desktop might have been Wrangler for a  
7 period of time while he was doing this on his own. And  
8 when other people began to join his efforts, he had to  
9 make that machine available. So he could have made it  
10 available from his desktop, but ultimately he would have  
11 had to separate that machine from the developers, you  
12 know, physically and replace his desktop with something  
13 else.  
14 Q. His statement that no SCO libraries were  
15 involved in the porting activity you now know to be  
16 incorrect. Correct?  
17 A. Well, if a program was ported, then there  
18 weren't any SCO libraries involved. But our problem is  
19 with those files that were copied but not ported.  
20 Q. So the point is that there were a number of  
21 files that were copied and ended up on your 3500 store  
22 machines that were not recompiled under Linux and were  
23 not ported in accordance with the structure that you had  
24 set up. Is that correct?  
25 A. That's right. The problem with those programs

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1 is they weren't ported, or if they were ported, Linux  
2 binaries weren't distributed.  
3 Q. Mr. Greer also refers to rules that he had  
4 established for these developers. Would it be fair to  
5 say that to your knowledge, he didn't establish any  
6 rules that pertained to protections of SCO proprietary  
7 code?  
8 A. I believe his overwriting rule was port  
9 everything, which had that been executed properly, would  
10 have protected IB -- excuse me -- SCO's library code  
11 from being copied.  
12 Q. But you've now learned that it wasn't done  
13 correctly?  
14 A. That's right.  
15 Q. When you were considering -- considering the  
16 migration of AutoZone to Linux, were you -- did you rely  
17 on any certifications from IBM that related to Linux?  
18 A. I don't think so.  
19 Q. Did you have knowledge that there were  
20 certifications that IBM had generated pertaining to  
21 Linux?  
22 A. No. Because I'm not even familiar now with  
23 what certification IBM might be able to provide.  
24 Q. Were you aware of IBM announcing in the  
25 1999/2000 time frame that it was embracing Linux as

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1 planning to spend billions of dollars on advancing  
2 Linux?  
3 A. I'm unsure of the time frame, but I do  
4 remember IBM promoting Linux as it promoted Java.  
5 Q. And did that play any role in your decision to  
6 migrate from OpenServer to Linux?  
7 A. No.  
8 MR. STEWART: Object. You can go ahead  
9 and answer.  
10 A. No. I'm not really concerned with what IBM  
11 thinks people should do.  
12 MR. STONE: Okay. Take a break. I think  
13 I'm done. I may have one or two more questions. But  
14 I think we're pretty close to done at this point.  
15 VIDEO SPECIALIST: Of the record, 1515.  
16 (SHORT BREAK)  
17 VIDEO SPECIALIST: Back on the record at  
18 1521.  
19 Q. (BY MR. STONE) Mr. Celmer, do you know  
20 what an INIT tab is?  
21 A. Yes.  
22 Q. Can you tell me what it is, please?  
23 A. There is a program called INIT that is started  
24 at the end of the process of booting up the Unix  
25 machine, and that program requires some information so

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1 that it knows what it's supposed to be doing. And so  
2 there's a table of information that is called a INIT  
3 tab, which, I suppose, is for an INIT table. And that  
4 table of information usually tells INIT which programs  
5 to start, in what order, at what point, and at which  
6 point of the boot process it should start them, and it  
7 tells them whether they should restart them if they die  
8 and some other information.  
9 So it's -- the file is used by this program to make  
10 sure that when a system comes up, all of the services  
11 that are necessary at that particular run level are  
12 running or at least that they try to start.  
13 Q. Have you heard of something called an INIT  
14 script?  
15 A. INIT script. I believe I have heard of INIT  
16 script, but I don't know what the heck it is.  
17 Q. So you don't know if it has something to do  
18 with INIT tab or not?  
19 A. I'm sorry. I don't know what it is.  
20 Q. Okay. Do you know if AutoZone has in any of  
21 its binaries that are in its 3500 stores on its Linux  
22 systems, INIT tabs?  
23 A. The process of booting Linux is similar to  
24 that of booting Unix. And there is a program that  
25 performs a function that's similar to INIT. I believe

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1 in our version of Linux, that program is called EX-INIT.  
2 But I don't remember whether we're using an INIT tab  
3 file or whether there's some kind of EX-INIT dot conf  
4 file, which is something that Linux does often. They  
5 put configuration in the file and put a dot conf at the  
6 end.  
7 So I'm sorry. I don't really remember whether we  
8 have an INIT tab file in our stores or not.  
9 Q. Did you have INIT tab files in your stores  
10 when you were using OpenServer?  
11 A. I believe we did. Yes.  
12 Q. When you ported your applications from  
13 OpenServer to Linux, do you know what you did about  
14 those INIT tabs? Is that something you would have taken  
15 out or replaced, or how would you have dealt with it?  
16 A. Well, I don't recall directly what was done.  
17 But among the things that are in the INIT tab file are  
18 the instructions for how to allow users to log into  
19 terminals, and we certainly would have needed that  
20 functionality. So we would have instructed this INIT or  
21 EX-INIT program under Linux to start the program that  
22 communicates with terminals and allows the user to log  
23 in.  
24 There are a number of other things that INIT does.  
25 So we would have reviewed what INIT was instructed to do

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1 via the INIT tab file under Unix, and we would have  
2 tried to replicate that functionality for the  
3 corresponding program under Linux.  
4 Q. Would you have done that in the way that  
5 you've described before, using the two different  
6 development machines, the OpenServer machine and the  
7 Linux machine, to try to replicate the same function?  
8 A. No. I think because Jim ported just a couple  
9 of programs to start with, that he would not have had to  
10 bring up a full system sufficient to run all of our  
11 software. All he wanted to do was recompile the source  
12 of the libraries, which took a while, as I remember, and  
13 then the source for, you know, some set of programs.  
14 And just in order to run those programs, he would not  
15 have had to modify the INIT file because he was working  
16 at his desk, which would have been the system console.  
17 So I don't think he would have had to modify INIT until  
18 well into the project.  
19 Q. So it would have been during when you were  
20 getting close to rolling out the project that you would  
21 have done that? Is that correct?  
22 A. It wouldn't have been necessary until then. I  
23 really don't know at what point of the project he would  
24 have done that. Because you know, first, we have to  
25 make sure that programs run and this is a viable thing

1 to invest time in. But at some point along the way,  
2 even if all your programs run, if you can't get the  
3 system up, it's not worth porting the programs.

4 So he would have had to evaluate at what point to  
5 investigate that critical piece, and I really don't know  
6 when he did it.

7 Q. But as -- as you sit here today, you don't  
8 know when he investigated that critical piece or when he  
9 actually performed the porting activity. Is that right?

10 A. That's right. I don't.

11 MR. STONE: All right. I don't have any  
12 further questions.

13 MR. STEWART: No questions.

14 MR. STONE: Thank you for coming.

15 VIDEO SPECIALIST: This concludes the  
16 videotaped deposition of Mr. Bob Celmer, consisting of  
17 four tapes. The time is approximately 1528. We are  
18 now off the record.

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1 CERTIFICATE

2  
3 STATE OF TENNESSEE:  
4 COUNTY OF SHELBY:  
5 I, KORIAN NEAL, Registered Professional Reporter and  
6 Notary Public for the State of Tennessee at Large, do  
7 hereby certify that I reported in machine shorthand the  
8 above-captioned proceedings.

9 I HEREBY CERTIFY that the foregoing pages contain a full,  
10 true and correct transcript of my said Stenotype notes  
11 then and there taken.

12 I FURTHER CERTIFY that I am not an attorney or counsel of  
13 any of the parties, nor a relative or employee of any of  
14 the parties, nor am I a relative or employee of any  
15 attorney or counsel connected with the action, nor am I  
16 financially interested in the action.

17 I FURTHER CERTIFY that in order for this document to be  
18 authentic and genuine, it must bear my original signature  
19 and my embossed notarial seal and that any reproduction in  
20 whole or in part of this document is not allowed or  
21 condoned and that such reproductions should be deemed a  
22 forgery.

23 THEREFORE, witness my hand and my official seal in the  
24 State of Tennessee on May 16, 2005.

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21 My Commission Expires:  
22 June 7, 2006

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RECYCLED PAPER MADE FROM 100% POST-CONSUMER CONTENT

# ALSTON & BIRD LLP

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November 24, 2004

*Via Facsimile and Overnight UPS*

David S. Stone, Esq.  
Boies, Schiller & Flexner LLP  
150 John F. Kennedy Parkway  
4th Floor  
Short Hills, NJ 07078

Re: *The SCO Group, Inc. v. AutoZone, Inc.*

Dear David:

This letter supplements the information we have provided to you previously regarding AutoZone's actions to locate and delete or replace any SCO compiled programs on its servers. AutoZone has focused its system review on searches for "COFF" files. As you likely know, COFF files are executable files in a format that is normally only used on SCO OpenServer computers. Such files would reside at AutoZone only on its store servers and on servers in AutoZone's store support center (i.e., servers at AutoZone's headquarters). All COFF files have now been located and deleted or replaced with Linux compiled versions of the files. An update of the actions AutoZone has taken to reach this result is provided below.

## Store Servers

On October 19, 20, and 21, AutoZone sent a release of its software to its store servers that updated the store servers to replace nine COFF files with Linux files and to delete nineteen unused COFF files. Two other COFF programs, COMPX and DECOMPX, were also deleted in this release. The nine replaced COFF files were on the store servers because they were inadvertently included in a Linux-only release in November of 2001. They subsequently became part of the Linux image rolled out to the rest of the AutoZone stores.

Of the nineteen unused COFF files deleted in the October 19-21 release, most were help utilities used outside of AutoZone's store management system that were

Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
704-444-1000  
Fax: 704-444-1111

90 Park Avenue  
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3201 Beachleaf Court, Suite 600  
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919-862-2200  
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601 Pennsylvania Avenue, N.W.  
North Building, 10<sup>th</sup> Floor  
Washington, DC 20004-2601  
202-756-3300  
Fax: 202-756-3333

errantly omitted from the original conversion schedule and loaded into the Linux load image. It is likely that many of these programs would not run under Linux due to compatibility issues or the fact that these programs predated year 2000 and would not have operated correctly with the new AutoZone data format in use after the year 2000. In addition to the help utilities, there were four SCO compiled programs that were copied to the Linux machines errantly because the programs were not located in the proper directory for binary files prior to the Linux conversion. The programs were located in the directories where data is kept on the AutoZone store servers. During the migration from OpenServer to Linux, this entire data directory was copied onto the Linux machine; thus, the four binary files that were in the COFF format were copied as well.

The deletion of the COMPX and DECOMPX programs in the October 19-21 release caused the replenishment system to fail on some of the AutoZone store servers. The replenishment system is a program used by AutoZone store servers to order and receive new inventory from the distribution centers. The replenishment system failed with regard to stores serviced by distribution centers 66 and 77 (approximately 650 of AutoZone's 3,500 stores). Investigation of the failure revealed that the store servers served by these distribution centers still used the COMPX and DECOMPX programs in connection with the replenishment system. The AutoZone IT Department upgraded the software in distribution centers 66 and 77 to eliminate the use of COMPX and DECOMPX in all AutoZone stores. This upgrade occurred one day after the notice of the failure of the replenishment system.

The release script sent to the AutoZone stores on October 19-21 also searched each AutoZone store server for the existence of other COFF files beyond the files we identified to you previously. A total of 1,681 additional COFF files were found on 387 store machines. These programs had 127 unique file names. The bulk of these files were files that were inadvertently copied because they were in the wrong directory or because the directory was inadvertently copied. The other files fall into a number of different categories, including files that were mislabeled as COFF files but that were data files, and temporary files created by the release process before being deleted automatically. All of those additional COFF files were deleted from all AutoZone store server machines by November 1<sup>st</sup>.

#### Store Support Center Servers

The store support center maintains a new machine load computer that the support center uses to create new store servers. In conducting additional review of all relevant AutoZone servers for OpenServer compiled code, AutoZone's IT staff discovered that the new machine load computer had a program on it called dexpand.x that was compiled under OpenServer. This program was being used to translate data from a pre-Y2K AutoZone format to AutoZone's new post-Y2K format. This translation occurred during the initial loading of information onto the new store server. After discovery, this program was recompiled and replaced.

David S. Stone, Esq.  
November 24, 2004  
Page 3

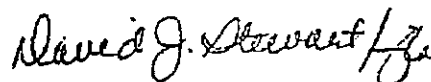
AutoZone's IT personnel also discovered that the "Spirit" server had some OpenServer compiled programs on it because of a recent restoration of the server after a crash. Historically, this server was used as both a development server and the home of AutoZone's revision control system. At one time, each AutoZone programmer had an account on the server to develop, compile, and test programs. Several years ago, AutoZone's IT department decided to stop providing developer accounts on the Spirit computer, and the machine transitioned to serving only as the home for AutoZone's revision control system. Spirit recently crashed and, during its recovery, it was converted from SCO OpenServer to RedHat Linux. All of the old files that were on Spirit were loaded back onto the machine during the recovery process to make sure that a complete restoration was achieved, and this resulted in many SCO compiled programs being loaded onto the machine. These programs were located both in the RCS system and in the developer's home directories. All of these programs (1,130) were removed from the server by October 26, 2004, after copies and backups were made.

We have produced to you previously the first thirty COFF files addressed above. AutoZone's IT personnel have saved copies of the other SCO compiled code. Copies of these files are included on CD's being sent to you with the original of this letter.

Finally, we have reviewed the relevant OpenServer agreements between SCO and AutoZone. These agreements are still in place and do not include any prohibitions on AutoZone's use of OpenServer compiled code on Linux machines. Accordingly, most of the OpenServer compiled code discussed above is properly licensed, and AutoZone is under no legal obligation to delete or recompile the code. Nevertheless, because AutoZone does not need the code to be compiled under OpenServer to serve its purposes (or, in some cases, because AutoZone no longer needs the code at all), AutoZone has removed or recompiled the code as a courtesy to your client and to avoid any further issue regarding these files in this litigation.

Please let me know if you have any questions or wish to discuss any of the foregoing further. Please also let me know when I can expect to receive supplemental responses to our client's outstanding discovery requests.

Sincerely,



David J. Stewart

DJS

Enclosures

ATL01/11798148v1

cc: Christopher A. Riley, Esq.  
Douglas L. Bridges, Esq.



**Chris Iannicelli**

---

**From:** Stewart, David [DStewart@alston.com]  
**Sent:** Tuesday, January 11, 2005 6:08 PM  
**To:** Chris Iannicelli; David Stone  
**Subject:** Document Production Questions

Chris and David:

This follows-up on my conversation with Chris this afternoon about several questions we have related to the mechanics of the document production. These questions are as follows:

1. AutoZone has run the script you provided on the store load machine at AutoZone's headquarters. The script identified 15 SCO-ELF and Xenix files. AutoZone is making a copy of these files and will produce them to you. Each of these files likely also exist on all 3,500 AutoZone store servers. We are assuming that production of the 15 files from the load machine will be sufficient and that you do not need copies of the files from each of the 3,500 individual store servers, or an identification of which servers have copies of the files and which do not. Please confirm.

2. AutoZone will run the script you provided on each of the individual store servers remotely. If the program identifies additional SCO-ELF or Xenix files on any store servers, is it sufficient if we simply provide you with a copy of each file without an identification of which store server each additional file was on?

3. In the prior production, with your client's permission, AutoZone deleted the SCO files it found on its computers after making copies to provide to you. I am assuming that this is the same protocol we should follow with the current production. However, if it is not, please let me know as soon as possible.

4. David had originally indicated that he would like to receive images of ten random store servers. We have discussed previously the difficulties in imaging store servers, and I requested that this number be reduced to five. Please let me know if that number is acceptable. We are in the process of obtaining a master store list, and will provide it to you as soon as possible so that you can select the store servers you wish to have imaged.

5. Finally, it is probably appropriate to at least pencil in a date for the deposition you plan to take. Can you give me dates that work for you so that I can try to lock them down with the appropriate AutoZone witness?

Thanks much,

*David J. Stewart  
Alston & Bird LLP  
1201 West Peachtree Street  
Atlanta, GA 30327  
Tel: (404) 881-7952  
Fax: (404) 253-8381  
dstewart@alston.com*

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1 IN THE UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

---

3 THE SCO GROUP, INC.,  
4 A DELAWARE CORPORATION,

5 Plaintiff,

6 vs.

Civil Action File No.  
CV-S-04-0237-RCJ-LRL

7 AUTOZONE, INC., A NEVADA  
8 CORPORATION,

9 Defendant.

---

10 DEPOSITION

11 OF

12 JIM GREER

13 SEPTEMBER 24, 2004

14 ORIGINAL

15 ALPHA REPORTING CORPORATION  
16 KORIAN NEAL, RPR, CCR  
17 100 North Main Building, The Lobby  
18 Memphis, Tennessee 38103  
19 (901) 523-8974  
20  
21  
22  
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1 A. Then I was made I believe a director.

2 Q. Of what?

3 A. Of software systems.

4 Q. How long did you hold that?

5 A. I think I held that for about two years.

6 Q. Okay. And then what after that?

7 A. Briefly, I was a director of retail systems.

8 Q. Okay. And how long was that?

9 A. Perhaps, a year.

10 Q. And then what did you do?

11 A. Then I really reverted to a director of  
12 software systems.

13 Q. And how long were you in that position?

14 A. I think about a year.

15 Q. And then what position did you hold?

16 A. Senior technology advisor.

17 Q. And was that the final position you held?

18 A. Yes.

19 Q. And for how long did you hold that position?

20 A. The remainder of my tenure there. So two or  
21 three years.

22 Q. So was it during the time that you were senior  
23 technology advisor that you became involved in the  
24 migration of AutoZone's computer system from Unix based  
25 operating system to a Linux based operating system?



1 MR. STEWART: Object to form.

2 Q. (BY MR. STONE) You can answer.

3 A. Yes.

4 Q. Have you ever been a party in a lawsuit,  
5 either a plaintiff or a defendant?

6 A. Yes.

7 Q. What lawsuit?

8 A. I don't recall the specifics of it. I was --  
9 I was part of a defendant in a lawsuit regarding a  
10 boating accident that never actually went to trial.

11 Q. Have you ever been a plaintiff in a lawsuit  
12 before?

13 A. No.

14 Q. Have you ever been arrested?

15 A. Arrested? No.

16 Q. So I take it, then, you've never been  
17 convicted of a crime. Is that correct?

18 A. Correct.

19 Q. Okay. I want to ask you your understanding of  
20 some terms, because I'm going to ask you about them, and  
21 I want to make sure that I understand what your  
22 understanding of them is when we go through these  
23 questions. Okay?

24 A. Okay.

25 Q. What is your understanding of what a library

1 began your migration work from the SCO operating system  
2 to Linux operating system for AutoZone, had you looked  
3 at the SCO contracts?

4 A. Yes.

5 Q. Do you remember which ones you looked at?

6 A. No.

7 Q. Okay. After you began your migration work  
8 from Linux -- sorry -- from SCO operating system to  
9 Linux operating system, did you look at those contracts?

10 A. No.

11 Q. So whatever you knew about those contracts,  
12 you knew at the time you began the migration. Is that  
13 correct?

14 A. Whatever I knew, yes.

15 Q. And since that time, have you looked at those  
16 contracts?

17 A. No.

18 Q. Did you consult copyright counsel before  
19 beginning the work that you did on moving, transitioning  
20 AutoZone from SCO's Unix based operating system to a  
21 Linux based operating system?

22 A. No.

23 Q. Had you taken any copyright law courses in any  
24 of the schools that you attended prior to beginning your  
25 migration work?

1 A. No.

2 Q. Did you insure that the programmers that  
3 worked on the migration from SCO operating system to  
4 Linux operating system had not previously had access to  
5 the SCO operating system?

6 MR. STEWART: Object to form.

7 A. Please explain had access to.

8 Q. (BY MR. STONE) Well, worked with the binary  
9 code of the SCO operating system.

10 A. Worked with the binary code.

11 Q. Yes.

12 A. They had used the binary code. They had  
13 executed SCO applications.

14 Q. Had they created -- had any of the programmers  
15 that worked with you created applications to work with  
16 the SCO Open Server prior to working on the migration?

17 A. Yes. All.

18 Q. All of them had?

19 A. All of them had.

20 Q. Okay. Getting back to my original question,  
21 I'm trying to understand in sort of laymen's terms, as  
22 best I can, this revision control system and what was on  
23 it. So were there -- was there any portion of the SCO  
24 Open Server code on the revision control system?

25 MR. STEWART: Object to form. You can

1 Q. Have you ever heard of a UDK?

2 A. I have.

3 Q. What is a UDK?

4 A. In the context of SCO, I believe it is an  
5 acronym for Universal Development Kit.

6 Q. And was that something that AutoZone purchased  
7 from SCO?

8 A. I believe so.

9 Q. And do you understand that there was a license  
10 that went with that that put restrictions on what you  
11 could do with those products?

12 A. I'm not aware of the terms of that license.

13 Q. Is that the kit that you believed AutoZone  
14 programmers would use to create applications that would  
15 work on Open Server?

16 A. Yes.

17 Q. So looking back at Exhibit 2 here for a  
18 second, do you know whether or not you copied any of the  
19 libraries listed on Exhibit 2 either into an application  
20 or on to the system that was running Linux?

21 A. No. I did not copy any of these libraries on  
22 to the system running Linux.

23 Q. Well, would it be fair to say you don't  
24 know -- to the extent one of these libraries may be  
25 contained in those third-party applications, you don't

1 of -- the portions necessary became part of AutoZone  
2 applications.

3 Q. Now, did you review each of the AutoZone  
4 libraries that you ported to Linux to determine whether  
5 there was any SCO code in them?

6 A. Generally, I did not review line by line of  
7 the AutoZone libraries. Instead, I took an optimistic  
8 approach. I attempted to compile the library. And if  
9 the library compile succeeded, then I would attempt to  
10 use it and test the specific behavior.

11 Under Linux, the version of the compiler being used  
12 at the time, there were more informative warning  
13 messages and the like that were produced during  
14 compilation than we typically used under SCO. So I  
15 would attempt to resolve all of the warning and errors  
16 that I saw in the course of compiling the library before  
17 using it.

18 Q. So would one of these warning errors be that  
19 this is copyrighted code or something?

20 A. No. The warning might be that some particular  
21 syntax of the C programming language was being abused or  
22 the like. So this was more in terms of source code not  
23 complying to typically observed rules.

24 Q. So getting back to my question, you didn't go  
25 line by line through every AutoZone library to see if

1 there was any SCO code in it. Correct?

2 A. Correct.

3 Q. And I take it you didn't go line by line  
4 through any of the AutoZone libraries to see if it had  
5 any links to SCO libraries in it?

6 A. No.

7 Q. How many applications that you ported to Linux  
8 used the ICBS module that you referred to before?

9 A. By the time I finished the port, there were  
10 the two third-party applications. Initially, there was  
11 an AutoZone application. And I was able to find the  
12 source code to that application and convert it. So my  
13 understanding currently is that there would be two  
14 applications that used or would use the IBCS  
15 functionality or whatever its current incarnation is.

16 Q. All right.

17 A. If they are being used.

18 Q. Did you -- was it your understanding that the  
19 conversion that was going to occur for AutoZone stores  
20 would involve also the other subsidiaries that AutoZone  
21 owned?

22 A. The purpose of the project I was involved in  
23 was to convert the AutoZone domestic stores. There was  
24 substantially greater work involved in some of the other  
25 subsidiary or one of the other subsidiaries of the

1 A. To my knowledge, some progress was made on  
2 that, yes. I don't know even the particulars of --

3 Q. You don't know how many stores right now?

4 A. I cannot tell you right now for instance if  
5 there are stores still running SCO Open Server or not in  
6 the domestic AutoZone store chain.

7 Q. Would it be fair to say that at no time during  
8 this process that you were planning the migration, that  
9 you were performing the migration through the point of  
10 time that you left the company did you consult any  
11 copyright lawyer about issues of copyright with regard  
12 to the migration that you were doing?

13 MR. STEWART: Object to form. You can  
14 answer.

15 A. I did not.

16 Q. (BY MR. STONE) What was Red Hat's involvement  
17 in the migration? Were there people from Red Hat that  
18 assisted you?

19 A. Red Hat's involvement in the migration was  
20 twofold. In part, we had a -- we ended up signing a  
21 support agreement with Red Hat. Actually, threefold.  
22 So we had a support contract with Red Hat that provided  
23 us access to one of their support engineers. We also  
24 got training as part of that contract, which is how I  
25 went to the Red Hat certified engineering course, along

1 don't believe this is my document. No. This also  
2 discusses -- this discusses some other issues that I  
3 don't recall specifically.

4 Okay. I take that back. I believe this is my  
5 document.

6 Q. So is that a portion of what you were talking  
7 about of this spreadsheet that you were talking about?

8 A. Well, this was -- this was one of the  
9 spreadsheets. There was a different spreadsheet I had  
10 that discussed -- you know, was actually what I was  
11 using to create estimates or to try to calculate how  
12 much additional time was remaining.

13 MR. STONE: Well, we have asked for that  
14 in our document request, and I presume if you have it  
15 somewhere, you'll produce it to us?

16 MR. STEWART: We will.

17 Q. (BY MR. STONE) Okay. That's the only  
18 question I had about that for the moment.

19 A. Okay.

20 Q. Let's get back to Exhibit 1, if you've got it  
21 there.

22 A. Yes.

23 Q. This is the posting that you made on GROK web.  
24 Correct?

25 A. Correct.



1 Q. I just want to go through some of the  
2 statements you make and make sure I understand them.

3 A. Okay.

4 Q. It's correct that you participated, led in the  
5 design development and maintenance of many of AutoZone  
6 store systems?

7 A. Correct.

8 Q. Were you essentially the chief technical  
9 person responsible for the migration of AutoZone's  
10 operating system from a SCO Unix based system to Linux  
11 based system?

12 A. I was.

13 Q. Then you say, I initiated AutoZone transition  
14 to Linux?

15 A. Uh-huh (affirmative response).

16 Q. Do you mean by that that you were the one who  
17 suggested it, or do you mean that you actually did it?  
18 What do you mean by initiated it?

19 A. I did initiate it in the literal sense of  
20 beginning the porting activity, and I was the chief  
21 advocate of doing so.

22 Q. Then you say I directed the port of their  
23 existing store software base to Linux.

24 A. Correct.

5 Q. That's fairly self-explanatory. Port means

1 have those marked together.

2 There were certain errors in our applications that  
3 we uncovered during the course of the porting activity,  
4 and many of these were common. You know, they were --  
5 we had a fixed population of developers.

6 Q. Right.

7 A. Often times developers make the same mistake  
8 over and over again.

9 Q. Right.

10 A. And so we saw across our source code base some  
11 of the same errors of the kind. And so I, you know,  
12 would inform them, you know, if you begin to test the  
13 application and you see this behavior, here's some sorts  
14 of thing to look for. You know, when I fixed it, here's  
15 what I did to fix it.

16 Q. Were these rules written down in any one  
17 place, or were they sort of rules that you developed all  
18 along and communicated at different times?

19 A. They were developed across the time of  
20 porting, because typically we would run into a new  
21 problem. And I communicated those chiefly by e-mails  
22 or, you know, walking around and informing the  
23 developers here's a particular scenario, here's what  
24 needs to be done to correct this scenario.

25 Q. Would it be fair to say that the rules you're

1 talking about are rules relating to programming as  
2 opposed to rules relating to, you know, what copyrighted  
3 codes not to copy or things like that?

4 A. Correct.

5 Q. This was, you know, when you look at the  
6 source code, if it does this, do this, or you know, look  
7 out for this, that kind of thing. Is that right?

8 A. Correct.

9 Q. Okay. You had 35 AutoZone developers  
10 performing work for you?

11 A. I think at one point at the height of it, I  
12 had about 35 people working for me. I had staff that  
13 represented people would have worked on, you know, all  
14 of the applications in AutoZone store system. So I  
15 think at the height of it, yes.

16 Q. And you say much of which was trivial, given  
17 that our code did not generally rely on SCO's specific  
18 features, you're talking about the AutoZone applications  
19 there?

20 A. Right. AutoZone's applications tended not to  
21 exercise really the more sophisticated features that  
22 might be available in SCO, even SCO Open Server, for  
23 instance.

24 Q. It was fairly basic applications. Is that  
25 right?

1 file, you can periodically go through and delete things  
2 out of that file, out of that location.

3 Q. And then you go on to say there are only three  
4 executables that you be compiled for SCO in the Linux  
5 store. By the way, have you seen this e-mail before  
6 today?

7 A. I don't recall seeing this e-mail since, you  
8 know, any of this has been written. No.

9 Q. Okay. I mean, I guess you saw it at the time  
10 you wrote it.

11 A. Yeah. I saw it when I received it. But no, I  
12 haven't seen this e-mail since 2001.

13 Q. It says there's only three executables that  
14 you be compiled for SCO in a Linux store. Do you mean  
15 that must be compiled or that should be compiled?

16 A. I think I was mentioning that there were these  
17 three that I was aware of that at the time I had not  
18 compiled natively. Compx is the compression utility I  
19 mentioned before.

20 Q. Right.

21 A. Decompx is a decompression utility.

22 Q. Right.

23 A. Surprise. And drun was a utility for  
24 running -- it was kind of running a fourth generation  
25 language set of executables.

1 Q. Was drun another one of these third party  
2 executables?

3 A. I don't know its real providence. It was  
4 present at AutoZone when I started working there. We  
5 used to use a -- AutoZone developers chiefly used to  
6 write in an obscure kind of four GEL, three GEL type  
7 language. I've never seen it anywhere else. I've never  
8 met anyone who's ever heard of it, eve.

9 And much like one compiles C programs, you would  
10 run it to pay particular utility on these files. And it  
11 would produce kind of an executable format. And then  
12 you would use this drun utility to actually then execute  
13 those files.

14 And at the time, you know, in the beginning of the  
15 port, I didn't know whether there was another program  
16 where I did not know the source to it. And ultimately,  
17 I found the source to it in its companion program in the  
18 one that one uses to compile, in essence. And I chose  
19 to port drun, and I chose not to comport its companion  
20 utility to encourage people to move away from using  
21 that.

22 Q. So you recompiled drun?

23 A. Yeah. I ultimately found the source to drun  
24 and was able to compile it.

25 Q. So compx and dcompx are the two that we were

1 talking about earlier that are by a third party.

2 Correct?

3 A. Yeah. That's why I said, you know, in the  
4 beginning, I was aware of three programs. And then, you  
5 know, ultimately after I had installed that I found this  
6 source to drun, this utility. So compx and dcompx are  
7 third-party software.

8 Q. And that's the software that you didn't have  
9 the source code for?

10 A. Correct.

11 MR. STONE: Let's break for lunch.

12 (LUNCH BREAK)

13 MR. STONE: Let's mark that.

14 (WHEREUPON, THE ABOVE-MENTIONED  
15 DOCUMENT WAS MARKED AS EXHIBIT NO. 17,  
16 AND IS HERETO ATTACHED.)

17 Q. (BY MR. STONE) I'll show you what's been  
18 marked Exhibit 17 for identification. It's an e-mail  
19 dated August 27th, 2001. You see that?

20 A. I do.

21 Q. My question is about in the middle there. It  
22 says something about 99.44 percent of all of our  
23 programs don't have a separate SCO and Linux version.  
24 What does that mean?

25 A. I thin the 99 and 44 percent is my attempt at

1 A. Yes.

2 Q. And you believe as of the time you left, that  
3 there were these six stores running, or were there more  
4 than the six stores?

5 A. At the time I left, there were the six stores  
6 running.

7 Q. Okay.

8 A. I believe that's right.

9 Q. At the time that you were doing this, did you  
10 get contacted by any other engineers asking you about  
11 how you were converting from Unix to Linux?

12 A. I'm sorry. When you say other --

13 Q. I mean from other companies or not from  
14 AutoZone.

15 A. I don't -- I don't recall being asked by other  
16 engineers how we were performing work, no.

17 Q. Do you recall discussing that you were  
18 performing work with other engineers?

19 A. It may have come up. I'm not certain. It may  
20 have come up.

21 Q. Do you recall any specific conversations you  
22 had or people that you spoke to?

23 A. I don't recall any specifics, no.

24 Q. Have you spoken with any of the attorneys that  
25 represent IBM?

1 A. I have spoken with one of the attorneys at  
2 IBM.

3 Q. Who did you speak with?

4 A. Gosh, his name is -- his name is Cook, but I  
5 can't really recall his name.

6 Q. Did he tell you he was an in-house attorney or  
7 from a law firm?

8 A. He did not identify whether he was in-house  
9 counsel or not.

10 Q. Do you remember his first name?

11 A. No. I'm sorry. I don't.

12 Q. When did you speak to him?

13 A. That was -- that would have been several  
14 months ago, this year but several months ago, around the  
15 time of my -- around the time of my posting to Groklaw.  
16 So earlier this year.

17 Q. Around February of this year?

18 A. Yes.

19 Q. What did he say to you and did you say to him  
20 as best as you recall?

21 A. I explained to him -- I asked him if he was  
22 aware that there was a online site called Groklaw. I  
23 told him that I had made a posting to that site. I  
24 explained that my post was in reference to one of the  
25 sections of a document describing a lawsuit between SCO



1 and IBM and said that I wanted to make sure he was aware  
2 of my statement. And he thanked me for telling him, and  
3 he asked for my contact information, and that was it.

4 Q. Did he call you or did you call him?

5 A. I called him.

6 Q. How did you get his number?

7 A. I got an e-mail with his phone number.

8 Q. Somebody sent you an e-mail with his phone  
9 number?

10 A. Yes.

11 Q. Who sent you an e-mail?

12 A. The person who runs the Groklaw site.

13 Q. PJ or something like that? Do you know her  
14 name?

15 A. I don't know her real name, her legal name.  
16 But, you know, she's called PJ.

17 Q. So she sent you an e-mail with the phone  
18 number for attorneys for IBM?

19 A. Yes.

20 Q. Do you still have that e-mail?

21 A. No. I don't believe I do. That was on a home  
22 machine that I've reformatted and reinstalled Linux on?

23 MR. STEWART: Can you take a look for it?

24 THE WITNESS: I can look.

25 MR. STONE: Yeah. We'll include that in

# ALSTON & BIRD LLP

One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424

404-881-7000  
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Douglas L. Bridges

March 4, 2005

*VIA Overnight UPS AND Facsimile*

David S. Stone, Esq.  
Boies, Schiller & Flexner LLP  
150 John F. Kennedy Parkway  
4th Floor  
Short Hills, NJ 07078

Re: *The SCO Group, Inc. v. AutoZone, Inc.*

Dear David:

Enclosed please find a USB hard drive containing data responsive to The SCO Group's Requests for Production in the above referenced case. Subsequent to this production, we will provide a CD containing MDS checksums for all of the included data. The hard drive is Bates Stamped AZ00493, and it contains the following data which will be subsequently produced on DVDs with the corresponding Bates Stamps:

- Image of server FEP01 – AZ00462, AZ00463
- Image of server FEP02 – AZ00464
- Image of server FEP03 – AZ00465
- Image of server FEP04 – AZ00466
- Image of server FEP05 – AZ00467
- Image of server FEP06 – AZ00468, AZ00469
- Image of server FEP07 – AZ00470
- Image of server FEP08 – AZ00471
- Image of server VEGA – AZ00472

Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
704-444-1000  
Fax: 704-444-1111

90 Park Avenue  
New York, NY 10016  
212-210-9400  
Fax: 212-210-9444

3201 Beechleaf Court, Suite 600  
Raleigh, NC 27604-1062  
919-862-2200  
Fax: 919-862-2260

601 Pennsylvania Avenue, N.W.  
North Building, 10<sup>th</sup> Floor  
Washington, DC 20004-2601  
202-756-3300  
Fax: 202-756-3333

David S. Stone, Esq.  
March 4, 2005  
Page 2

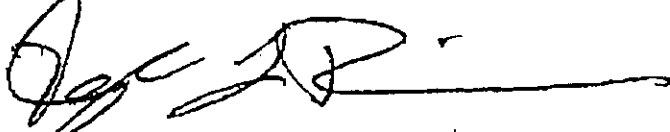
- Image of server SPIRIT – AZ00473, AZ00474, AZ00475
- Image of server JEEP – AZ00477, AZ00478, AZ00479
- Image of server WRANGLER – AZ00480, AZ00481, AZ00482, AZ00483
- Image of store server releases – AZ00484
- Image of current store server load software – AZ00485, AZ00486
- Image of store server s1320 – AZ00487
- Image of store server s1376 – AZ00488
- Image of store server s1402 – AZ00489
- Image of store server s5413 – AZ00490
- Copies of every COFF, SCO-ELF, and X.OUT file found using SCO's search program – AZ00491
- Output of SCO's search program run on every AutoZone store server – AZ00492

The integrity of each of the store images that are in the CPIO format has been verified using the following command: `zcat filename.cpio.gz | cpio -iv --only-verify-crc`

The integrity of each of the store images that are compressed using the gzip compression protocol has been verified using the following command: `gzip -test filename.gz`

Please let us know if you have any questions about any of the foregoing.

Sincerely,



Douglas L. Bridges

Enclosures via Overnight Delivery

cc: David J. Stewart, Esq. (w/o enclosures)  
Christopher A. Riley, Esq. (w/o enclosures)

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Nevada Bar No. 4027  
SCHRECK BRIGNONE  
300 South Fourth Street, Suite 1200  
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Attorneys for Defendant AutoZone, Inc.

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

<b>THE SCO GROUP, INC.</b>	)	
a Delaware Corporation	)	
	)	Civil Action File No.
Plaintiff,	)	CV-S-04-0237-RCJ-LRL
v.	)	
	)	
<b>AUTOZONE, INC.</b>	)	
a Nevada Corporation	)	
	)	
<b>Defendant.</b>	)	

**DEFENDANT AUTOZONE, INC.'S RESPONSES TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES AND FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS**

Defendant AutoZone, Inc. ("AutoZone") objects and responds to Plaintiff's First Set of Interrogatories and First Request for Production of Documents (collectively the "Requests") as follows:

individuals' duties and responsibilities as employees or agents of AutoZone. Subject to and without waiving the foregoing objections, AutoZone responds as follows:

- (a) James Greer, Former Senior Technology Advisor at AutoZone, Inc.

Mr. Greer was a senior developer in the IT department at AutoZone. He was the primary developer in charge of the migration from SCO OpenServer to Linux on the AutoZone store machines. Mr. Greer left AutoZone in January, 2002.

- (b) Jon Bascom, Vice President of STS, Customer Satisfaction, AutoZone, Inc.

Mr. Bascom is a Vice President of Information Technology at AutoZone, Inc. and makes many of the daily decisions as to the direction of AutoZone IT, including the migration from SCO OpenServer to Linux.

- (c) Bob Celmer, Senior Technology Advisor, AutoZone, Inc.

Mr. Celmer is a senior developer in the IT department at AutoZone. After Mr. Greer left AutoZone in January, 2002, Mr. Celmer coordinated the final stages of the porting activity from OpenServer to Linux. Mr. Celmer also led the roll-out of the ported applications and Linux installations to the AutoZone domestic stores.

### **INTERROGATORY NO. 2:**

Identify all versions and the source of any Linux-based operating system you are using or have used, including but not limited to the identity and source of the kernel and standard and non-standard additional operating system packages and associated tools.

### **RESPONSE:**

AutoZone objects to Interrogatory No. 2 on the grounds that the phrase "standard and non-standard additional operating system packages and associated tools" is vague and ambiguous.

Subject to and without waiving the foregoing objections, AutoZone states that it has used Red Hat Linux 6.2, and is using Red Hat Linux 7.2 and NeoWare embedded Linux running Linux kernel version 2.2 on computers in AutoZone retail stores.

### **INTERROGATORY NO. 3:**

State whether you or anyone on your behalf or at your direction, copied all, or any part, of the SCO OpenServer operating system or any other Unix-based operating system, or used any part of a SCO OpenServer operating system or any other Unix-based operating system with a Linux-based operating system, including but not limited to any SCO OpenServer or Unix-based software, source code, object code, libraries, and/or programming tools, and identify any aspect of the SCO OpenServer operating system and any other Unix-based operating system that was copied or was used with a Linux-based operating system by you or on your behalf or at your direction.

**RESPONSE:**

When AutoZone converted from OpenServer to Linux, its goal was to move completely away from the Unix operating system and any use of any Unix-based code or libraries. AutoZone copied two third party applications, "CompX" and "DecompX," from its OpenServer installation onto its Linux installation. Because AutoZone does not have the source code for these programs, it cannot determine whether any OpenServer libraries were compiled with the software or not. AutoZone has not used the CompX or DecompX programs since 2003. In preparing its response to this Interrogatory, AutoZone discovered that a few minor programs that were originally compiled on OpenServer had errantly been copied onto its Linux image, an image that contains approximately 700 programs. Several of these programs are programs for the SCO store support group and programs for the sorting module of the store management system that AutoZone has not used since it converted to Linux. Eight of the programs are still in sporadic use as part of the sorting module for AutoZone's store management system. These sort programs, when compiled under OpenServer, appear to have included certain lines of code from five basic OpenServer static libraries. AutoZone has recompiled the programs in Linux, and AutoZone is now in the process of deleting from its store image all of the OpenServer compiled programs that it no longer uses and replacing the eight

OpenServer compiled sort programs with the Linux compiled versions. AutoZone anticipates that testing and roll-out will be completed within one week.

**INTERROGATORY NO. 4:**

Identify all persons at AutoZone, Inc. or persons working on its behalf or at its direction who have or who have had access to UNIX source code, including derivative works, modifications, and methods. For each such person, set forth precisely the materials to which such person has or had access.

**RESPONSE:**

AutoZone objects to Interrogatory No. 4 on the grounds that the terms UNIX "modifications" and UNIX "methods" are vague and ambiguous. Subject to and without waiving the foregoing objections, AutoZone responds that, other than include files, no employee of SCO had access to UNIX source code prior to or during AutoZone's conversion from OpenServer to Linux. Programmers at AutoZone had access to OpenServer include files, but SCO has not alleged infringement of these files. Accordingly, information related to individuals with access to these files is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 5:**

Identify all persons who have any information concerning any of the allegations set forth in SCO's Statement of Basis for Claim for Preliminary Injunctive Relief and Nature of Relief, and with respect to each such person, describe the subject(s) of that person's knowledge and state whether you expect to call that person as a witness in the trial of this matter.

**RESPONSE:**

AutoZone objects to Interrogatory No. 5 on the grounds that it is an improper use of the interrogatory mechanism. The Interrogatory does not identify any particular allegation as to

## RESPONSES TO DOCUMENT REQUESTS

### REQUEST FOR PRODUCTION NO. 1:

All documents you maintained, prepared, used, or considered in connection with converting from the use of any SCO OpenServer operating system or any other Unix-based operating system to a Linux-based operating system, including but not limited to, changeover or conversion proposals, plans, schedules, calendars, timelines, testing, post-conversion lists of bugs, post-conversion reports, and/or contracts.

### RESPONSE:

AutoZone objects to Request No. 1 on the grounds that it is overly broad and unduly burdensome to the extent it requests the production of "all" documents. AutoZone further objects on the grounds that the Request seeks the disclosure of information that is confidential and competitively sensitive. Subject to and without waiving the foregoing objections, and subject to the entry of a suitable protective order, AutoZone will produce documents responsive to Request No. 1.

### REQUEST FOR PRODUCTION NO. 2:

Beginning on January 1, 1999 and on a semi-annual basis thereafter until present (i.e., June 30, 2000, December 31, 2000, June 30, 2001, etc.), documents sufficient to establish the identity of each operating system and version, each operating system package and tool, and each application program including its source (source code from which application was compiled), residing on the system image for, and the identity of any other content of, the server system used by AutoZone in its retail stores for its retail operations in the United States.



**RESPONSE:**

AutoZone objects to Request No. 2 on the grounds that it is overly broad and unduly burdensome. AutoZone further objects on the grounds that the Request seeks the disclosure of information that is confidential and competitively sensitive. AutoZone further objects on the grounds that the Request seeks the production of documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it requests documents regarding operating systems or applications not run on AutoZone's store servers. Subject to and without waiving the foregoing objections, AutoZone will produce documents sufficient to establish that AutoZone has used Red Hat Linux 6.2 and 7.2, and AutoZone will produce relevant store server images.

**REQUEST FOR PRODUCTION NO. 3:**

All documents identified, considered or relied upon in responding to the Plaintiff's First Set of Interrogatories.

**RESPONSE:**

AutoZone objects to Request No. 3 on the grounds that it calls for the production of information protected by the attorney-client privilege and/or the attorney work product doctrine. AutoZone further objects on the grounds that the Request seeks the disclosure of information that is confidential and competitively sensitive. Subject to and without waiving the foregoing objections, and subject to the entry of a suitable protective order, AutoZone will produce documents responsive to the request.

**REQUEST FOR PRODUCTION NO. 4:**

All documents concerning communications between you and the Plaintiff.



**Case: CV-S-04-0237**

**Docket #: 52**

EOD: 05/31/2005

Date Filed: 05/27/2005

Type: REPORT

Title:



\*CASECV-S-04-0237\*



\*DOC00676064\*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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OFFICE CLERK OF RECORD

2005 MAY 27 P 1:28

FILED IN COURT  
DISTRICT OF NEVADA  
*[Signature]*

THE SCO GROUP, INC.,  
a Delaware corporation.

Plaintiff,

v.

AUTOZONE, INC.,  
a Nevada corporation,

Defendant.

Case Number: CV-S-04-0237-RCJ-LRL

**REPORT OF PLAINTIFF THE SCO GROUP, INC. REGARDING DISCOVERY  
PURSUANT TO THE ORDER OF THE COURT DATED AUGUST 6, 2004**

**FILED SEPARATELY**

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Attorneys for Plaintiff The SCO Group, Inc.

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