

In The Matter Of:

**THE SCO GROUP, INC., v.
INTERNATIONAL BUSINESS MACHINES CORPORATION**

CHRISTOPHER SONTAG

December 21, 2005

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<p style="text-align: right;">Page 13</p> <p>1 THE WITNESS: Other than emails that may 2 have been made in conjunction with our legal counsel 3 that would therefore be privileged, I'm not sure that 4 there would be any other emails that would have been 5 sent or received by Mr. McBride that would have been 6 responsive to Topic 7. 7 Q. BY MR. DRAKE: How about emails that you 8 yourself might have sent or received that would be 9 responsive to Topic 7? 10 A. I don't believe I would have sent or had 11 received any emails responsive to Topic 7 that would 12 have not been subject to privilege, having been 13 communications with -- in conjunction with our legal 14 counsel. 15 Q. Okay. Is it your testimony then that you 16 don't recall sending any emails to any of the 17 recipients of the letters that we'll talk about in a 18 moment that you -- these so-called intent to sue or 19 license letters? 20 MR. NORMAND: Objection to form. 21 THE WITNESS: We may very well have had 22 email communications with companies that were 23 recipients of the, you know, the -- what we call the 24 Global 1500 letter and also the Unix licensee letter. 25 However, in no case would any of those</p>	<p style="text-align: right;">Page 15</p> <p>1 your belief then that Exhibit 92 is a comprehensive 2 list with respect to documents that SCO contends are 3 responsive to Topic 7; is that correct? 4 MR. NORMAND: Objection to form. 5 THE WITNESS: Yes, inasmuch as -- I mean, 6 it was a fairly extensive effort to attempt to 7 identify all of these documents. 8 MR. DRAKE: Yes, and that's just what I'm 9 trying to explore and establish with you, so I 10 appreciate your answer. 11 (Exhibit 315 was marked for identification.) 12 Q. BY MR. DRAKE: I'd like to show you what 13 we'll mark as Exhibit 315 and ask you to identify 14 that, please. 15 A. This was a spreadsheet prepared regarding 16 Topic 7 that contains a list of companies who received 17 our, what we call Fortune -- or Global 1500 letter as 18 well as a letter we sent to our Unix licensees. 19 (Exhibit 314 was marked for identification.) 20 Q. BY MR. DRAKE: Before discussing 21 Exhibit 315 in more detail let me show you what we've 22 marked as Exhibit 314 to your deposition and ask you 23 to identify that if you can, please. 24 A. This appears to be an email from myself 25 to Joanie Bingham and Kathy Martens back in</p>
<p style="text-align: right;">Page 14</p> <p>1 correspondence have really been around our intent to 2 sue any of those companies. 3 Q. BY MR. DRAKE: What about correspondence? 4 Do you recall sending any correspondence to any of the 5 recipients of the Global 1500 letter or the UnixWare 6 license letter? 7 MR. NORMAND: Objection to form. Last 8 question had the same issue, are we talking -- when 9 you're saying "you" at this point do you mean 10 Mr. Sontag? 11 MR. DRAKE: I mean him personally at this 12 point and then I'm going to expand it to your 13 knowledge of anyone on behalf of SCO. 14 Q. So my question was in your individual 15 capacity do you recall sending any correspondence to 16 any of the recipients of either the Global 1500 letter 17 or the UnixWare license letter? 18 A. No. 19 Q. And again, to your knowledge did anyone 20 on behalf of SCO send correspondence to those 21 recipients? 22 A. Other than the letters themselves? 23 Q. Yes, sir. 24 A. I do not believe so. 25 Q. So back to your original answer, it is</p>	<p style="text-align: right;">Page 16</p> <p>1 December 22nd of 2003. 2 Q. And can you identify the attachment to 3 that email that is part of Exhibit 314? 4 A. It appears to be a listing of customers 5 that would be on the Global 1500 list. 6 Q. What was the purpose of compiling the 7 list of the so-called Global 1500 companies? 8 MR. NORMAND: Objection to form. Scope. 9 And object to the extent that the answer would reveal 10 any attorney-client communications or any attorney 11 work product. 12 THE WITNESS: Certainly we wanted to have 13 a database to be able to record any follow up 14 responses from any of those companies. And if we made 15 any follow on communications with those companies we'd 16 have a location to be able to record that 17 communication. 18 Q. BY MR. DRAKE: What was the purpose of 19 compiling the list in the first place? 20 MR. NORMAND: Objection to form. Asked 21 and answered. 22 Q. BY MR. DRAKE: I mean, apart from having 23 a place to record information, what was the purpose of 24 identifying these companies? 25 MR. NORMAND: Objection to form and</p>

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1 objection to the extent that it calls for
 2 attorney-client privilege or attorney work product.
 3 THE WITNESS: I really can't comment on
 4 the reason why we -- we had prepared a list of large
 5 companies that we felt it was important to send a
 6 letter stating our, you know, understanding and -- and
 7 wanted to make them aware of our concerns.
 8 And so creating the Global 1500 list was
 9 our mechanism to be able to put together a listing
 10 that we could mail to what we felt were the largest
 11 potential commercial users of -- of Linux who would
 12 most likely have the greatest concern about issues
 13 related to Linux and our possible intellectual
 14 property issues.
 15 Q. When did SCO first decide to compile a
 16 list of potential recipients of what came to be known
 17 as the Global 1500 letter?
 18 MR. NORMAND: Objection to form.
 19 THE WITNESS: My best estimate of that
 20 would be less than a month before we actually sent out
 21 the Global 1500 letter.
 22 Q. BY MR. DRAKE: And who was involved,
 23 apart from counsel, in putting together the list of
 24 recipients for the Global 1500 letter?
 25 A. I don't think there was any real magic to

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1 the creation of the list. It was my understanding a,
 2 you know, Fortune 1000 list of company names that were
 3 easily obtained as well as a list of global companies
 4 as well that were merged together which ultimately,
 5 with some duplication, created a list of about 1500
 6 largest companies worldwide.
 7 Q. And is that list in fact what ended up
 8 being Exhibit 314?
 9 MR. NORMAND: Objection to form.
 10 THE WITNESS: Based on just a cursory --
 11 cursory view of it it appears to be so.
 12 Q. BY MR. DRAKE: All right. And if I
 13 understood your earlier answer, part of the intent was
 14 to identify those companies who might be using Linux
 15 in some significant manner; is that correct, or to
 16 some significant extent, I should say?
 17 MR. NORMAND: Objection to form.
 18 THE WITNESS: I think our simple intent
 19 was to make as many large commercial entities aware
 20 that we felt there were issues related to intellectual
 21 property in Linux and just to make them aware.
 22 Q. BY MR. DRAKE: Was there any attempt on
 23 SCO's part to determine whether any of the companies
 24 listed on Exhibit 314 were actually using Linux at the
 25 time?

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1 MR. NORMAND: Objection to form.
 2 THE WITNESS: Yes, I believe there was
 3 some attempt made to identify users of Linux.
 4 Q. BY MR. DRAKE: And what was done in that
 5 regard?
 6 A. I believe we had a number of our
 7 salespeople take a look at public, you know, press
 8 clippings or otherwise and help identify any public
 9 press announcements or other types of statements from
 10 any of these companies regarding their use of Linux,
 11 and some of that was added to the information
 12 regarding these companies.
 13 MR. NORMAND: And I just want to object
 14 to the scope of these line of questions. The topic,
 15 as poorly drafted as it is, still relates only to
 16 communications between SCO and any other person. IBM
 17 defines SCO as including its employees, so I don't
 18 think the topic covers communications within SCO
 19 regarding these letters, but of course I'll let the
 20 witness answer.
 21 Q. BY MR. DRAKE: What was the date that the
 22 Global 1500 letter was sent out?
 23 A. Off the top of my head I don't remember.
 24 I believe it was -- I think the date would be on here.
 25 I believe it was December 23rd, 2003.

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1 Q. Refer back to Exhibit 315, if you would,
 2 please. And if I may let me just take a quick look at
 3 it.
 4 MR. NORMAND: Mr. Drake, do you want a
 5 copy of that?
 6 MR. DRAKE: I would love a copy. Thank
 7 you.
 8 Q. Mr. Sontag, under Exhibit 315 in the
 9 column "Company Name," is this intended to list the
 10 name of each company that received the Global 1500
 11 letter?
 12 A. Yes, I believe so.
 13 Q. And did all of the companies listed on
 14 Exhibit 315 receive the same letter?
 15 A. Yes, I believe so.
 16 Q. And the two columns in the far right-hand
 17 side of Exhibit 315 are labeled "Response 1" and
 18 "Response 2" respectively. What is the column that's
 19 labeled "Response 1" intended to signify?
 20 A. I believe it was intended to be a
 21 repository for any initial response we received from
 22 that particular company.
 23 Q. Okay. Would you turn to Page 3 of
 24 Exhibit 315. In the column for "Advanced Integrated
 25 Technologies, Inc.," in the column labeled

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1 I'm not sure if you guys are on the same page as to
 2 how that was answered.
 3 If you want to read the question again
 4 and think about your answer.
 5 MR. DRAKE: Go ahead and read it back.
 6 (The requested testimony was read back.)
 7 THE WITNESS: I'll just add that I
 8 believe we were -- my discussion with Mr. Campbell was
 9 simply making him aware that we were going to be
 10 announcing publicly a SCOSource program in the next
 11 month, January of 2003.
 12 We did not have any licensing program in
 13 place at that time, so therefore it would have been
 14 very difficult to discuss and negotiate that.
 15 Q. BY MR. DRAKE: Did SCO ever have
 16 discussions with Hewlett-Packard about HP's obtaining
 17 the SCOSource or intellectual property license?
 18 A. Yes.
 19 Q. When did those discussions begin?
 20 A. Beginning of June of 2003.
 21 Q. Do you know why Mr. McBride placed a call
 22 to Carlton Fiorino on May 12th, 2003, as he had done
 23 the same day to Mr. McNealy at Sun?
 24 A. The exact nature of that conversation,
 25 since I was not involved in that call, but Mr. McBride

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1 occasionally picks up the phone and calls other CEOs
 2 of public companies and other large commercial
 3 organizations with the desire of making them aware of
 4 things, talking to them about possible business
 5 together, which I think likely was the nature of that
 6 communication.
 7 Q. And you don't think it had anything to do
 8 with the Global 1500 license; is that correct?
 9 A. I do not believe so, not specifically.
 10 Q. Did Hewlett-Packard ever obtain a
 11 SCOSource, or intellectual property license from SCO?
 12 A. No.
 13 Q. Why not, if you know?
 14 A. We had negotiations regarding a SCOSource
 15 license for use by Hewlett-Packard for their
 16 customers, and we were unable to come to terms.
 17 Q. Did Hewlett-Packard ever express to SCO
 18 why it chose not to obtain the license, or why they
 19 wouldn't agree to your terms?
 20 A. No.
 21 Q. So you don't know if their reason was
 22 money, principle, language of an agreement, or
 23 anything of the above?
 24 A. Well, you're making the assumption that
 25 it was Hewlett-Packard that made the decision not to

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1 enter into the license.
 2 I believe the reason we didn't enter into
 3 the license was because SCO determined it was not in
 4 our business interest to make a -- enter into a
 5 license with Hewlett-Packard.
 6 Q. So is it your testimony that
 7 Hewlett-Packard was ready, willing, and able to enter
 8 into an agreement, and SCO said no?
 9 MR. NORMAND: Objection. Form.
 10 A. Yes.
 11 Q. BY MR. DRAKE: And the reason SCO
 12 declined to enter into the agreement was what, again?
 13 MR. NORMAND: You can answer to the
 14 extent that it was business reasons.
 15 A. Ultimately it was financial amount, but
 16 most of the reason why was due to legal concerns for
 17 which I can't provide any more answer.
 18 Q. BY MR. DRAKE: You said business reasons,
 19 Mr. Sontag; that's not legal. What were the business
 20 reasons that SCO declined to enter into an agreement
 21 with Hewlett-Packard?
 22 A. A financial amount we didn't deem to be
 23 sufficient for the type of license Hewlett-Packard
 24 sought.
 25 Q. What are we talking about? What are the

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1 numbers?
 2 A. It was on the order of -- 30 to 50
 3 million dollars was going to be the size of the
 4 license. We didn't believe that was enough.
 5 Q. Was that the price you demanded or was
 6 that the price that Hewlett-Packard offered to pay?
 7 MR. NORMAND: Objection to form.
 8 A. That was the price they offered.
 9 Q. BY MR. DRAKE: What price would SCO have
 10 accepted?
 11 MR. NORMAND: Objection, form. Objection
 12 to the extent it calls for speculation. Objection to
 13 scope.
 14 THE WITNESS: Are you through?
 15 MR. DRAKE: Come on.
 16 THE WITNESS: I don't have anything more
 17 I can add.
 18 Q. BY MR. DRAKE: Well, did SCO have a
 19 number in mind or not? You said the deal fell apart
 20 because you couldn't reach an agreement.
 21 MR. NORMAND: Objection to form.
 22 A. I don't think we had a specific number in
 23 mind.
 24 Q. BY MR. DRAKE: Is there any documentation
 25 that exists of the negotiations between SCO and

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1 Reporter's Certificate
 2 State of Utah)
 County of Salt Lake)
 3
 4 I, Ariel Mumma, Certified Shorthand
 5 Reporter, Registered Professional Reporter, and Notary
 6 Public for the State of Utah, do hereby certify:
 7 THAT the foregoing proceedings were taken
 8 before me at the time and place set forth herein; that
 9 the witness was duly sworn to tell the truth, the
 10 whole truth, and nothing but the truth; and that the
 11 proceedings were taken down by me in shorthand and
 12 thereafter transcribed into typewriting under my
 13 direction and supervision;
 14 THAT the foregoing pages contain a true
 15 and correct transcription of my said shorthand notes
 16 so taken.
 17 IN WITNESS WHEREOF, I have subscribed my
 18 name and affixed my seal this ____ day of
 19 _____, 2005.
 20
 21 _____
 Notary Public
 22
 My commission expires
 23 November 15, 2009.
 24
 25

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