

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC., a)
Delaware corporation,) Deposition of:
)
Plaintiff,) JEAN ACHESON
)
vs.)
)
NOVELL, INC., a Delaware) Case No. 2:04CV00139
corporation,)
) Judge Dale A. Kimball
Defendants.)

MARCH 20, 2007 * 9:30 a.m.

Location: Anderson & Karrenberg
700 Chase Tower
50 West Broadway
Salt Lake City, Utah 84101

Reporter: Diana Kent, CSR, RPR, CRR
Notary Public in and for the State of Utah
Videographer: Max Nelson, CLVS

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1 then if anything is found in the test the scope is
2 widened. So she worked with them on things on that
3 order.

4 Q. What do you mean they wanted to audit 100
5 percent and Terry negotiated down to 10? What does
6 that mean?

7 A. Well, usually audits are not done auditing
8 every transaction that occurs. An audit is usually
9 done by selecting a test group, and then if nothing
10 is wrong in the test group, then it is assumed that
11 all transactions are correct. If something is found
12 wrong, then you widen the scope of the audit to test
13 more and to see if maybe this is just one aberration
14 or if it's a trend throughout.

15 Q. So what do you remember on that subject,
16 the test size or sample size? What do you remember
17 on that?

18 A. They selected a lot. They selected I
19 believe several from each monthly report.

20 Q. And when you say they selected a lot, they
21 did what? What do you mean?

22 A. Well, they would just check it off and
23 say, "Okay, I want to see these ten customer reports
24 from this report, five from the next one." That kind
25 of thing. And then we would pull the documentation

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1 for them. And since it was original documentation,
2 they stayed in our offices to review it.

3 Q. And by that, you mean the underlying
4 customer reports that had been sent to SCO?

5 A. That's correct.

6 Q. But initially Novell's auditors had asked
7 for a hundred percent?

8 A. I believe, yes.

9 Q. And did you discuss that with Terry?

10 A. Terry told me about it. But she was the
11 one who negotiated the -- what the audit selection
12 was going to be with them.

13 Q. And what was the ultimate resolution on
14 that?

15 A. I don't remember. Probably about 10 to 20
16 percent.

17 Q. And did you consider that high?

18 A. I'm not -- no. I mean, it was a lot of
19 documents, yes, because there were a lot of
20 transactions at that time.

21 Q. What was the discussion between you and
22 Ms. Dulin when Novell had asked for 100 percent at
23 the beginning?

24 A. Terry had been a C.P.A. and had been an
25 auditor, and she did not feel it was anywhere near

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1 recollection, in that audit, the Novell
2 representatives never asked for anything other than
3 the reports of the SVRX binary licenses that existed
4 at the time of the APA, and never asked about
5 licensing of source code." Do you see that?

6 A. Yes, I do.

7 Q. What was that?

8 A. I just said yes, I do.

9 Q. All right. Let me ask you about the first
10 part of that where you say that in that audit the
11 Novell representatives never asked for anything other
12 than the reports of the SVRX binary licenses that
13 existed at the time of the APA. Do you mean
14 literally that the only information Novell sought in
15 this audit were those reports?

16 A. Well, that's basically what they asked for
17 from me. They gave me the reports with the OEMs
18 checked off that they wanted to see the underlying
19 documentation from.

20 Q. But are you saying Novell didn't ask for
21 any other information whatsoever in this audit?

22 A. No. They asked of me. I mean, they did
23 ask Terry for proof on the 40 percent test. But as
24 far as the royalty reports or the source code
25 licenses were concerned, this is all they asked me

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1 for in relation to those, that I know of.

2 Q. Okay.

3 A. I mean, they probably also asked for maybe
4 some copies of checks, although those would have been
5 part of the royalty packet that we would have given
6 to them.

7 Q. Who asked you for these reports?

8 A. Well, I believe either they had, or we
9 sent a set of the monthly reports to the auditors.
10 They checked off what they wanted and it came back
11 through Terry, and then Terry gave it to me, and then
12 I pulled the documentation and worked with the
13 auditors on the reconciliation of them.

14 Q. So what was the process, to your
15 knowledge? Can you go over that again?

16 A. Okay. Novell took the monthly reports.

17 Q. That they already had?

18 A. I'm not sure if they took the ones they
19 already had or if they asked us for another set of
20 them. I know on the second audit they asked us for
21 another set because they couldn't get them together
22 from their company. So either they already had or we
23 supplied them with a set of the monthly reports.

24 They took them, reviewed them, checked off
25 what it was they wanted to review, and then probably

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1 sent that back through Terry, since she was the one
2 negotiating the audit, who then gave it to me. I, in
3 conjunction with my people, probably pulled the
4 documentation, made sure that we could tie everything
5 back to the reports, and then supplied Novell with
6 the documentation for the report, for what they
7 wanted to test.

8 Q. And what kind of documentation was that?

9 A. It was the customer quarterly reports.

10 Q. Now, you said they never asked for
11 anything other than the reports of the SVRX binary
12 licenses that existed at the time of the APA?

13 A. Uh-huh (affirmative).

14 Q. Did they use those words or are you saying
15 they asked more broadly for the reports and that's
16 all there were? What do you mean?

17 A. I don't remember. Basically they handed
18 me back the reports and marked off what they wanted
19 to see, and that's what I gave them.

20 Q. But no one from Novell said, or did they,
21 "We'd like the reports of the SVRX binary licenses
22 that existed at the time of the APA"?

23 A. What else would they have been looking at
24 except to audit that the reports that we gave them
25 were correct, and that is what was on those reports?

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REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss. .
COUNTY OF SALT LAKE)

I, Diana Kent, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That prior to being examined, the witness, JEAN ACHESON, was by me duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in stenotype on March 20, 2007, at the place therein named, and was thereafter transcribed and that a true and correct transcription of said testimony is set forth in the preceding pages;.

I further certify that, in accordance with Rule 30(e), a request having been made to review the transcript, a reading copy was sent to Jean Acheson for the witness to read and sign before a notary public and then return to me for filing with Attorney Mark Pernick.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 30th day of March, 2007.

Diana Kent, RPR, CRR
Notary Public
Residing in Salt Lake County