

EXHIBIT 3

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

THE SCO GROUP, INC. a,)
Delaware corporation,) Deposition of:

)
Plaintiff,) Michael Anderer

)
vs.)

)
NOVELL, INC., a Delaware,) Case No. 2:04CV00139
corporation,)

) Hon. Dale A. Kimball
Defendant.)

March 30, 2007 * 9:47 a.m.

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

Reporter: Susette M. Snider, CSR, RPR, CRR
Notary Public in and for the State of Utah
Videographer: Colleen Curry, CLVS

Page 2

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Page 3

1 INDEX

2 MICHAEL ANDERER: PAGE

3 Examination By Mr. Melaugh 6

4

5 EXHIBITS

6 NUMBER DESCRIPTION PAGE

7 157 January 15, 2003 e-mail from Chris 38

8 Sontag to Mike Anderer

9 158 January 17, 2003 e-mail from Mike 44

10 Anderer to neile and jweresh

11 159 February 5, 2003 e-mail from Mike 49

12 Anderer to Neil Calvin, attachment

13 160 Release, License and Option Agreement.... 60

14 161 Amendment No. 4 to Release, License and . 80

15 Option Agreement

16 162 January 4, 2003 e-mail from Mike 88

17 Anderer to Darl

18 163 January 5, 2003 e-mail from Mike 104

19 Anderer to Darl

20 164 June 5, 2003 e-mail from Mike Anderer ... 116

21 to Darl

22 165 June 7, 2003 e-mail Mike Anderer to 122

23 Darl and Csontag

24 166 June 10 e-mail from Neil Calvin to 126

25 Mr. Sontag and Mr. Broderick

167 August 29, 2003 e-mail from Mike 128

Anderer to Bill Broderick

168 September 18, 2004 e-mail from Sean 130

Wilson to David Politis and Darl

McBride

Page 4

1 NUMBER DESCRIPTION PAGE

2 169 October 6, 2003 e-mail from Ed Powell ... 132

3 to Rich Wickham

4 170 November 21, 2003 e-mail from Mike 139

5 Anderer to Kim Jenkins, scall

6 * * *

Page 5

1 PROCEEDINGS

2

3 THE VIDEOGRAPHER: This is the video

4 deposition of Michael Anderer taken by the defendant

5 and counterclaim plaintiff in the matter The SCO

6 Group, Inc., versus Novell, Inc., in the United

7 States District Court, District of Utah, Central

8 Division, Case No. 2:04-CV-00139, held in the offices

9 of Anderson & Karrenberg, 50 West Broadway, Suite

10 700, Salt Lake City, Utah, on March 30, 2007 at 9:47

11 a.m.

12 My name is Colleen Currey. I am the video

13 specialist. The court reporter is Susette Snider

14 from the firm of CitiCourt Reporting.

15 Counsel will now state their appearance

16 for the record, and the witness will be sworn.

17 MR. MELAUGH: David Melaugh, Morrison

18 Foerster, for Novell.

19 MR. GONZALEZ: Mauricio Gonzalez of Boies,

20 Schiller & Flexner for Plaintiff The SCO Group, Inc.

21 MR. SCOFIELD: David Scofield for the

22 witness, Michael Anderer.

23 MICHAEL ANDERER,

24 having been first duly sworn,

25 was examined and testified as follows:

Page 6

1 MR. MELAUGH: If we could pause for just a
 2 second. I'm having a little trouble with my
 3 computer. Why don't we go off the record for just a
 4 moment.
 5 THE VIDEOGRAPHER: Off the record, 9:48.
 6 (Discussion off the record.)
 7 THE VIDEOGRAPHER: The time is 9:49. On
 8 the record.
 9 EXAMINATION
 10 BY MR. MELAUGH:
 11 Q. Good morning, Mr. Anderer.
 12 A. Good morning.
 13 Q. I understand you've been deposed before in
 14 the SCO v. IBM action, but I'm going to walk through
 15 some of the basics again just so we're all on the
 16 same page.
 17 I ask the questions, you'll be giving the
 18 answers. This reporter will take down everything we
 19 say, and as you can see, there's a videographer here
 20 videotaping you as well.
 21 It's important that we try not to talk
 22 over each other because the reporter has a difficult
 23 time taking that down when we're talking
 24 simultaneously.
 25 It's also important that we make our

Page 7

1 conversation verbal, so shrugs of shoulders, nods,
 2 those sorts of things, are difficult for the reporter
 3 to take down.
 4 Do you understand?
 5 A. I do.
 6 Q. Now, my purpose here today isn't to try
 7 and trick you or trip you up, so if there's ever a
 8 question you don't understand, please just let me
 9 know, and I'll try and restate it or clarify it for
 10 you.
 11 Do you understand?
 12 A. I do.
 13 Q. In that vein, I'm going to use the term
 14 "SCO" today to refer both to the entity that is the
 15 plaintiff in this action and its predecessor
 16 corporate entities. If there's ever a point that
 17 that doesn't make sense so that you need to clarify
 18 your answer in light of the words I'm using, just let
 19 me know, and I can restate.
 20 A. Okay.
 21 Q. Now, from time to time I expect perhaps
 22 your counsel or maybe SCO counsel will interject
 23 objections or questions. Unless your counsel
 24 specifically instructs you not to answer my question,
 25 you'll need to answer my question. If you find the

Page 8

1 objections or the conversation between attorneys
 2 distracting, let me know, and I can have the question
 3 restated or I can restate it myself.
 4 Do you understand?
 5 A. I do.
 6 Q. Now, at the end of all this, you'll be
 7 given a written transcript to review. You'll have
 8 the opportunity to make corrections at that point.
 9 But I'll know you've made those corrections and be
 10 able to comment on them, so it's important that you
 11 give as truthful and as complete of testimony as you
 12 can today.
 13 Do you understand?
 14 A. Yes.
 15 Q. Are you taking any medication that might
 16 impair your ability to give truthful and accurate
 17 testimony today?
 18 A. No.
 19 Q. Do you have any medical condition that
 20 might impair your ability to give truthful and
 21 accurate testimony today?
 22 A. No.
 23 Q. Have you had occasion to review
 24 the transcript from your deposition in the SCO v. IBM
 25 action?

Page 9

1 A. I have not.
 2 Q. Okay. Now, as I understand it, you acted
 3 for a time as an outside contractor for SCO; is that
 4 right?
 5 A. That's correct.
 6 Q. What were your principal tasks as a
 7 contractor for SCO?
 8 A. Primarily to get a deal with Microsoft on
 9 licensing some of the technology or IP that they had.
 10 Q. What were other tasks that you were asked
 11 to do as contractor for SCO?
 12 A. Look at some of their -- you know, their
 13 IP-related stuff and see what -- whether or not they
 14 could be developed further and also to take a look at
 15 some of their channel programs and see if they could
 16 be leveraged to generate additional revenue for the
 17 company.
 18 Q. Do -- why were you asked to be -- to help
 19 negotiate, to deal with Microsoft?
 20 A. I had a long history with Microsoft and
 21 had worked with them since the, you know, mid to --
 22 mid -- mid-'80s to late '80s all the way through the
 23 date I was hired by SCO. And I'd just recently come
 24 off of -- was working with a company that was doing
 25 work with Microsoft.

1 MR. GONZALEZ: And I'm going to object to
2 that question on the basis of foundation, assuming
3 facts.

4 Q. (By Mr. Melaugh) And if you know, why
5 were you asked to assist with IP evaluation for SCO?

6 A. I believe that they -- they had a -- when
7 they first came on board, when Darl came on board
8 initially and -- that he believed that that was one
9 of the assets that they needed that was
10 underleveraged within the company.

11 Q. Do you know why you, in particular, were
12 asked to assist with this review?

13 A. I had done a lot of work with intellectual
14 property in the past and had done a significant
15 amount -- I owned several patents, and I'd had a
16 significant amount of experience in -- in developing
17 IP and in licensing it.

18 Q. Roughly when did the negotiations with
19 Microsoft begin?

20 MR. SCOFIELD: Well, I'm going to object
21 to that question as lacking in foundation.

22 But I also would like to take this
23 opportunity to clarify something. Mr. Anderer's
24 company has a contract with The SCO Group that
25 requires him to keep confidential certain information

1 concerning their dealings. I'm assuming that counsel
2 have entered into a stipulated form of protective
3 order in this action and that The SCO Group does not
4 have any objection to Mr. Anderer answering fully and
5 freely today as they will take care to designate
6 whatever portions of the record they feel should be
7 designated confidential under that.

8 MR. GONZALEZ: I think that's fine.
9 That's accurate.

10 MR. SCOFIELD: Thank you.

11 Q. (By Mr. Melaugh) So you said earlier that
12 one of the things you were hired to do was assist
13 with negotiations with Microsoft. Did you, in fact,
14 do so?

15 A. I did.

16 Q. And when did those negotiations begin?

17 A. I don't recall the exact dates. You know,
18 it's been several years. But it was very close to
19 when I was engaged with -- with SCO. I'm not sure
20 exactly the exact dates.

21 Q. Can you give me, say, a -- a month and a
22 year?

23 A. Yeah. I can tell you it's -- I believe it
24 was early 2003, but the -- I'm really not clear on
25 the dates at all. It's been -- it's been a while

1 so -- if you gave me something to remind me.

2 Q. And do you know roughly how long the
3 negotiations with Microsoft lasted?

4 A. They were ongoing till I stopped working
5 with them, but the -- the initial negotiations, I
6 think, to get to a license took about six months.

7 Q. And when did you stop working for SCO?

8 A. I'm not sure that -- when exactly my
9 contract terminated, but, you know, there was a point
10 where I just stopped having contact with them. So
11 I'm not sure about the exact date to -- as to when my
12 contract actually ended.

13 Q. Can you say roughly?

14 A. Roughly a year later probably, you know,
15 or in 2000 -- maybe early 2004, mid-2004.

16 Q. Now, the Microsoft negotiations, who
17 approached whom first in the beginning of those
18 negotiations?

19 A. Between me and SCO?

20 Q. I mean between SCO and you on one side and
21 Microsoft on the other.

22 A. That was me. That would be me approaching
23 them.

24 Q. What was Microsoft's initial reaction to
25 the proposals you came -- came with in the beginning?

1 A. Well, I -- I initially had to get over the
2 hurdle of -- or of The SCO Group and their
3 predecessor company suing Microsoft for \$450 million
4 and won on the DR DOS thing. So they weren't exactly
5 happy to hear from them. And it's, like -- so that
6 was the primary hurdle. But when they did, is --
7 they referred me over to one of their attorneys, and
8 the reaction was, like -- was very skeptical, to say
9 the least, because it wasn't a friendly relationship
10 prior to that.

11 Q. Speaking generally, what was your role in
12 the negotiations between SCO and Microsoft?

13 A. I think it was establishing a willingness
14 to -- to basically talk about some of the
15 intellectual property that SCO -- SCO had and just a
16 willingness to sit down and talk about potentially
17 licensing it and having a conversation at all at a
18 serious level about licensing the technology.

19 Q. Over the course of these negotiations with
20 Microsoft, did you meet face-to-face with Microsoft
21 representatives?

22 A. I did.

23 Q. How many times would you say, roughly?

24 A. Maybe 20 times.

25 Q. Did these meetings typically take place at

1 Microsoft or here or elsewhere?
 2 A. There was all three.
 3 Q. With whom did you typically meet at
 4 Microsoft?
 5 A. There wasn't a typical. It wasn't usually
 6 typical because it did move between their attorneys
 7 and -- and corporate development. And sometimes it
 8 was several -- several people maybe from the UNIX
 9 group, and it was -- there was different areas within
 10 Microsoft. It's, like, a thousand companies.
 11 And so basically what would happen would
 12 be each of those groups that were interested, the
 13 channel side of the group would come in one day, and
 14 it was kind of looking for areas within Microsoft
 15 that there might have been a match to for the
 16 technology and people that potentially had a need for
 17 the technology within Microsoft, you know, and were
 18 willing to discuss it. Typically you need a
 19 corporate sponsor inside of Microsoft who has a need
 20 for the technology before you could do a license
 21 deal.
 22 Q. Who would you say that corporate sponsor
 23 was at Microsoft?
 24 A. It was in the server side. Dan Neault, I
 25 think, ended up being --

1 THE REPORTER: I'm sorry. What was the
 2 name?
 3 THE WITNESS: Dan Neault, N-e-a-u-l-t, was
 4 sort of coordinating on the server side. It -- the
 5 UNIX group, which is the group that put out Microsoft
 6 services for UNIX, Doug Miller and their group, was
 7 one of the sponsors, clearly, because they actually
 8 have a UNIX-compatible system at Microsoft that they
 9 had put out. And so he was one of the sponsors. And
 10 then there was, you know -- I think it was a
 11 combination of different groups, you know -- but,
 12 again, mostly server side people.
 13 Q. When it came time to negotiate the
 14 business terms, the language of the contract between
 15 SCO and Microsoft, would you say that Microsoft had
 16 particular main negotiators?
 17 A. They had -- yeah, they had a set of
 18 attorneys that were involved who, I think, were in
 19 communication with their business groups. You know,
 20 the business groups would set the goals, and then the
 21 lawyers would sit down and negotiate the terms
 22 with -- with SCO's lawyers.
 23 Q. And are the business groups you're talking
 24 about now the same ones you talked about just a
 25 moment ago?

1 A. That's correct. It's, like, primarily the
 2 UNIX group, you know, because they had a need for the
 3 products.
 4 Q. Do you recall any of the names of the
 5 attorneys that you would say were the main
 6 negotiators of the terms of the deal?
 7 A. Yeah. The attorneys -- you know,
 8 Microsoft's got probably about a thousand attorneys,
 9 so they did rotate people back in and out. And they
 10 had -- some of the ones that I had -- like, Rich
 11 Wickham, was the one that, you know, was a primary
 12 contact. He wasn't acting as an attorney. He was
 13 more acting as a liaison. But he was our primary
 14 contact, and then he would communicate with the
 15 attorneys.
 16 And if -- you'll see several of the
 17 e-mails have attorneys' names that were early
 18 contacts that -- you know, they -- they -- generally
 19 the attorneys don't do anything there without having
 20 a business group sponsor it. So you need somebody
 21 kind of in the middle to liaise between the two
 22 groups.
 23 Q. If I wanted to go to Microsoft and ask
 24 them why did you enter into this deal, is there
 25 someone that comes to mind that would be the best

1 person to ask that question to?
 2 MR. GONZALEZ: Objection. Calls for
 3 speculation.
 4 THE WITNESS: Yeah. I would have to
 5 speculate as to who would be the best person to
 6 answer that, I think. Clearly, a lot of people, I
 7 think, would understand some of the value.
 8 Q. (By Mr. Melaugh) Is there anyone that
 9 rises to the top of those list of people?
 10 MR. GONZALEZ: Same objection.
 11 THE WITNESS: Speculating, I would say,
 12 you know --
 13 MR. SCOFIELD: Don't speculate.
 14 THE WITNESS: Yeah. It's hard to
 15 speculate. I -- a lot of smart people up there.
 16 Probably the same people that Novell did their deal
 17 with on the patents.
 18 Q. (By Mr. Melaugh) With the proviso you'd
 19 be speculating, I'd still like to hear your answer to
 20 this --
 21 MR. SCOFIELD: No. The witness is not
 22 here to speculate today. He'll testify about the
 23 facts that are within his knowledge. He's not going
 24 to sit here and speculate about facts.
 25 MR. MELAUGH: He can make an educated

1 guess as to this.

2 MR. SCOFIELD: If you want to lay a
3 foundation for a lay opinion, go ahead.

4 Q. (By Mr. Melaugh) I'm really only
5 interested in your opinion on this. I don't need to
6 hold you to this point. It's something that I want
7 to know, when I go to Microsoft, who to direct my
8 questions to. That's the only purpose for my
9 question.

10 Who, in your opinion, would you say would
11 be a good target for that?

12 A. Probably -- I think, like I said, it's
13 actually very much probably the same person that
14 Novell did their deal on licensing -- Microsoft has
15 one group of people that stays pretty static that is
16 their corporate decision making for these
17 license-type deals.

18 Dan Neault certainly would be one of the
19 people as an attorney. But it's the whole group, I
20 think, that does technology licensing with them, and
21 that's a fairly good-sized group. And there I think
22 they would understand the cases for it.

23 Doug Miller's no longer with them, you
24 know. And he was in the UNIX group, and he would
25 understand parts of the need for -- for the licenses

1 because we -- he was the one that expressed some of
2 the needs and some of the comments.

3 Q. Now, from the SCO side, who would you
4 characterize as the -- the main folks involved in the
5 Microsoft negotiations?

6 A. I would say it was Chris, Darl and Ken
7 Jenkins.

8 Q. That's Chris Sontag and Darl McBride?

9 A. And -- right, and Ken Jenkins. And
10 they -- plus their attorneys.

11 Q. Which attorneys were those?

12 A. You know, there was a lot of -- a lot of
13 attorneys on their side, and some of them I don't
14 know from the old -- from the older days, and some
15 that were internal. So I'm not sure -- I'm not sure
16 exactly -- in other words, I was on the business
17 side. I didn't actually see the -- who was on the
18 SCO side that would negotiate the actual terms of the
19 contract with them. I may see a draft or something
20 come through, but that was not really -- the
21 specifics of it were usually done by their people
22 internally who were on the licensing side of SCO, you
23 know, I guess out of New Jersey.

24 Q. Did you interact with any outside counsel
25 as part of these negotiations for SCO?

1 A. You know, Ken Jenkins was a lawyer, but he
2 was actually acting, I think, as a -- more of a
3 financial -- in a different role. So I would say
4 beyond him I really didn't have -- Kevin McBride was
5 also -- would be probably the only one that I would
6 have interacted with.

7 Q. Were there any attorneys from Boies,
8 Schiller, as far as you know, involved in the
9 Microsoft negotiations?

10 A. Some of the later ones, yeah. There was
11 several people -- several people from Boies, I think,
12 were there also, along with Kevin.

13 Q. Which attorneys were those, if you recall?

14 A. I don't know their names. You know, it
15 was a -- I just -- I'm very bad with names, so it's
16 going to be -- that will be an interesting -- but I'm
17 not sure.

18 Q. How about Mr. Tibbitts, was Mr. Tibbitts
19 involved in the Microsoft negotiations?

20 A. No, not that I know of.

21 Q. Based on your participation page in the
22 Microsoft negotiations, do you have -- do you have an
23 understanding at a general level as to what Microsoft
24 was hoping to get out of a deal with SCO?

25 A. I -- I believe so.

1 Q. And what is that?

2 A. You know, I believe that they were trying
3 to get a better -- kind of more clear title to
4 operating in that -- in there, like -- their UNIX
5 compatibility space, more functionality, more
6 compatibility in that space and in their connectivity
7 space. You know, we -- I pitched them that it was
8 going to be a UNIX Windows world out there. And they
9 have a lot of IP in the Windows space and none in the
10 UNIX space, and it would be nice -- they should have
11 a license for anything that they can get.

12 Q. When you say connectivity space, what do
13 you mean?

14 A. The communication between their operating
15 systems and UNIX-based systems or Linux-based
16 systems.

17 Q. Now, again, speaking at a general level,
18 based on your participation in the Microsoft
19 negotiations, did Microsoft express concerns or
20 hesitations about the deal during the course of the
21 negotiations?

22 A. I think those are probably clearly
23 documented in some of the e-mails, but, yeah, clearly
24 the deals were very -- very tenuous at times and --
25 because of concerns about numerous items and about

Page 22

1 doing a deal with them at all.
 2 Q. What were some of those numerous items?
 3 A. What were they licensing? What did
 4 they -- what -- what were they getting for the money
 5 that they would be spending? Was there true value in
 6 that? Did they need it? Did -- you know, were the
 7 people that they were licensing it from, you know,
 8 people that they wanted to do business with?
 9 Q. When you say they had a concern about what
 10 they were licensing, what do you mean by that?
 11 A. Just as, like, in any deal. It's -- you
 12 know, if you're paying money, what do you get for
 13 that money, and is it something that you -- you know,
 14 do you perceive the value? Are you getting what
 15 you -- Microsoft has a buy versus build mentality in
 16 a lot of cases, and they wanted to know can we build
 17 this -- we got a lot of programmers. Can we build
 18 this cheaper than we can buy it?
 19 Q. As a result of these negotiations with
 20 Microsoft, it is true that Sun -- I'm sorry -- SCO
 21 and Microsoft executed a deal; is that right?
 22 A. Yeah, or a series of deals.
 23 Q. What did you understand the terms of these
 24 series of deals to be, again, speaking in the general
 25 level?

Page 23

1 A. In general terms, they gave SCO some
 2 money, SCO gave them a disk and some rights.
 3 Q. When you say they gave them a disk,
 4 what -- what do you mean? What did the disk contain?
 5 A. I believe it was source code for -- and
 6 for different products, but that was -- it was an
 7 exchange of software for money and -- and, you know,
 8 rights for -- for money.
 9 Q. Do you know whether the disk of source
 10 code contained UNIX System V source code?
 11 A. You know, I -- I don't know exactly what
 12 it was because, again, that comes out of a whole
 13 different group at SCO and my interest was in getting
 14 the license deal and that they came to the exchange
 15 of money part. At that point -- and they came to an
 16 exchange of, you know, what they were getting for
 17 that.
 18 The actual delivery of it really was
 19 outside of my purview, and so what -- what was
 20 delivered, what needed to be was done even outside of
 21 the group. I never even met any of the people who
 22 would have delivered that stuff. They were out of
 23 New Jersey, I think.
 24 Q. Do you know who those folks were?
 25 A. No. It was not -- they were just not

Page 24

1 people I did -- that I interacted with. I know they
 2 had a group back in New Jersey. And I'd interacted
 3 with one of the attorneys, I just don't remember his
 4 name. But they, I assume, were told to produce
 5 something and send it out.
 6 Q. And when I asked you earlier about the --
 7 your general understanding of the terms of the deal,
 8 you said deliver software and get rights, something
 9 along those lines. And I've just asked you questions
 10 about the software delivery. Now I have questions
 11 about the rights.
 12 What was your understanding of the rights
 13 Microsoft obtained as part of this deal?
 14 A. You know, the terms of the contracts got
 15 pretty intricate. You know, they were not, you know,
 16 as outlined in the license deal. And Microsoft tends
 17 to -- they have a lot of smart lawyers and so -- and
 18 SCO had a lot of people and a lot of experience
 19 licensing stuff. You know, they -- I guess on my
 20 part there was an assumption it was -- it was
 21 something that SCO did as normal course of business.
 22 You know, they were in the licensing business at some
 23 level and that -- that it was based on that.
 24 But there was a lot of negotiation back
 25 and forth as to the finer points as to what that --

Page 25

1 included within that license, you know, and I think
 2 you just have to look at the document itself to see
 3 what it was because I didn't -- at that point I
 4 really didn't care. I didn't know what those details
 5 were because I didn't understand, you know, A, what
 6 was important at that level at Microsoft or what was
 7 important -- what SCO was licensing to them, you
 8 know, beyond in general terms.
 9 Q. Thinking back to your memory of the
 10 negotiations, does anything stand out to you from
 11 Microsoft's standpoint that they were interested in
 12 obtaining license rights to?
 13 MR. GONZALEZ: Objection to form.
 14 THE WITNESS: There -- there was --
 15 basically most of their services for UNIX was based
 16 on BSD UNIX, and then there are some System V
 17 components and other -- I guess basically, if you
 18 look at it as two different worlds from a
 19 compatibility standpoint, they were -- I think that
 20 they felt like that would enhance their compatibility
 21 of their SFU product and having some of those
 22 products that may have had a little bit more --
 23 clearer origins, I guess. You know, they basically
 24 selected the BSD route, and it would be nice to have
 25 some of the things from the System V side to enhance

1 the compatibility and maybe develop the product
2 further.

3 Q. (By Mr. Melaugh) Do you recall the dollar
4 value of the license that ended up getting executed
5 with -- between SCO and Microsoft?

6 A. There -- along with the option -- again, I
7 believe this is pretty clearly a matter of public
8 record, but it -- it strikes me as being in the
9 20 million range, somewhere in there.

10 Q. Based on your actions with SCO at the
11 time, did you understand that amount to be a
12 significant amount for SCO?

13 MR. SCOFIELD: Object to the form of the
14 question as vague and ambiguous.

15 THE WITNESS: That was clearly significant
16 to them. They had a market cap of \$6 million when we
17 first went to work with them.

18 Q. (By Mr. Melaugh) Did the deal that was
19 executed between SCO and Microsoft contain a release
20 from the claims and liability from SCO to Microsoft?

21 A. I remember that they asked for certainly
22 in -- certain reps and warranties, you know, inside
23 of the contract. How that manifest itself in the
24 legal document at the end, I don't know. But I think
25 clearly they were looking for some of that. But

1 again, asking for it and whether or not it ended up
2 in the final contract are two different things.

3 Q. Did Microsoft ever articulate to you why
4 it was interested in receiving a release as part of
5 these negotiations?

6 A. You know, Microsoft -- I've dealt with
7 Microsoft contracts for so long. They -- they ask
8 for everything. You know, it's like it was a matter
9 of -- that was no surprise whatsoever. The fact is
10 that anything that's a compromise on that was the
11 surprise. But they always asked for way too much.

12 Q. During the course of these -- these
13 negotiations, did you ever come to know any
14 particular concerns of Microsoft with regard to
15 receiving a release?

16 A. You know, nothing more than I would say
17 would be in the normal course of business. They
18 were -- they generally expressed, you know, concerns
19 on that at every level, you know, and each person
20 that came to the table would ask again, you know,
21 exactly what are the -- what are the scope of your
22 rights? What are the limits to your rights? Because
23 there are certain products in System V that were
24 sublicensed and that were, like, third-party products
25 that were sublicensed that -- that you had to go

1 back. So clearly there was some research on SCO's
2 part also.

3 Q. What research are you referring to?

4 A. To look and see what -- what exactly -- of
5 the components, which ones did they have -- have
6 rights to sublicense and not sublicense.

7 Q. In the course of this research, did Novell
8 come up?

9 A. You know, I think -- you know, Novell was
10 always present, you know, in that conversation
11 because clearly that's -- that's where -- it was that
12 cascade of licenses, you know, of where each of the
13 technologies came from. The ones that I remember
14 were not specifically Novell, they were specifically
15 some of the utilities that might have been produced
16 by third parties.

17 Q. During the course of the negotiations
18 between SCO and Microsoft, did you have occasion to
19 review the Asset Purchase Agreement between SCO and
20 Novell?

21 A. I did.

22 Q. What was the purpose of that review?

23 A. Mostly to understand, I thought, what was
24 purchased and -- however, the -- being a layman, the
25 contracts tended to be, I would say -- they were not

1 conducive to a layman fully understanding who owned
2 what outside of that. So, you know, I clearly was
3 not in a position to understand exactly what the
4 contract said. It's -- just reading it as a layman,
5 though, there was -- it gave me a general
6 understanding, you know, of what the -- of what that
7 transaction involved.

8 Q. With that in mind, what general
9 understanding did you come to?

10 A. The general understanding was that -- that
11 SCO or/Caldera had basically managed to license and
12 take over the System V business from Novell, and, you
13 know, we were actually a Novell partner when they
14 were -- when they bought it originally, you know,
15 from the AT&T -- the AT&T deal.

16 So I think there initially was an
17 assumption that they bought the UNIX business from
18 that. That was what, I think, the general
19 understanding was. But, you know, the contract --
20 the contract spoke for itself, but it was something I
21 couldn't -- I had to go back for any licensing deal
22 and ask the attorneys, Is this something that we
23 could license, you know, or, You guys have to get
24 together and negotiate what -- what you can license
25 versus what they want to license. But I had a better

Page 30

1 idea as to what -- you know, kind of what they were
 2 talking about from reading the agreement.
 3 Q. You said there was initially an
 4 understanding. Did that understanding change over
 5 time?
 6 A. That was my understanding. It was not
 7 really -- it did -- it did change over time in the
 8 fact that it was -- that there were some limitations
 9 to what was licensed, and then it was -- it changed
 10 from the standpoint of I just understood just how
 11 unclear it was, you know, and that there was actually
 12 disputes on the table as to what -- you know, what
 13 was out there, which was a surprise, actually, I
 14 think, to a lot of people.
 15 Q. When you say there were some limitations
 16 as to what was licensed, what do you mean?
 17 A. Well, there was -- there was language in
 18 there, I think, that limited the terms of it, and
 19 there was also addenda that came later on that
 20 were -- that modified the terms. And it was -- even
 21 from the original license back with AT&T, you know,
 22 there's -- it's exactly what -- what rights --
 23 ideally you would have a set of agreements, and you
 24 would see what rights flowed through to the end
 25 point. It was difficult for me to see and understand

Page 31

1 which rights even made it through the first hurdle
 2 much less the second, third and fourth hurdle.
 3 So when somebody does a press release and
 4 said, Caldera buys Novell's UNIX group, or, Novell
 5 buys AT&T's UNIX group, you know, there's a -- you
 6 know, there's a general understanding in the world, I
 7 think, that that meant they bought everything.
 8 However, in the world of licenses, that's not
 9 necessarily always the case, you know.
 10 Q. And were you ever told by SCO that there
 11 were limitations on its license rights?
 12 MR. GONZALEZ: Objection.
 13 Mischaracterizes his testimony.
 14 THE WITNESS: I think I was aware that
 15 there were -- were those restrictions on -- on -- or
 16 some restrictions on their rights mostly because I
 17 was told, like, when they found an addendum and that
 18 Novell had claimed at some point that they owned --
 19 or that they didn't have rights and then, I think,
 20 Joanie found something in her drawer, one of the --
 21 and said, Well, we do have the rights. And so it was
 22 a -- you know, I was -- I was a -- anecdotally, I was
 23 in the room when, you know, several of those things
 24 were brought up but not -- not in detail.
 25 Q. (By Mr. Melaugh) Do you know if the

Page 32

1 addendum you're talking about is Amendment --
 2 Amendment No. 2 to the Asset Purchase Agreement?
 3 A. That sounds familiar.
 4 Q. And when you said "Joanie," are you
 5 talking about Joanie Bingham?
 6 A. That's correct.
 7 Q. And she was an assistant to Darl McBride?
 8 A. To Darl, yes.
 9 Q. Aside from the points related to Amendment
 10 No. 2, were you ever told by anyone at SCO that there
 11 were limitations on their license rights?
 12 MR. SCOFIELD: Object to the question as
 13 overly broad.
 14 THE WITNESS: In the course of -- of --
 15 again, with the third-party stuff, the -- including
 16 the utilities, there were clearly some -- I was privy
 17 to certain negotiations about those utilities as to
 18 which ones they could and could not sublicense
 19 without -- in some cases they had to go back to the
 20 third party, which may no longer exist, to get rights
 21 to something to sublicense it.
 22 Q. (By Mr. Melaugh) How about in connection
 23 with Novell, aside from the Amendment No. 2
 24 discussion, were you ever told by anyone at SCO that
 25 there were limitations on its license rights?

Page 33

1 A. Again, that was -- struck me as the normal
 2 course of business there, that they were running the
 3 license -- they had a whole licensing group who was
 4 doing that and they were doing that on an ongoing
 5 basis for Novell. So, you know, I just -- I assumed
 6 that was normal course of business that, you know,
 7 they had done thousands of licenses and that they
 8 were administering that and they -- I would think
 9 that they were pretty clear as to what -- you know,
 10 in each case what they were licensing.
 11 So I didn't -- I did know that they
 12 licensed out portions, different parts in some cases,
 13 but I didn't know -- I wasn't made aware of any
 14 particular limitation. It was just I assumed that
 15 was all straight within their licensing group because
 16 they'd been doing it on an ongoing basis.
 17 Q. Did the concept of Novell's entitlement to
 18 certain sorts of royalties from these UNIX assets
 19 ever come up in the Microsoft negotiations?
 20 MR. GONZALEZ: Objection to form.
 21 THE WITNESS: Not in the Microsoft
 22 negotiations. It came up with me -- me noting
 23 something to Darl and Kevin as just noting that it
 24 appeared that some of them expired on a -- on a date
 25 and that they should have a lawyer review it because

1 they may no longer have to pay through some of the
2 royalties on portions of the code. That was just a
3 date out of the contract that appeared to me to be
4 coming up and expiring. And that was for some
5 portion of the license, and I don't remember -- I
6 don't recall exactly what that was.

7 Q. (By Mr. Melaugh) Did you become aware at
8 any point during the negotiations that SCO was
9 collecting certain revenue from UNIX licensees and
10 passing that revenue on to Novell?

11 A. I do.

12 Q. What role, if any, did that play in the
13 negotiations and in your discussions with SCO?

14 MR. SCOFIELD: I'm going to object to the
15 question as compound.

16 THE WITNESS: I'm not sure what -- I'm not
17 sure what that question -- what you mean by that.

18 Q. (By Mr. Melaugh) That's a good objection.

19 So did the concept of SCO collecting
20 certain sorts of revenue and passing those on to
21 Novell come up in the course of the Microsoft
22 negotiations?

23 A. Not in the course of the Microsoft
24 negotiations that I remember.

25 Q. Did it come up otherwise?

1 MR. GONZALEZ: Excuse me. I'm going to
2 caution you if these discussions took place in the
3 presence of attorneys for SCO who were either
4 giving or -- who were giving legal advice, I would
5 caution you that you should not answer the question.

6 MR. SCOFIELD: Well, I'm going to object
7 to that. If you want to establish whether he should
8 or shouldn't answer the question, then I think you
9 should voir -- voir dire the witness and determine
10 that, because I don't think it's fair to the witness
11 to have him come to a legal conclusion about whether
12 something is privileged.

13 MR. GONZALEZ: Well, I'm just -- you know,
14 we can go off the record and figure this out. But my
15 view is pretty simple. If, as a factual matter, you
16 know, you start to go into conversations involving
17 attorneys for SCO, discussing legal issues, then I
18 think that would set the parameters of what you
19 should not -- what you should not be testifying
20 about.

21 MR. SCOFIELD: Well, but what I'm saying
22 is this witness is not going to sit here and draw
23 legal conclusions about whether he should or
24 shouldn't be answering questions based on some
25 assertion of privilege that SCO might make. If SCO

1 wants to make an assertion of privilege, then it's
2 your duty to perform a voir dire examination to
3 determine whether the privilege would apply so that
4 you can assert the privilege.

5 If you make that determination and you
6 assert it, then I will instruct Mr. Anderer to honor
7 your assertion, unless a court tells him to the
8 contrary, but I will not allow that burden to stay on
9 Mr. Anderer's shoulders.

10 MR. GONZALEZ: Can we take a break?

11 MR. MELAUGH: Sure.

12 THE VIDEOGRAPHER: Off the record, 10:28.
13 (Recess from 10:28 to 10:48 a.m.)

14 THE VIDEOGRAPHER: The time is 10:48. On
15 the record.

16 Q. (By Mr. Melaugh) Before we went off, I
17 had first asked you whether you recalled any
18 discussion as to Novell's entitlement -- no, sorry --
19 as to SCO's collection of revenue on behalf of Novell
20 with Microsoft, and I think your answer was no, not
21 with Microsoft. And then I asked you do you recall
22 any discussion about that otherwise?

23 So let me put that question again to you.
24 Do you recall any discussion concerning SCO's
25 collection of revenue on behalf of Novell?

1 A. Not specifically.

2 Q. What do you mean by that?

3 A. To the extent that I knew that they were
4 in a licensing agreement and had read the terms of
5 the agreement and I knew that they had a licensing
6 group and that they were in the business of
7 collecting -- they had a group that collected and got
8 royalties back, I did know that, and there were
9 certainly discussions about that being a component of
10 their revenue.

11 Q. Was there ever any concern expressed that
12 the revenue derived -- that any portion of the
13 revenue derived from the Microsoft agreement would
14 have to be turned over to Novell?

15 A. There was never a discussion of that at
16 all.

17 Q. Was there ever any discussion as to
18 structuring the deal with Microsoft in ways that
19 would have avoided an obligation to turn over revenue
20 to Novell?

21 MR. GONZALEZ: And I'm going to object on
22 that. Those questions have been asked and answered
23 several times.

24 THE WITNESS: It came down to what they --
25 you know, what they could license and what they

1 wouldn't license, right? So I'm lumping it all
2 together as things that they had rights to license
3 and things they didn't have rights to license. So
4 including the third-party utilities it was really
5 just a matter of -- you know, I was a salesman, so
6 I'm trying to get -- I'm trying to put -- I want to
7 sell something. They've got to tell me what they can
8 sell, and, you know, Microsoft has to tell me what
9 they're -- what they're willing to buy.

10 So there was discussions with respect to
11 what can you sell? You know, what's available to
12 sell, and does that match up with what Microsoft
13 needs or wants. And that's really what I was doing,
14 you know. So I'd say there's a lot of conversations
15 related to that, but not necessarily -- I don't
16 recall any situation where, you know, the --
17 certainly not with Microsoft that that was an issue.

18 (Discussion off the record.)

19 (EXHIBIT-157 WAS MARKED.)

20 Q. (By Mr. Melaugh) I'm showing you what's
21 been marked in this litigation as Exhibit 157.

22 There's also, for the record, a sticker on
23 it from a previous -- from the SCO vs. IBM
24 litigation. It has two different Bates numbers on
25 the first page, SCO1616993 and SCON48539.

1 Do you recognize this document?

2 A. Not -- not specifically, you know, but it
3 appears to be an e-mail from me -- or an e-mail to
4 me.

5 Q. And that's to you from Chris Sontag; is
6 that right?

7 A. That's right.

8 Q. Now, this appears to contain a Proposed
9 Term Sheet that's two pages long. Do you recall
10 whether this is the first term sheet generated?

11 A. I would categorize this as Chris's wish
12 list.

13 Q. Well, why would you characterize it as
14 such?

15 A. Because I do remember the hundred million
16 dollar side of the thing in the back. They were --
17 he was at some point in time -- I would say that, you
18 know, there wasn't a -- there was a sense that there
19 was not a -- I got the idea that there wasn't a whole
20 lot of -- of an understanding as to kind of the scope
21 of what would work in a deal with Microsoft on their
22 side. And I would get things that had numbers that I
23 was going, based on my experience, you're just -- you
24 know, this isn't going to happen. So I would look at
25 things like that. And I'd get to the hundred million

1 dollars, and I'd go, I don't think I could do that.

2 Q. I take it you're referring to the hundred
3 million dollar figure on the second page under item
4 No. 7, licensing royalty; is that right?

5 A. Yeah. So that would have led me to
6 probably dismiss this out of hand.

7 Q. Why would you dismiss this figure out of
8 hand?

9 MR. GONZALEZ: Objection.
10 Mischaracterizes his testimony.

11 THE WITNESS: I would characterize it as a
12 dating-versus-marriage thing. You know, they were
13 people -- they'd already had some reticence because
14 of the Caldera suit and the DR DOS suit, and I just
15 think that -- based on my experiences as a
16 salesperson, that they would not be willing to do a
17 deal of that scope, you know, as the first deal
18 with -- with these guys.

19 Q. (By Mr. Melaugh) Going back to the first
20 page, on item No. 3 am I correct in reading this that
21 in this proposed term sheet, part of the license code
22 contemplated was UNIX System V code?

23 A. That's what Chris actually -- yeah,
24 that's -- obviously that's what he wrote so...

25 Q. And, again, on the next page under item

1 No. 5, it looks as though Chris also contemplated
2 granting a retroactive license for System V code?

3 MR. GONZALEZ: Objection.

4 Mischaracterizes the document and -- you're just
5 asking him to read the document basically, which
6 speaks for itself?

7 THE WITNESS: So -- I'm sorry. I don't
8 understand the question. I'm sorry.

9 MR. MELAUGH: Can we repeat the question
10 back?

11 MR. GONZALEZ: And you're focused on
12 item 5 on the second page, counsel?

13 MR. MELAUGH: Yes.

14 (The question was read as follows:

15 "Question: And, again, on the next page
16 under item No. 5, it looks as though Chris also
17 contemplated granting a retroactive license for
18 System V code?")

19 THE WITNESS: I think you'd just have to
20 ask Chris what he was contemplating on this one. You
21 know, like I said, I -- Chris had a lot of big ideas.

22 Q. (By Mr. Melaugh) And, again, under item
23 No. 6, it looks as though from this document at this
24 time the proposed terms included binary distribution
25 rights? Is that your understanding of the proposed

Page 42

1 terms as well?
 2 MR. SCOFIELD: Object to the form as
 3 mischaracterizing the plain language of the document.
 4 THE WITNESS: The -- that's what it
 5 appears -- it appears to say. But, again, this is a
 6 document that I would never have forwarded.
 7 Q. (By Mr. Melaugh) And that's because of
 8 the royalty figure, or are there other reasons as
 9 well?
 10 A. I'd -- I would have taken that as an
 11 indication that it wasn't completely well thought out
 12 and not a final draft of something that you would --
 13 you would forward -- that this was more of a
 14 brainstorming, I guess, and his idea of what -- what
 15 he was thinking. But I couldn't see forwarding that
 16 without getting a difficult response going the other
 17 direction.
 18 Q. Aside from the hundred million dollar
 19 figure, are there other aspects of this that you feel
 20 are unrealistic?
 21 MR. SCOFIELD: Well, I'm going to object
 22 to the form of the question. If you're asking him to
 23 sit here and form opinions today that he did not have
 24 at the time, that's not what we're here for. If
 25 you're asking him if he had an opinion at the time,

Page 43

1 that's a different situation.
 2 Q. (By Mr. Melaugh) And so that's a good
 3 question, and I'll be clear I'm asking you for
 4 your -- your response to this at this time.
 5 When you saw this in 2003, were there
 6 other aspects of this that also struck you as
 7 unrealistic?
 8 MR. GONZALEZ: Objection. Asked and
 9 answered.
 10 THE WITNESS: I would say that this was
 11 created in a vacuum, not in a negotiation with the --
 12 with the other party. So I would say that that was
 13 not -- so I would have to say is that -- I would
 14 characterize this as just not -- not being a part
 15 of -- of a negotiation process. It was just
 16 something of them throwing out something, and it was
 17 not something that could be -- that was going to
 18 be -- lead to a final agreement.
 19 I think, if you look at the final
 20 agreement, that's really where that was -- set of
 21 needs -- or set of requirements and a set of
 22 deliverables. This was a set of wants.
 23 Q. (By Mr. Melaugh) And aside from the
 24 hundred million dollar figure, are there other
 25 aspects of this upon which you base that answer?

Page 44

1 MR. GONZALEZ: Same objection.
 2 THE WITNESS: Yeah. Again, it's just --
 3 it's that it was done without and before in most -- I
 4 actually found out what -- from the customer what
 5 they actually -- the person I was licensing it to,
 6 what they wanted. So whatever this was, it was not
 7 relevant to me because -- you know, yes, you could
 8 want all that, I just have to find out what they're
 9 willing to buy. And it usually goes the other way
 10 around. So this may be a starting point, it may be
 11 exact, it might not be. I just don't know. It was
 12 premature, I guess is the word.
 13 MR. MELAUGH: Let's go to the next
 14 exhibit, 158.
 15 (EXHIBIT-158 WAS MARKED.)
 16 Q. (By Mr. Melaugh) Do you recognize this
 17 document?
 18 A. I do, and -- I'm glad I took out the
 19 hundred thousand -- the hundred million.
 20 Again, I see this as an e-mail from me to
 21 Neil Calvin.
 22 Q. So to be clear, the "neilc" in the to line
 23 is Neil Calvin?
 24 A. That's correct.
 25 Q. And who is the --

Page 45

1 A. He's a -- he's a lawyer at Microsoft that
 2 I was referred to, the initial lawyer I was referred
 3 to. I just did not recall his name.
 4 Q. And who is the second addressee under the
 5 to line?
 6 A. I'm not sure. I believe it's just another
 7 attorney in their group or it may have been one of
 8 their IP guys who also -- because they did rotate
 9 people in on a regular basis. So from his e-mail
 10 address, I'm not quite sure, but I believe it's
 11 another attorney.
 12 Q. And as you commented, I see under -- on
 13 the third page, under item No. 7, the hundred million
 14 dollar figure is gone, and instead it says, "To be
 15 discussed."
 16 What was the reason for that?
 17 A. I just thought that they would get a
 18 reaction to the number, not -- you know, and
 19 Microsoft didn't ever -- every really have a chance
 20 to assess, you know, what SCO had to offer versus
 21 what -- you know, what the value was. So putting a
 22 value in, again, was premature. And they may just
 23 say no based on -- we would have had no time to show
 24 them what -- what we actually had to license because
 25 they would have been reacting to the number.

1 Q. In reviewing this term sheet that you sent
2 to Microsoft, is it -- is it your recollection that
3 UNIX System V code was part of the licensed code that
4 you were proposing be part of the deal with
5 Microsoft?

6 MR. GONZALEZ: Objection. Foundation.

7 MR. SCOFIELD: I'm going to object to the
8 form of the question because I'm not sure if you're
9 asking him to read the document or whether you're
10 asking him for his recollection. It sounds like
11 you're doing both, and that would be compound.

12 Q. (By Mr. Melaugh) So to be clear,
13 Mr. Anderer, I'm asking you for your understanding of
14 the deal that's being proposed to Microsoft at the
15 time.

16 Is it your understanding that UNIX
17 System V code was part of the licensed code being
18 proposed to Microsoft?

19 MR. GONZALEZ: Same objection.

20 THE WITNESS: From reading the document,
21 it appears that that's one of the -- one of the
22 components of the -- you know, of the document.

23 Q. (By Mr. Melaugh) And, again, is it your
24 understanding of the deal being proposed to Microsoft
25 that binary distribution rights are being included as

1 part of the deal?

2 MR. GONZALEZ: Same objection.

3 THE WITNESS: Again, I wouldn't
4 characterize it as a deal. I'm characterizing this
5 as kind of a shotgun blast of -- of what are they --
6 are any of these things of interest to you. So it's
7 more -- and to the extent the document says -- in
8 No. 6, it does say, "Binary distribution only," but
9 that's the -- I don't believe that it was this
10 document that was the basis of any further -- there
11 was probably a -- I don't believe that this document
12 itself was necessarily what -- it morphed into
13 something much more specific and much more -- in the
14 final terms.

15 And so that's a -- and, again, this was
16 strictly from -- from me asking Chris, What is it
17 that we want, or, What is it that we possibly have to
18 offer? So I don't --

19 Q. (By Mr. Melaugh) So is it your
20 understanding, then, that -- sorry.

21 Is it your recollection, then, that SCO
22 has told you that binary distribution rights are one
23 of the things SCO has to offer?

24 A. They're one of the things that they put in
25 the document that they asked me to forward.

1 Q. What role did you have in -- in authoring
2 this document?

3 A. I requested that they put together these
4 documents because -- and maybe I would ask -- tell
5 them that these are some areas that Microsoft would
6 be interested in but not specifically down to
7 licensings. I did tell them that they would be
8 interested in the Microsoft operations manager,
9 potentially interested in leveraging SCO's channel.

10 And from -- I would give Chris general data, they
11 would give me back, from internal discussions, what
12 they did. But I was -- I was present at as few
13 meetings as I could humanly possibly get to.

14 Q. Now, we've seen at least one change
15 between the version you saw a moment ago and this
16 version, the excision of the hundred million dollar
17 figure.

18 Did you play any role in the changes that
19 were made between these two versions?

20 A. I would characterize myself as lobbying
21 for certain changes like that, ones that obvious --
22 would have caused an obvious push-back, more from a
23 deal terms as opposed to a specifics.

24 Q. Was the hundred million dollar figure one
25 of the changes that you lobbied for?

1 A. Absolutely.

2 Q. Were there -- do you recall any of the
3 other changes that you lobbied for?

4 A. I don't recall, and I don't even know what
5 the changes are. You know, based on the two
6 documents I can't, unless you highlight them.

7 MR. MELAUGH: Let's introduce Exhibit 159
8 now.

9 (EXHIBIT-159 WAS MARKED.)

10 Q. (By Mr. Melaugh) Do you recognize this
11 document?

12 A. I recognize the conversation as part of an
13 ongoing conversation with Neil Calvin.

14 Q. Now, I notice this e-mail is -- the
15 subject of which is confidential settlement proposal.
16 Do you know why it was called a settlement proposal?

17 A. You know, I think that there was
18 assertions that Microsoft had potentially infringed
19 on certain rights and certain distributions of
20 products that -- that may have -- that SCO may have
21 had rights to, and I think that was the -- I think
22 that was the context to it.

23 Q. Do you know what those assertions were?

24 A. The specific assertions, again, I think
25 were lined out probably in future e-mails. The --

1 but there was -- you know, and I actually did not
2 know even what all the rights that -- that SCO had
3 from, you know, the pass-through from the AT&T
4 contract and from the Novell agreement.

5 So -- but I did know that they had a
6 product in the UNIX space, the services for UNIX and
7 several other products, and actually, Microsoft had
8 actually written, I guess, Xenix originally, under
9 contract, I think, for SCO, so -- for the original
10 SCO.

11 So I don't know what exactly -- what those
12 exact items were. I think they were -- they were to
13 be defined, or I think there was an assumption that
14 there was a large body of work and there was a large
15 amount on both sides, that there was some overlap.

16 Q. Did UNIX System V code play any role in
17 the infringement assertions you've discussed?

18 MR. GONZALEZ: Objection. Vague and
19 ambiguous.

20 THE WITNESS: Again, at this point in
21 time, it was -- I wasn't even sure what the -- what
22 the -- what was code, what was patents, what was
23 copyright. There was not really an interest there.

24 I do believe that on the Microsoft side
25 there was an interest in -- as part of their normal

1 course of business, they do lots of cross-licenses,
2 and they do lots of -- they just assume there's a lot
3 over here and they don't want to see any lawsuits
4 coming from this particular direction.

5 They were in the UNIX business, and I
6 think that they were looking to establish as many
7 rights within that business as possible. And it --
8 SCO seemed to be the holder of some -- one of those
9 bodies of work that they would like to get all the
10 rights to and -- and basically, if there had been
11 past infringement, to make sure that that was
12 included as part of the work.

13 So I think that's the real -- I think that
14 was the real context for it being called a settlement
15 proposal. It was just an assumption that there was
16 something there.

17 Q. (By Mr. Melaugh) Let me back up one or
18 two steps.

19 You said that this was called a settlement
20 proposal because there'd been assertions of some
21 kind. These are assertions being made by SCO to
22 Microsoft?

23 A. There's actually -- there was actually a
24 big -- a big issue in the old -- in a -- in a TCP/IP
25 driver that -- that basically was shipped -- that

1 Microsoft used in Windows 95 that actually had an
2 AT&T copyright notice in it. And it was for a TCP/IP
3 driver that actually was part of -- it was part of
4 the -- that they got a lot of grief for including
5 with copyright attribution in as part of that driver.

6 So they included as part of shipping
7 products something that had an AT&T copyright in it
8 as part of -- just to enhance their TCP/IP support.
9 And it was -- I think it was shipping a BSD
10 distribution with an AT&T copyright notice. And so
11 they knew that they'd shipped that to hundreds of
12 millions of people, and they got a lot of grief
13 over -- over shipping other people's work in their
14 product.

15 Q. Grief from SCO?

16 A. Grief from a group of people called
17 Slashdot -- you know, on Slashdot, which is -- I
18 would -- the hoard.

19 So it was -- it became somewhat public at
20 that level, you know, because of that, and they
21 were -- they were very aware of that, you know, that
22 being -- their software development firm was being
23 accused of using other people's work and having to
24 include that without direct rights or a direct
25 pedigree to the rights of it was something that

1 was -- something that was uncomfortable for them
2 because -- simply because of the number that they
3 shipped.

4 So I believed -- and I brought that up to
5 them -- that you are shipping third-party products in
6 there that you don't have clear title to or have an
7 unknown pedigree or unknown set of rights to. And
8 that can be pretty expensive, as they found out
9 before.

10 Q. Was this TCP/IP code something SCO claimed
11 to own?

12 A. No. This was just an example of code that
13 Microsoft shipped, it had the AT&T license. SCO
14 appeared to be the successor, you know, in interest
15 of the -- you know, the AT&T contract, and it was
16 just an example of Microsoft shipping -- in order to
17 provide the compatibility and connectivity provided
18 in a third-party product that they really didn't
19 understand all of their rights to in their
20 products -- you know, it was actually part of the Sun
21 settlement or the -- or part of the BSD-i settlement
22 with University of California that Novell settled,
23 and one of those was to allow them to include this
24 license in BSD as long as they didn't take out the
25 AT&T copyright attribution.

1 But they -- again, Microsoft wasn't a
2 party to that settlement, so they don't really
3 understand whether the rights continued underneath --
4 outside of the context of being shipped in a BSD-i
5 package, yet it shows up as a component of every
6 Windows 95 product that was out there, which would be
7 pretty scary if you were a big company.

8 Q. Aside from the TCP/IP-related assertions,
9 were you aware at this time of any other IP
10 infringement assertions from either you or SCO to
11 Microsoft?

12 A. I never could get a list, actually, kind
13 of completely of what -- what, you know, that was on
14 one side to the other. So it was hard for me to -- I
15 could pass through as a conduit assertions from one
16 side to the other, but I didn't -- you know, I
17 didn't -- I didn't -- beyond passing them through in
18 e-mail, I did not have knowledge of any specific ones
19 we -- I think we talked about a couple of
20 technologies that they might want additional rights
21 to, but I don't know that it was -- that it was
22 specifically or anything in particular that we were
23 talking, or any technology in particular. I know we
24 talked about several.

25 Q. Well, what I'm trying to do is get a full

1 picture of why this is now called a confidential
2 settlement proposal, and it sounds like TCP/IP
3 assertions may have played a role in that --

4 A. Well, I think actually -- let me clarify.
5 Neil said, If we are going to do an agreement, we are
6 going to do one -- you know, it's going to be an
7 agreement and it's going to make -- you know, which
8 basically I expected from them, that there are no
9 issues past -- you know, from the past, that it's --
10 you know, the only thing of interest in -- from us,
11 our standpoint, would be something that made sure
12 that we just didn't have to revisit this again.

13 So he was looking at something that was
14 more of a broad -- more of a broad based and said,
15 make sure that that's the -- because we didn't -- to
16 do -- I read it as them not wanting to be nicked
17 and dined to death and not wanting to deal with this
18 issue 20 times. They wanted to deal with it once.

19 And so from the context of the prior
20 stuff, it ends up being a -- you know, a settlement.
21 You know, that's what I would -- I would characterize
22 it, and I think that's the -- which to me meant
23 settling all issues, you know, in the past as kind of
24 a throw-in.

25 Q. If you could turn in to the second page of

1 this document, it looks as though now there's been a
2 figure put into this document of \$10 million under
3 item No. 4. Do you know how that figure was arrived
4 at?

5 A. You know, I think that -- that was done in
6 conjunction with -- with Darl and Chris and just
7 basically what could be done quickly, you know, what
8 would be -- what would fall -- you know, there would
9 be various levels of approval inside of Microsoft as
10 to what -- you know, what deals would be -- kind of a
11 way to start -- a way to start the conversation. So
12 it was more of a -- a perceived -- a perceived level
13 that a deal could get done fairly quickly, and I
14 believe this one, you know, allowed us -- I think
15 there was an option beyond that.

16 Q. Did you have any input into this
17 \$10 million figure?

18 A. I -- I told them, I think, that -- I gave
19 them input that said that that would be the ballpark
20 of what they could expect to get done in a fairly
21 timely basis.

22 Q. And was it your understanding at this
23 time -- we're now in, say, February 2003 -- that the
24 deal being proposed to Microsoft included rights to
25 UNIX System V code?

1 A. Again, reading the document, it has very
2 specific, you know, items that they're licensing.
3 It's not all. It's like Version 3.2, System V,
4 release this. So it's very specific. It's not --
5 it's some subset of that.

6 Q. And I think you're referring to page 144,
7 which is the third page of this document; is that
8 right?

9 A. Right. I -- I had to look at that to see
10 what it said as to what -- what they were proposing.

11 Q. Is this consistent with your understanding
12 of what's being proposed at the time?

13 A. It's consistent with my understanding of
14 the document that I forwarded on. Again, knowing all
15 of these released versions and knowing which ones
16 would be of interest to somebody, which ones were
17 actually real releases, that's something I wouldn't
18 have known. That came out of -- that was forwarded
19 to me, you know, as part -- or from the SCO team, so
20 I don't know. It is consistent with what I -- what
21 was sent to me. I did not negotiate the specifics of
22 which of these versions, you know, were included.

23 Q. Well, you've -- you've come into my next
24 question, and that is, do you know how this list of
25 code on page 144 and 145 was arrived at?

1 A. Not completely, because I believe that at
 2 that point in time there may have been a conversation
 3 or two between the technical groups at both -- at
 4 both sides. I don't know if that -- I don't know if
 5 this is a standard list or if it was a list that was
 6 derived from a conversation that some of the
 7 technical people had together. I just know that it
 8 was the one that was forwarded to me and said this is
 9 something we would be willing to license for the
 10 following, you know, price.

11 Q. Do you recall who forwarded you this list
 12 of licensed code?

13 A. I would expect it was -- I don't recall
 14 specifically. I believe that it would have been most
 15 likely from -- from Chris or from one of their people
 16 back in New Jersey --

17 Q. And who are you referring --

18 A. -- their attorney in New Jersey. And I
 19 forget his name. It was -- who was very up to date
 20 on all the licenses and what they -- you know, what
 21 was what, because it's a pretty amazing list.

22 (Discussion off the record.)

23 Q. (By Mr. Melaugh) I think you also
 24 referred to the possibility of certain technical
 25 people at SCO being involved in the creation of this

1 list. Did you have anyone in -- in mind
 2 specifically?

3 A. I don't. I -- I don't.

4 Q. The last page of this document titled 146
 5 looks as though it's a cover letter meant to
 6 accompany this? Am I interpreting that correctly?

7 A. That's -- that's correct.

8 Q. And I think you said earlier that there --
 9 there were some possibilities of additional options.
 10 Is that what's described in items 1, 2 and 3 in the
 11 middle here?

12 A. I believe so. That was -- that would be
 13 the option which is item 3.

14 Q. Do you know how the numerical figures
 15 in -- in item No. 3 were arrived at, namely,
 16 \$4 million for a 3-year option to purchase a license
 17 for \$90 million?

18 A. I think this was -- I think most of the
 19 numbers that were done here were more out of -- I
 20 think you reverse engineered into it. It was, like,
 21 how much money do we need to move forward as a
 22 company and, you know, combined with what is -- what
 23 can we get done in a timely basis with Microsoft. So
 24 it was a compromise of those factors that led to this
 25 outline.

1 And if you'll notice, it does list -- on
 2 item 3, it lists it as a sample IP listing. I
 3 don't -- as not a -- which -- as opposed to a
 4 comprehensive IP list. I guess the -- the
 5 comprehensive one would be either negotiated or
 6 listed with the final agreement.

7 MR. MELAUGH: I think we need to take a
 8 break to change the tape now.

9 THE VIDEOGRAPHER: Off the record, 11:25.
 10 (Recess from 11:25 a.m. to 11:30 a.m.)

11 THE VIDEOGRAPHER: The time is 11:30. On
 12 the record.

13 MR. MELAUGH: And let's introduce this as
 14 160, I believe we're on now.

15 (Discussion off the record.)

16 (EXHIBIT-160 WAS MARKED.)

17 Q. (By Mr. Melaugh) Do you recognize this
 18 document?

19 A. Yeah. It looks familiar.

20 Q. What is it?

21 A. Just what it says, a Release, License
 22 and Option -- I think this was the first agreement
 23 between SCO and Microsoft, if I can look at the date.

24 It's a -- yep. It's very close.

25 Q. And this is the first signed agreement,

1 you mean, between SCO and Microsoft?

2 A. The first -- I thought it was the first
 3 agreement that -- so --

4 Q. Which was then followed by amendments?
 5 That's what you mean by the first agreement?

6 A. That's correct, or exercises of options.

7 Q. Now, the payments discussed in item No. 1,
 8 it's a total of \$3.75 million broken up various ways.
 9 Do you know how those figures were arrived at?

10 A. I believe that that was a Microsoft
 11 response to SCO's previous -- you know, their
 12 previous proposals, and I believe there was a single
 13 phone call with Darl, I think, where some of these
 14 were -- where we're -- which is where some of the
 15 numbers, I think, came from.

16 Q. Who was on that phone call?

17 A. At that point I believe it was still Neil
 18 Calvin and his team.

19 Q. And by "his team," you mean attorneys --

20 A. Other attorneys from Microsoft.

21 Q. Aside from Darl on the SCO side, who was
 22 on the call?

23 A. I believe it was just Darl.

24 Q. Were you on the call?

25 A. I was -- I was on -- actually, I believe I

1 handed off the phone to Darl at that point and he was
2 on the call.

3 This was the first time, I believe, that
4 he'd talked -- the upcoming -- time coming up to
5 negotiate this, I believe, was the first time he
6 directly talked to the Microsoft people. It was just
7 a finalized --

8 MR. MELAUGH: Bless you.

9 THE REPORTER: It was just a what?

10 THE WITNESS: Finalized this agreement in
11 those terms, and he made -- he came to the
12 compromises that are listed here.

13 Q. (By Mr. Melaugh) Now, turning to
14 section 2 of this, which is titled "Release and
15 Licenses," it has a few subsections. What's your
16 understanding of the purpose of this section of the
17 agreement?

18 MR. GONZALEZ: Objection. Calls for a
19 legal conclusion.

20 THE WITNESS: All I can say is what was
21 important to me was that there was a deal. The
22 lawyers had papered it, and it was what it was. The
23 actual specifics of what was negotiated in each of
24 these contracts really wasn't material to me, so I
25 did not delve in and make any conclusions or other

1 types of -- my understanding of it was limited to the
2 general -- you know, the general terms.

3 Q. (By Mr. Melaugh) Well, for example, in
4 2.1, it's titled "Release of existing general
5 claims." It goes on with particulars.

6 A. I would have known in general that that --
7 that that was something that -- that Microsoft had
8 asked for and that it was now included in the
9 contract.

10 Q. Do you have any understanding as to why
11 Microsoft asked for 2.1, the release of existing
12 general claims to be part of the contract?

13 MR. GONZALEZ: Asked and answered. Excuse
14 me.

15 THE WITNESS: I think I answered that in
16 the context of why it was called settlement proposal.

17 Q. (By Mr. Melaugh) So the answer's the same
18 when we were talking generally about the agreement as
19 is the specific language here?

20 A. Right. They just didn't want to be
21 nicked and dined.

22 I do believe Neil indicated this was in
23 almost all of their contracts, that they required
24 this as a general component of any new contracts.

25 Q. (By Mr. Melaugh) Now, 2.2 is titled "IP

1 license to current Microsoft products and services,"
2 and it goes on with various particulars.

3 Do you have an understanding as to why
4 Microsoft wanted this IP license as part of the
5 overall agreement?

6 MR. GONZALEZ: Objection. Asked and
7 answered.

8 THE WITNESS: Yeah. I don't have anything
9 to add to the other one. It's the -- you're asking
10 me what was in their mind at that point, and I'm not
11 sure why they -- why specifically they did. And the
12 wording on this one is -- it appears to be similar to
13 just breaking up the first release into two parts,
14 past and current.

15 Q. (By Mr. Melaugh) Well, for example, were
16 there any particular current Microsoft products that
17 were articulated to you by Microsoft as something
18 that they were interested in receiving licenses as
19 to?

20 A. They didn't assert anything in particular
21 at all with respect to that and, in fact, asserted to
22 me that they didn't need -- that their argument was
23 always that they didn't need any licenses from
24 anybody for anything.

25 Q. They ended up taking a license, however?

1 A. Right.

2 Q. Do you have an understanding as to why
3 that was so, even given their assertions?

4 A. You know, if -- if you read them at their
5 words, it was always because it was just irritating
6 to get sued all the time.

7 Q. And let's turn to the third section of
8 this, which is -- starts on the second page and goes
9 through a little bit of the fourth page. This
10 section is titled "Option to Purchase UnixWare
11 License."

12 As a preliminary matter, do you know why
13 this was broken out as a separate option as opposed
14 to a part of the contract in the beginning?

15 A. I don't remember the exact reason that was
16 broken out separately. I think that they were just
17 looking at -- their intent was to look at what was
18 provided under the other -- or look at the other
19 piece of it and then take some time and decide
20 whether or not there was interest at all within
21 Microsoft for anything else, whether it was worth
22 their while to -- you know, exercise the option.

23 Q. And in 3.5 there's another dollar figure
24 given here, \$5 million, to exercise the option as
25 discussed in this section of the contract. Do you

1 know how this figure was arrived at?
 2 A. Again, the -- a lot of the timing -- a lot
 3 of the amounts were related to what could be done
 4 very -- you know, in a -- quickly, establish a
 5 relationship and then give them the time to do a
 6 typical -- more due diligence and more internal
 7 searching for whether or not it was useful.

8 So they were just trying to lower the risk
 9 of the initial contract and just lower the dollar
 10 amount and break it up into bite-size chunks and,
 11 again, lower their risk.

12 And I think -- you know, obviously 60 days
 13 was the -- the option was pretty short term, and I
 14 believe that they -- up front that they intended to
 15 exercise it. I think that they wanted to just make
 16 sure that they had internally all of their ducks in a
 17 row with their group.

18 Q. What do you mean by "ducks in a row"?
 19 What sort of decision making needed to go on at
 20 Microsoft before they exercised this option to --

21 A. Who -- who was the -- who would be the
 22 internal -- who would be the internal champion for
 23 the -- and who had a need for each of the
 24 technologies, was it -- was it the SFU team? Did
 25 they really -- and they would basically -- asking

1 them to give you an answer in a very short period of
 2 time wasn't reasonable.

3 So if they -- if they came back and said,
 4 We have absolutely no need for it, then I expect they
 5 wouldn't have exercised, but I think that there was
 6 an expectation that, giving the people enough time,
 7 they would say it's better to have it than not to
 8 have it, so they exercised it.

9 But it was really about breaking it down
 10 into bite-size chunks, not -- you know, and I do
 11 believe there was an intent to exercise unless --
 12 unless something changed or they got responses
 13 personally that they didn't expect.

14 Q. What does the SFU team stand for?

15 A. Services for UNIX.

16 Q. Aside from the SFU team, were you aware of
 17 any other people or organizations that were involved
 18 within Microsoft that were involved in deciding
 19 whether or not to take this option?

20 A. There was part of the SFU team, and also
 21 there was a -- they bought a company called
 22 Connectix, and Connectix does virtualization. And
 23 Microsoft's virtual machines could run UNIX and could
 24 run Linux. And so they basically would literally
 25 have Windows with a virtual machine on top of it, and

1 then that virtual machine would boot an operating
 2 system so they would actually be running Linux in an
 3 operating system underneath the Microsoft.

4 So their virtualization team, the team
 5 that bought the Connectix product, would be very
 6 interested in this. And they were also -- it was
 7 some of the people from the UNIX group, including
 8 Doug Miller, who would -- who also were interested in
 9 the virtualization side.

10 Q. Aside from the SFU team and the
 11 virtualization team, can you think of any other
 12 people or groups within Microsoft that would have had
 13 a hand in deciding whether or not to take this
 14 option?

15 A. I think it's the legal group and the --
 16 and the -- and also the -- yeah, the server team in
 17 general because it's -- it's related to that. There
 18 was a lot of applications that ran on -- on UNIX that
 19 it would be nice to throw up in a virtual machine and
 20 put on the network and manage under Windows. So that
 21 group was -- certainly the server side of the team
 22 was interested in it at all levels, but they have,
 23 like, a hundred groups.

24 Q. Aside from Doug Miller, do any other
 25 specific names stand out in connection with

1 Microsoft's decision, yes or no, to take this option?

2 A. And you can look at the people -- if you
 3 did the org chart, you would see, like, Bill Veghte
 4 and those guys that -- you'll see who signed it,
 5 going down. If you looked at the org chart, it would
 6 be very much -- most of the people came from the
 7 server side, reported up through the server side
 8 team. So all of that -- there was a series of people
 9 that came from those groups, and then they would do
 10 a -- an into from other groups. Even Dan Neault was
 11 a part of that group, and Rich Wickham.

12 Q. And I'm sorry. What was Bill's last name?

13 A. Veghte. He's actually the signature
 14 you'll see on the back of this --

15 Q. Ah.

16 A. -- contract, and he's up there.

17 Q. What was your understanding of
 18 Mr. Veghte's role on behalf of Microsoft?

19 A. You know, he's like -- they change the --
 20 they changed the titles all the time and do re-orgs
 21 all the time, but there's a group of people there
 22 that have been around forever. And he's one of the
 23 senior -- he's one of the decision makers at
 24 Microsoft, all -- that you always -- and Jim Allchin
 25 and all that group.

Page 70

1 THE REPORTER: And who? I'm sorry.
 2 THE WITNESS: Jim Allchin.
 3 Q. (By Mr. Melaugh) Was he someone with whom
 4 you interacted directly as part of the Microsoft
 5 negotiations?
 6 A. No.
 7 Q. And I'm sorry. Who did you say -- among
 8 the people you interacted with as part of the
 9 negotiations, who would you say the person was that
 10 was reporting to him?
 11 A. Are you -- and you're talking about the
 12 first -- you're talking about the first -- this first
 13 deal specifically, right?
 14 Q. Yeah. So all we're talking about now is
 15 this deal in April '03 and your memory of the
 16 negotiations up to this point.
 17 A. Not many. Bob Kelly, I think, was also --
 18 he was the original one who referred us over to Neil
 19 Calvin and said, If you want to do this, you have to
 20 talk to Neil Calvin. So...
 21 Q. After this point did Bill Veghte become
 22 more involved? Did you -- did you start to have
 23 negotiations with him directly?
 24 A. No. We would not -- that just wouldn't
 25 happen. He's just --

Page 71

1 Q. He's too senior?
 2 A. He's too senior. He didn't -- he didn't
 3 do that stuff.
 4 Q. Now, I take it Microsoft ended up
 5 exercising the option that's described in section 3.5
 6 and 3.6; is that right?
 7 A. That's correct.
 8 Q. Do you have an understanding as to why
 9 Microsoft decided to do so?
 10 A. Again, I believe it was their original
 11 intent to always do that. I think it was just simply
 12 a -- I think it was just simply a matter of process
 13 for them to break it up. And at the end of 60 days
 14 if something didn't occur or if something -- or if
 15 there was no objections brought up, then they
 16 would -- you know, but other than that, I -- you
 17 know, my intent -- I was told up front that that
 18 was -- you know, that it was their -- you know, their
 19 leanings would be to exercise that option unless
 20 something came up that wasn't -- you know, internally
 21 that didn't pass the muster, I guess.
 22 Q. And do you have an understanding as to why
 23 it was always their intention to exercise the 3.5,
 24 3.6 option?
 25 A. To get as much rights, you know, to get as

Page 72

1 much value, you know, for the money. They looked at
 2 the contract and said, What do we get? And I think
 3 they weighed it -- they weighed it on the whole and
 4 said, For this much money, what you're giving us is
 5 worthwhile.
 6 And I think -- I think the -- you know, we
 7 looked at it as a whole. It was broken up that way,
 8 I think, to lower their risk and give them 60
 9 additional days to basically -- to do something -- to
 10 basically do further review and get further sign-off
 11 if necessary.
 12 Q. Maybe I should take a brief step back.
 13 What's your understanding of what Microsoft's getting
 14 when it exercises this 3.5, 3.6 option?
 15 MR. GONZALEZ: Objection. Asked and
 16 answered multiple times.
 17 THE WITNESS: Again, I see this -- I saw
 18 this as a single \$10 million deal, you know, for me.
 19 That was the -- and that was the point -- you know,
 20 how it got broken up, it was -- wasn't really that
 21 relevant to me. It was just -- it was broken up, it
 22 was set up as a \$10 million deal.
 23 The parties came to this type of a
 24 breakout, and it seemed acceptable to both of them.
 25 I really wasn't concerned. I assumed that it was

Page 73

1 something that SCO was willing to license for
 2 10 million and it was something that Microsoft was
 3 willing to buy for 10 million. I'm a happy camper.
 4 You know, clearly SCO would have loved to
 5 have more money, you know, and Microsoft would have
 6 loved to not have the conversation.
 7 Q. (By Mr. Melaugh) And you arrived at
 8 the -- I'm sorry. How do we get to \$10 million?
 9 A. You know, I think if you added it up, it
 10 was around that, and so --
 11 Q. So is it the 3.7 plus 5 at this point, or
 12 is there something I'm missing?
 13 A. Yeah. There was a --
 14 Q. I know there was a later option --
 15 A. Three five, three seven five -- yeah, this
 16 may have been -- this one may have been broken down
 17 in -- I'll say approximately ten.
 18 Q. Okay.
 19 A. Any concessions on it, you know, weren't
 20 made by me.
 21 MR. MELAUGH: I think the next bit may
 22 take a little while. If you want to take a break
 23 now -- it's ten minutes till twelve -- for lunch, is
 24 that appropriate?
 25 MR. TIBBITTS: Well, I don't care. We can

Page 74

1 go another 10 or 15 minutes --
 2 MR. MELAUGH: Okay.
 3 MR. TIBBITTS: -- unless you don't want to
 4 break it up that way.
 5 MR. MELAUGH: Okay. No, we can. We might
 6 as well go forward.
 7 Q. So the -- let's turn now to section 4 of
 8 this agreement. We're on the fourth page. It's --
 9 it's titled an "Option to Purchase License to Other
 10 SCO Assets," and the first section here lists another
 11 number, \$8 million. Do you have an understanding as
 12 to how that \$8 million figure was arrived at?
 13 A. It was just, again, I think, through --
 14 there tended to be an understanding with the parties
 15 that basically they couldn't negotiate a hundred
 16 percent of the terms and get a complete understanding
 17 both within Microsoft and SCO what was going for
 18 what. They acknowledged that there was some value in
 19 there, and then this was an option, I think, that was
 20 kind of a -- Neil tended to have a lot of things that
 21 were all-inclusive throw-ins, right, and he was
 22 trying to get -- trying to use the leverage of
 23 getting a deal done, probably, to get other things
 24 thrown in later.
 25 So it was -- and he did -- he did a good

Page 75

1 job of that. He had -- he basically was saying,
 2 well, if there is something else and you can -- and I
 3 can get other groups within Microsoft to buy off on
 4 it, then we'll license other stuff from you. At
 5 least we can establish the -- you know, the part that
 6 you see as the original exercise price, but we'd like
 7 an option on anything else. We just don't know what
 8 it is yet. You haven't -- we haven't gotten there
 9 yet. So we need to basically get our technical
 10 people to dig in with your technical people to figure
 11 it out.
 12 Q. And do you know what groups or people in
 13 Microsoft would have been involved in the decision as
 14 to whether or not to take the option described in
 15 section 4?
 16 A. You know, I wouldn't -- I wouldn't know
 17 the -- again, the group -- beyond the groups that I
 18 told you, there was probably other people forwarded
 19 internally at Microsoft who -- you know, again, who
 20 those people knew might have an interest in this
 21 space, but I wasn't a party to that.
 22 You know, they were just basically --
 23 I'm -- I'm sure that they forwarded it to other
 24 people and asked them if they had an interest in it,
 25 I just doesn't know which ones. You know, it could

Page 76

1 have been -- it could have been any group within
 2 Microsoft that was doing anything that had UNIX, you
 3 know, or some standards-based stuff on it. There
 4 could have been a lot of people.
 5 So I'm expecting that there were other
 6 people, but beyond the ones I listed to you, I don't
 7 know.
 8 Q. And so to make sure I understand your
 9 testimony, the groups we discussed earlier, namely
 10 the SFU group and the virtualization group --
 11 A. And the server -- the server team in
 12 general.
 13 Q. The server team in general would have also
 14 been involved in deciding whether or not to take this
 15 section 4 option?
 16 A. Right, and the legal team and potentially
 17 other groups that they felt should be involved. I
 18 just don't know what they are.
 19 Q. What's your understanding of what rights
 20 Microsoft is getting by exercising this option?
 21 MR. GONZALEZ: Objection. Asked and
 22 answered.
 23 THE WITNESS: You know, I've seen a
 24 thousand license agreements, I think, and I just
 25 quit -- I think I quit reading them at, you know,

Page 77

1 Version .5. It was -- you know, you look at them,
 2 and they had general terms. But I don't -- the
 3 specifics of it, to me, generally are not -- aren't
 4 that important. It's -- it's just legal terms that
 5 basically outline both parties' -- you know, both
 6 parties' rights and limitations. So I wasn't
 7 concerned about that.
 8 I mean the things that I would read is
 9 confidentiality. I knew that was going to be in
 10 there. I looked at it and said, Okay, it's got the
 11 catchall, it's got this, so in general terms I know
 12 what it's got in it. But specifically I wouldn't
 13 ever purport to say I'm a lawyer and I can say what
 14 that is, because I just -- there's just so many
 15 lawyers floating around in this case, if I ever said
 16 anything, I was always wrong. So there were just too
 17 many lawyers around to -- to try to even do that.
 18 Q. (By Mr. Melaugh) Well, let's turn to
 19 page 12, which is Exhibit C of this. I think it's
 20 continued on page 13 as well.
 21 Do you have an understanding as to the
 22 role of this exhibit within the context of the larger
 23 deal?
 24 MR. GONZALEZ: Objection to form. Vague
 25 and ambiguous.

1 THE WITNESS: It's just as it says, it's a
 2 list of assets that I assume are referred to
 3 somewhere in the contract. You know, it just is --
 4 I've -- I'm not sure what -- what it -- how they are
 5 referred to or if they're part of the contract or if
 6 there is information only under other assets because
 7 I really haven't -- I don't recall in the contract
 8 and I don't remember reading it. So...

9 Q. (By Mr. Melaugh) Did you play any role in
 10 the drafting or negotiation of this exhibit, the
 11 things that are listed on it?

12 MR. GONZALEZ: Objection. Asked and
 13 answered.

14 THE WITNESS: I don't believe so. The
 15 other times that I would get involved is if
 16 somebody -- if there was some type of a dispute
 17 between the two parties. If they wanted something
 18 and if it got to an issue, I would just connect the
 19 two people that needed to get that issue resolved.
 20 That's all I -- the only role I would have done.
 21 If somebody had said, We need this other
 22 version -- I do recall there was some request for
 23 versions that, when they went to get them off a tape,
 24 they couldn't get them they were so old. You know,
 25 some of the oldest versions just were not even

1 available and they would take -- or they would take a
 2 while to transcribe because the tapes were damaged or
 3 something. So there was -- I recall that being an
 4 issue.

5 But to the extent -- and that may have
 6 been something that held things up because they
 7 couldn't deliver a hundred percent because, when they
 8 went to get things, you know, they were not readily
 9 available.

10 Q. (By Mr. Melaugh) And we're talking
 11 about -- these are old versions of the UNIX code?

12 A. Um-hum. Yes.

13 Q. Do you know whether that would have been
 14 versions of the System V code?

15 A. All I could say is it was just old
 16 versions of some of the stuff. It could have been --
 17 it could have been any of the assets listed. I
 18 believe it was System V code, but --

19 Q. Do you recall who from the SCO side was
 20 involved in --

21 A. Or System IV.

22 Q. -- in developing Exhibit No. C?

23 A. I -- I don't. I don't know all the people
 24 that are involved. This was a team -- this obviously
 25 was their licensing group again.

1 Q. Is there anyone within the licensing group
 2 that you recall being involved in Exhibit C?

3 A. There was an attorney who -- again, whose
 4 name escapes me, who was probably the liaison from
 5 that group who we dealt with on a regular basis. But
 6 he was an attorney -- and I don't recall his name --
 7 back in New Jersey who seemed to have -- I think he
 8 ran the licensing group -- who had a handle on all of
 9 that and who very clearly knew all of these -- all of
 10 the versions and what was available and what wasn't.
 11 That wasn't me, and I just don't recall his name.
 12 But he was in -- in and around, giving us that data.
 13 I think he was a lawyer. I'm pretty sure he was a
 14 lawyer also.

15 MR. MELAUGH: We can take a break now.
 16 THE VIDEOGRAPHER: Off the record, 11:57.
 17 (Recess from 11:57 a.m. to 1:10 p.m.)
 18 THE VIDEOGRAPHER: The time is 1:10. On
 19 the record.

20 MR. MELAUGH: Could you add a sticker to
 21 that?
 22 (EXHIBIT-161 WAS MARKED.)
 23 MR. MELAUGH: This has been marked
 24 Exhibit 161. I'll note for the record that it also
 25 bears another sticker noting it as 223. I believe

1 that's an exhibit number from the SCO v. IBM
 2 litigation. It bears, again, two Bates labels. The
 3 first is SCO1300026. The second is SCON41093.

4 Q. (By Mr. Melaugh) Mr. Anderer, do you
 5 recognize this document?

6 A. This is one I wasn't a party to, I don't
 7 believe. I mean I may have known that it happened,
 8 but it was not something I negotiated.

9 Q. Why weren't you a party to this?

10 A. Again, this was -- got down to the
 11 specifics of the contracts. I think when they did
 12 the research, they found -- it looks like they found
 13 something that they may not have had -- been able to
 14 license without a fee.

15 Q. I understand also this is the amendment
 16 whereby Microsoft exercised its option in section 4.
 17 Do you have the same understanding of this document?

18 A. That's entirely possible. It's -- you
 19 know, there was -- I believe that they may have done
 20 the change in and around that time. It was just -- I
 21 knew that there -- that there was a correction in the
 22 form of some of the stuff that they were looking for
 23 and what the rights that they -- when I said -- they
 24 went back and researched it internally, and then
 25 there were some -- I think SCO did the same thing and

1 found there were certain things that had to be
2 changed in the contract. So as a clarification to
3 the contract, this became, you know, a part of it, I
4 guess. That was the -- I wouldn't be negotiating at
5 that level of detail with them.

6 Q. Do you know who was involved in the
7 negotiations surrounding Amendment No. 4?

8 A. Again, I suspect it was the people back in
9 New Jersey, you know, Chris, Darl and those guys, but
10 that's -- I can't add to that, really.

11 You know, obviously Bob Bench signed it.
12 I assume he was wanting to get the money, and so I'm
13 sure he was collecting all the people to get this
14 thing finished.

15 Q. On the second page there, it says
16 signature from Microsoft. Do you know who this
17 person is? It looks like S -- Somasegar?

18 THE REPORTER: S-what?

19 MR. MELAUGH: Your guess is as good as
20 mine. It looks like it's spelled
21 S-o-m-a-probably-s-e-g-a-r.

22 Q. (By Mr. Melaugh) Do you -- Is this
23 someone with whom you interacted?

24 A. No. This was not somebody who I
25 interacted with.

1 Q. Do you know who he is?

2 A. It's just -- again, it's a lot of people
3 up there, so I'm not sure exactly who that would be,
4 whether that was one of their attorneys or one of the
5 people in one of the server groups who -- who
6 understood the Motif stuff.

7 Q. Based on what we've reviewed today at this
8 deposition and based on your memories of the
9 Microsoft-SCO negotiations, would you characterize
10 UNIX System V as playing -- rights to UNIX System V
11 as playing a significant role in the Sun-Microsoft
12 agreement?

13 MR. GONZALEZ: Objection. Asked and
14 answered.

15 THE WITNESS: You mean SCO-Microsoft?

16 Q. (By Mr. Melaugh) I do mean SCO Microsoft,
17 yes.

18 A. Yeah. I can't -- I mean, to the extent it
19 was listed as one of the major bullet points, I would
20 say, you know, it was clearly an important item based
21 on the contract, but I can't say it was -- you know,
22 there -- there was a lot of -- there was a lot of
23 other components to this that were, again, the
24 third-party utilities. So which ones Microsoft put
25 the most value on, I don't know, and I just -- you

1 know, I think it was -- there was a -- which ones
2 they actually needed versus which ones were nice to
3 have versus need to have, I don't know.

4 Q. Are you familiar with the term
5 "SCOsourc"?

6 A. I am.

7 Q. What's your understanding of that term?

8 A. It was a group set up to basically -- I
9 think to take something similar to this and basically
10 license it -- you know, to give -- take that first
11 clause, which was the release back out to the
12 community of people who might be using the IP and
13 give them that kind of global release idea, you know.

14 Q. What involvement, if any, did you have in
15 SCO's SCOsourc efforts?

16 A. Well, I strongly suggested they didn't do
17 it, but beyond that, I -- at which point in time I
18 wasn't engaged much in conversation.

19 Q. Why did you suggest that they not pursue
20 SCOsourc?

21 A. Just because I wasn't sending invoices to
22 people for stuff, you know, that there seemed to be a
23 lot of -- for an engineering package, it seemed to me
24 that it was -- it would devalue, kind of, the -- it
25 would devalue that, and their likelihood of

1 succeeding at that would seem to be very low because
2 each individual company, if they send an invoice to
3 them, was going to be, you know, not likely to just
4 pay an invoice which was sent, which I think was the
5 original plan.

6 Q. Ah.

7 A. It wasn't likely to succeed, I should say.

8 Q. Why do you say it wasn't likely to
9 succeed?

10 A. Based on my experience with corporate
11 customers, that was not something that they would --
12 they would look upon as something -- they would not
13 look upon that positively.

14 Q. Why not?

15 A. It's -- getting an invoice for something
16 that you didn't know that you were violating or from
17 somebody you didn't know or didn't understand what
18 the issues were isn't usually something that -- an
19 unplanned item -- you know, in broadening, basically
20 turning a lot of people into your -- into reluctant
21 customers didn't seem to be something that would help
22 you -- help the company on the whole.

23 Q. Did you convey this view to SCO?

24 A. I did. That's -- that's what I said. I
25 didn't -- that's why I wasn't involved in much of

1 this stuff around SCO, the SCO license -- it was how
2 they implemented it. And maybe I shouldn't say the
3 whole SCOsource piece. It was how they -- how they
4 basically decided to do it.

5 I think there was probably a way to do it,
6 which was licensing it to big companies, which the
7 industry was mostly big cross-license deals. That's
8 how the industry was done, not going out to -- you
9 know, if IBM wanted to go after Microsoft, they
10 didn't usually sue all Microsoft's customers. They
11 went after a cross-license deal with Microsoft. And
12 I thought that was the more productive route.

13 But I do know, you know -- so we were
14 involved in the discussions related to that, but once
15 it got set up, I wasn't related to -- I wasn't
16 involved.

17 Q. What was SCO's reaction when you conveyed
18 this view to them?

19 A. It was just an opinion. You know, it just
20 was like they were -- and they had a bunch of lawyers
21 and a bunch of other people and -- who drove the --
22 who -- I didn't run the company. I was just a
23 consultant who was there infrequently. And I was
24 under no illusions that my -- my opinion was going to
25 drive this. I just gave it, you know, in good faith

1 to just give them another data point to make their
2 decisions. And they made different decisions in some
3 cases, and I think in some cases they listened to it.
4 But it was not -- I wasn't driving all that.

5 Q. Did you regard the Microsoft agreement as
6 part of the SCOsource effort or as separate from it?

7 A. I -- you know, I think it predated it.
8 You know, there was not -- I don't think SCOsource
9 existed at that -- at that point, except in maybe
10 concept.

11 Q. Were you aware of an agreement entered
12 into between SCO and Sun within the last few years?

13 A. I was aware that one occurred that
14 actually predated the Microsoft contract.

15 Q. Did you have any involvement in the
16 negotiation of that contract?

17 A. No.

18 Q. Did you have occasion to review that
19 contract in preparing -- or in negotiating the
20 Microsoft contract?

21 A. No. The SCO was a different -- or, the
22 Sun case would have been a different case because
23 they already had a substantial rights and they were
24 looking for additional rights under the contract.
25 That's my understanding. So theirs would have been

1 completely different as opposed to Microsoft who
2 didn't have any existing -- SCO -- or, Sun had a
3 hundred -- spent a hundred million already in some
4 type of license deal with SCO, so they were looking
5 for incremental rights because it was core to their
6 product offerings.

7 Q. What do you mean by that, core to their
8 product offerings?

9 A. Solaris was basically based all over
10 around what -- you know, an original license from
11 AT&T, and some of the restrictions that carried
12 forward to them I think they would -- they wanted to
13 get rid of. So they'd progressively buy more rights.

14 Sorry.

15 MR. MELAUGH: Let's mark this the next
16 exhibit.

17 (EXHIBIT-162 WAS MARKED.)

18 Q. (By Mr. Melaugh) Do you recognize this
19 document, Mr. Anderer?

20 A. I do.

21 Q. What is this?

22 A. This is just an e-mail to me from Darl
23 based on -- you know, I -- when I was allowed to look
24 at some of the documents, I just would give him a
25 briefing on what I -- what came out of the documents,

1 you know, what I -- what my read was. And then I'd
2 say usually that you have to -- you know, suggest
3 that they go back -- my assumption always was that
4 they'd go back to the attorneys and do it.

5 Q. So to be clear, this is an e-mail from --
6 from you to Darl, right?

7 A. That's correct.

8 Q. Okay. Now, when you say here in the
9 second line, "This agreement indicates Novell
10 transferred substantially less than what was
11 transferred to USL in the previous agreement" --
12 first a foundational question. What agreement are
13 you referring to in this sentence?

14 A. There was an original agreement that -- I
15 guess where AT&T transferred to USL some of their
16 rights, and then Novell subsequently purchased those.
17 The contract was available from AT&T to USL, the
18 original contract of where they put stuff in it.
19 There's another contract which is what Novell bought
20 from -- when they originally purchased UNIX system --
21 or bought USL that wasn't available to me. And then
22 I had the next piece of it, which was what -- what --
23 I had the Novell-SCO piece of it. So there was a
24 hole in it.

25 So I can assume that certain things flowed

1 through, and, again, like I indicated earlier, there
 2 was an industry perception of -- they'd do the press
 3 release and said, Novell buys UNIX. You know, what
 4 that means is always dictated by some type of a
 5 contract. And I was digging through and found that
 6 it looked like there was some things left off and --
 7 that I didn't know. And I also wasn't a party to all
 8 of the agreements. Apparently there was an
 9 Amendment 2 and other amendments that I just never
 10 saw, that I wasn't ever given. I heard rumor of
 11 them, you know, but I didn't know of them. So from
 12 what I read as a layman, it indicated that.

13 Q. And so when you say "transferred
 14 substantially less than what was transferred to USL,"
 15 what did you mean by that?

16 A. Just what I said. It looked like there
 17 was some restrictions on what exactly had been
 18 transferred, and in the next line, it -- it excludes
 19 the stuff. But, again, I wasn't a party to, kind of,
 20 the latter agreements, the one that Joanie found, for
 21 example. But I was -- in this one it looked like
 22 there was stuff that I had -- I had made an
 23 assumption, and I was surprised when I read it that
 24 it seemed that those were excluded.

25 Q. And in the next paragraph, the third

1 sentence reads, I think it also leaves Novell with
 2 practical -- practical control of the license
 3 agreements with IBM and others with respect to SVRx.

4 What are you -- what are you referring to
 5 in that sentence?

6 A. The cancel -- the right for them to
 7 basically, you know, allow or disallow right of
 8 approval and right to -- you know, to waive any --
 9 any pieces.

10 But, again, that was related to just the
 11 piece that I had read, which was, you know, the file
 12 that I was provided. And I'm always looking at a
 13 subset of stuff when I look at these agreements, but
 14 it just seemed to me, again, from a layman's read,
 15 that that's what -- that there was something excluded
 16 and that they -- that Novell had the right to
 17 basically approve and disapprove certain things.

18 Q. So let's take the first part of this
 19 first, the "transferred substantially less." What,
 20 if any, reaction back was there from Darl McBride or
 21 anyone else at SCO concerning this portion of your
 22 e-mail?

23 A. I don't believe there was an explicit
 24 reaction to it. It was -- you know, I'd --

25 MR. GONZALEZ: Excuse me. To the extent

1 it would be privileged, we're asserting that
 2 objection.

3 THE WITNESS: Okay. I can just say there
 4 was, like -- there was no reaction really
 5 specifically to it, you know, unless it was in a --
 6 in with a bunch of SCO lawyers and SCO senior
 7 executives, was the only time that there would be a
 8 response.

9 Q. (By Mr. Melaugh) Can you think of an
 10 occasion in which -- I just need a yes or no answer
 11 to this first. Can you think of an occasion in which
 12 you were with SCO attorneys and others in which this
 13 portion of your e-mail was discussed?

14 A. No.

15 Q. No, you can't think of an -- an occasion
 16 in which this was --

17 A. Can -- I'm sorry. Rephrase the question,
 18 please.

19 Q. Sure. In the last part of your earlier
 20 answer, you said aside from meetings I might have had
 21 with attorneys, or something to that effect. I'm
 22 trying to drill down now into the specifics of that.

23 How many meetings would you say you had in
 24 which this text came up?

25 A. I would say two or three.

1 Q. When was the first of those meetings,
 2 roughly?

3 A. I'd say contemporaneous with this.

4 Q. So that would be roughly January or the
 5 beginning of '03?

6 A. Um-hum.

7 Q. Who was present at that meeting?

8 A. A bunch of lawyers I didn't know and SCO
 9 senior executives, people from New Jersey.

10 Q. People from New Jersey meaning SCO and --

11 A. Meaning the lawyer I think was there but a
 12 couple of other attorneys I didn't know.

13 Q. What was discussed at this meeting?

14 MR. GONZALEZ: Objection. Privilege.

15 MR. SCOFIELD: Well, if they're asserting
 16 a privilege on the meeting, then I think you
 17 shouldn't be discussing it in light of the S2
 18 agreement.

19 MR. MELAUGH: And so we're just clear on
 20 the record, can you go a little farther into the
 21 basis for your objection?

22 MR. GONZALEZ: Well, I -- you know, I can
 23 elaborate and say if -- if it's clear in your mind
 24 that there were conversations at that meeting,
 25 communication at that meeting that were clearly

1 purely business related, then we will not assert a
2 claim of privilege over those.

3 But to the extent that there was legal
4 analysis, legal advice asked for or given or any
5 discussion of legal issues, then we would assert a
6 privilege over those on the basis that Mr. Anderer
7 was a consultant, a paid contractor for SCO, so it
8 was -- you know, would have been part of the client
9 of the attorneys present at that meeting.

10 Q. (By Mr. Melaugh) Do you understand that
11 clarification? He's drawing a line between
12 communications that were exchanged for the purpose of
13 providing or receiving legal advice and
14 communications that were of a business nature.

15 And so I'm going to ask you about
16 communications that may have occurred at this meeting
17 that were of a business nature. Do you recall
18 communications of that kind?

19 MR. SCOFIELD: Well, hold on. Don't
20 answer.

21 I'm going to object to the extent that
22 you're trying to get this witness to parse in his
23 mind what's business and what's legal. If you want
24 to ask your foundational questions in a different
25 form, I might not have an objection, but in the form

1 you've asked them, you're asking him for a legal
2 conclusion concerning whether something is business
3 or legal.

4 Q. (By Mr. Melaugh) Well, my -- my
5 question's going to be something like were there
6 questions -- were there communications that were
7 purely of a business nature, and if -- I have no
8 objection to you talking this over with your attorney
9 privately if you need clarification on as to what was
10 legal and what -- what were business communications.

11 A. I -- to the extent that the privilege is
12 being claimed, is it only for the meetings where
13 lawyers are present?

14 Q. We should probably -- we should probably
15 do it meeting by meeting --

16 MR. GONZALEZ: Exactly.

17 Q. (By Mr. Melaugh) -- because his answer
18 and my answer is going to differ depending on the
19 particular facts. I would guess, as a general point,
20 that if a lawyer's not there, it's going to be
21 tougher for those folks to say a privilege attaches,
22 but there are certainly circumstances in which it
23 still might.

24 MR. TIBBITTS: Or if they're on the phone.
25 You know, there are variations on all of that.

1 Q. (By Mr. Melaugh) So let's talk about this
2 meeting for a moment. And from my understanding
3 there are lawyers present at this. Do I have that
4 right?

5 A. Yes.

6 Q. And were there communications going on
7 that were of a business as opposed to a legal nature?
8 And I'll offer again if you need to, and
9 frankly, if you need to talk with your attorney about
10 this, I'm happy for you --

11 A. The only replies that were given to me
12 were from an attorney -- from the attorneys. They
13 were the ones that spoke to me, so I would assume
14 it's...

15 Q. In the course of these discussions, were
16 you asked to give your opinion, as a businessman, on
17 questions?

18 MR. GONZALEZ: Objection. Privilege
19 grounds.

20 MR. SCOFIELD: Well, he can answer that --
21 THE REPORTER: Privilege what?

22 MR. GONZALEZ: On privilege.

23 MR. SCOFIELD: He can answer that question
24 yes or no.

25 MR. GONZALEZ: Yeah.

1 THE WITNESS: No.

2 Q. (By Mr. Melaugh) Thanks.
3 You said there were two or three meetings.
4 I think we've talked about the first of those. Let's
5 go to, say, the second of them. Can you put that
6 roughly in time?

7 A. It would be several months after this.

8 Q. And do you recall who was present at that
9 meeting?

10 A. Just Chris Sontag.

11 Q. And what was discussed at the meeting?

12 A. This was just about a -- there was a part
13 of this agreement that had a sublicense where they --
14 where they had to -- part of the agreement was that
15 they would offer a -- a sublicense back to Novell for
16 the stuff, for, in other words, what they purchased.
17 They also agreed to give -- to negotiate at a future
18 date an agreement to license the stuff back to
19 Novell.

20 And I asked Chris -- I -- because it was
21 referenced in this document, I said, Chris, I don't
22 know what's in that document. Could I get a copy of
23 that document, because it would seem to be relevant?

24 And he said he'd seen it. He just
25 said that -- and he said he would get me a copy, but

Page 98

1 he never did.
 2 Q. Aside from the discussions of the license
 3 back, were there any other discussions that took
 4 part -- took place in this meeting?
 5 A. No -- no discussions.
 6 Q. Did you talk at this meeting about any of
 7 the topics you've raised in this -- in the e-mail
 8 that we're looking at now?
 9 A. Chris commented that there was some about
 10 the -- about the one that he had done and said that
 11 there were certain things in there that were -- you
 12 know, that needed further review, in the other
 13 agreement.
 14 Q. In the SCO-Novell agreement?
 15 A. Right, the one -- the license back to
 16 them.
 17 Q. Ah.
 18 A. And I accepted that as the reason he
 19 wasn't giving it to me. So it wasn't a discussion,
 20 it was just a comment.
 21 Q. Did he say at all what things needed
 22 further review in the license-back agreement?
 23 A. Well, I'd asked him what rights they had
 24 given back to Novell, so I assumed it was an answer
 25 to that.

Page 99

1 Q. Do you know what he meant by further
 2 review?
 3 MR. SCOFIELD: Well, I'm going to object
 4 to the question as assuming facts not in evidence,
 5 but if he used the terms "further review"
 6 specifically and you had an understanding of those,
 7 you can say what your understanding was.
 8 THE WITNESS: Yeah, I -- it just meant to
 9 me that it was somewhat -- it was important to review
 10 it.
 11 Q. (By Mr. Melaugh) You said there was maybe
 12 also a third meeting. Do you recall when in time
 13 that occurred?
 14 A. Again, contemporaneously with these other
 15 two, and kt -- in that case a lawyer was present
 16 again.
 17 Q. Which attorney was that?
 18 A. I think it was Kevin McBride.
 19 Q. And we're going to go through some of the
 20 same questions as we did before. Were there
 21 communications with you in the course of this meeting
 22 that were of a business as opposed to of a legal
 23 nature?
 24 A. I believe everything was legal related.
 25 Q. Now, the second bit I had you go through

Page 100

1 in this e-mail begins, "I think it also leaves Novell
 2 with practical control..." It goes on from there.
 3 Was there any reaction back to this portion of your
 4 e-mail?
 5 MR. GONZALEZ: Objection on privilege
 6 grounds.
 7 MR. SCOFIELD: Would you read the question
 8 back, please?
 9 (The question was read as follows:
 10 "Question: Now, the second bit I had you
 11 go through in this e-mail begins, "I think it
 12 also leaves Novell with practical control..."
 13 It goes on from there. Was there any reaction
 14 back to this portion of your e-mail?")
 15 MR. SCOFIELD: You can answer that
 16 question yes or no because it's not asking for a
 17 communication, it's asking whether there was -- for
 18 the substance of the communication. It's just asking
 19 whether there was any reaction that you can recall,
 20 so you can answer yes or no.
 21 THE WITNESS: There was a reaction, yes.
 22 Q. (By Mr. Melaugh) And what form did that
 23 reaction take? I'm asking now whether there were
 24 meetings that discussed it, e-mails, phone calls,
 25 that sort of thing.

Page 101

1 A. Mostly it was lawyers talking to me.
 2 Q. How many occasions did lawyers talk to you
 3 about this portion of your e-mail?
 4 A. I believe it was the two or three times.
 5 Q. Are these the same two or three times that
 6 we've just discussed?
 7 A. I believe so.
 8 Q. Did this concept here, Novell having
 9 practical control of license agreements, come up at
 10 any point in the Novell -- I'm sorry -- in the
 11 SCO-Microsoft license negotiations?
 12 A. I think it was publicized by Novell
 13 somewhere in the process of some of the Novell or
 14 some of the Microsoft negotiations. It was either
 15 just prior or just post to one of the agreements.
 16 Q. What's your memory of that publicity?
 17 A. I believe that -- somewhere Novell claimed
 18 that SCO didn't -- you know, the -- I believe it was
 19 when they were waiving the rights or waiving their --
 20 ostensibly waiving the infringement that SCO claimed
 21 of IBM. And that became public, and it was certainly
 22 something that we -- got my attention and was
 23 something that I knew would have to be dealt with
 24 within Microsoft just as a -- the note.
 25 Q. In what way was it dealt with in the

1 context of the SCO-Microsoft negotiations?
 2 MR. GONZALEZ: Objection to the extent it
 3 implicates privilege again.
 4 MR. SCOFIELD: Well, as I understand the
 5 question, he's asking about negotiations with
 6 Microsoft. So long as it's involving communications
 7 and negotiations with Microsoft, you can go ahead and
 8 tell him what it was.
 9 THE WITNESS: I just -- if I would see a
 10 press release related to this point, I would
 11 generally forward it to the people that I knew at
 12 Microsoft and put a spin on it that was whatever, you
 13 know, the internal spin was or whatever the internal
 14 take was so that they weren't surprised, because
 15 Microsoft tends to hate surprises like everybody
 16 else.
 17 So I would -- at times there may have been
 18 an e-mail that followed up from me to Microsoft just
 19 saying, FYI this is -- this is something that hit the
 20 press, because typically the person who was our
 21 advocate internally would get a hundred phone calls
 22 and say, What is this?
 23 So it was just really -- beyond that it
 24 wasn't anything more than information retransmission.
 25 Q. (By Mr. Melaugh) What spin, if any, did

1 you put on Novell's -- the publicity that we're
 2 talking about, Novell's announcement with respect to
 3 IBM, when you conveyed that to Microsoft?
 4 A. I don't know -- I don't recall if there
 5 was a spin on that one. It was just a -- I believe
 6 it was an FYI, Here's something that's -- that's out.
 7 I believe that there was a point where in one of them
 8 it just said, The people internally believe in the
 9 agreement that they signed with you, and it -- it
 10 should have no effect on it.
 11 Q. Was there ever any discussion of the
 12 concept, in your e-mail here, again, Novell having
 13 practical control of certain licenses, in the context
 14 of the rights SCO was purporting to license to
 15 Microsoft?
 16 MR. GONZALEZ: Objection --
 17 MR. SCOFIELD: Objection. The form of the
 18 question is vague and also lacking in foundation.
 19 MR. GONZALEZ: And the same objection and
 20 also privilege.
 21 THE WITNESS: I don't think I can answer.
 22 Q. (By Mr. Melaugh) Why is that? Is it --
 23 why is that?
 24 A. Just for the claim of privilege. And
 25 there's a -- you know, I also followed it in the

1 press. That was it.
 2 Q. Now aside from in the press and what you
 3 may have discussed with SCO's attorneys, I'm asking
 4 about your communications with Microsoft. I'd like
 5 to know whether this concept, Novell having practical
 6 control of licenses, came up in your communications
 7 with Microsoft.
 8 MR. GONZALEZ: I would object on the
 9 grounds it has been asked and answered a couple of
 10 times at least.
 11 THE WITNESS: Yeah, I believe I answered
 12 that. It was an FYI, if anything, you know, in my
 13 e-mails. I don't recall every communication with
 14 Microsoft, but if -- if I did communicate with them,
 15 it was strictly -- it was an e-mail.
 16 Q. (By Mr. Melaugh) Do you know whether the
 17 terms of the deal with -- between SCO and Microsoft
 18 were structured in any way that took account of this
 19 concept here, Novell having practical control of
 20 licenses?
 21 MR. GONZALEZ: Objection.
 22 THE WITNESS: I don't know.
 23 (Discussion off the record.)
 24 (EXHIBIT-163 WAS MARKED.)
 25 Q. (By Mr. Melaugh) Now, this is an e-mail

1 dated the day after the last e-mail we looked at.
 2 It's Bates number is SCO1272214. Do you recognize
 3 this document?
 4 A. I do.
 5 Q. Now, in the first paragraph you say to
 6 Mr. McBride, "I would not send any checks to Novell
 7 until we reconcile some of the royalty payments." It
 8 goes on from there.
 9 What did you mean by this?
 10 A. There was -- again, as a layman, I noticed
 11 a date in the contract. And there was -- there was a
 12 series of -- of payments that they were collecting on
 13 Novell's behalf. There was also an expiration in
 14 that contract that had -- this was -- that had just
 15 come up. Literally it was January 1st right here.
 16 And so I was saying, Until you review that -- you
 17 know what? -- you might -- I wasn't expecting anybody
 18 to look at this contract, but I just happened to look
 19 at it. Something expired -- you know, some of the
 20 payments expired, and so you should take a look at
 21 that.
 22 Q. Do you know whether SCO, in fact, stopped
 23 sending checks to Novell?
 24 A. I don't know if they did or not. I was
 25 not privy to any of the -- as to whether they

1 listened to me on that or not.

2 Q. The next paragraph says, I am also
3 concerned about some clauses in the contract. There
4 is probably some room to negotiate with Novell on
5 some issues.

6 What clauses in the contract were you
7 concerned about?

8 A. I think there was a series of -- of -- of
9 clauses and limitations within the contract. I think
10 they were expressed in the previous e-mail, you know,
11 the -- you know, that there was some of the things
12 that were transferred -- there wasn't a hundred -- it
13 wasn't completely clear to me, you know, what -- in
14 some of those clauses what -- what the net effect
15 on -- on SCO was.

16 And there was a -- there's also a clause
17 in there that just said, Hey, if these clauses don't
18 work out and SCO's not making any money on it, then
19 Novell will renegotiate those terms in the contract,
20 which was part of the -- part that I thought that
21 they -- to the extent that they weren't deriving
22 enough licensing royalty from the agreement that they
23 had the right to go back and renegotiate a deal and
24 go back. It was anticipated in the contract. So
25 that was another -- that was another clause that was

1 pretty much -- had some room for -- for negotiating.
2 The -- the waiver clause clearly was another one.

3 Q. And just so the record's clear, the
4 contract that you're referring to in this e-mail and
5 that we've been discussing is the Asset Purchase
6 Agreement between SCO and Novell, correct?

7 A. That's correct.

8 Q. Do you know whether Mr. McBride or anyone
9 else at SCO contacted Novell to negotiate about these
10 issues in response to your e-mail?

11 MR. GONZALEZ: Objection to form. Vague
12 and ambiguous.

13 THE WITNESS: My understanding was that
14 they -- they did talk to Novell. Darl was an
15 ex-Novell person. So were -- so was Chris, so were
16 several of the other people --

17 THE REPORTER: I'm sorry. So was who?

18 THE WITNESS: So were -- so was Chris and
19 so were several of the other employees at SCO and
20 some of the board members. So I think they were
21 right down the road.

22 So I did know that they were talking to
23 Novell people. Whether it was about this or not, I
24 don't know, but my assumption was is that they
25 were -- that was an ongoing conversation because they

1 were writing checks to them also.

2 Q. (By Mr. Melaugh) The last sentence of
3 this paragraph reads, "The other is clarifying the
4 process for conversion of royalties from SVRx to
5 UnixWare."

6 What did you mean by this sentence?

7 A. I believe that there was two products that
8 were -- there was a -- an outline in the process for
9 people that had existing -- that had existing SVRx
10 contracts, which was thousands of people, and there
11 was also a royalty on the UnixWare side that was
12 different. And if they were converted from one to
13 the other, I believe that the royalty treatment was
14 different. And what constitutes a conversion? Is it
15 selling one copy of it, you know, to one -- so I
16 think that there was -- you know, there was -- there
17 was a lot of language in these things that needed
18 clarification.

19 This was an off-the-cuff commentary from a
20 layman on a legal contract, and I just isolated the
21 issues that I thought were important, with the
22 assumption that there's -- I'm handing it off to a
23 group of lawyers to research it so -- these things
24 might be worth looking into. So that was one of the
25 things that I noted that -- and that's part of the

1 reconciliation also as to who owes who how much
2 money.

3 Q. Why did you feel this issue was important?
4 MR. GONZALEZ: Objection. Vague and
5 ambiguous.

6 THE WITNESS: You know, mostly this was a
7 company that was worth, like I said, about \$6 million
8 at some point. And they were cash poor, and they
9 were looking for -- looking for alternate sources of
10 revenue. And so you were -- you would look at your
11 contracts and see if there was -- if there was things
12 that you were paying that you shouldn't have been or
13 things that you -- you know, when you're trying to do
14 an inventory of what you own and what you can go
15 forward and license, it was just important to get
16 clarifications on those things. And at that point
17 they had a very good -- what I would characterize as
18 a good relationship with Novell.

19 Q. (By Mr. Melaugh) Did you feel that
20 clarifying the process for conversion of royalties
21 was something important to do in the context of doing
22 a deal with Microsoft?

23 A. No. This was strictly just the contract
24 on a stand-alone basis. It was just me giving my two
25 cents, as a layman, on a contract with Microsoft to a

1 bunch of lawyers, which they always appreciate.
 2 MR. TIBBITTS: You're under oath.
 3 Q. (By Mr. Melaugh) Skipping one paragraph,
 4 the next paragraph reads, "I am uncertain whether we
 5 can offer a Sun like license. With Novell's support,
 6 we may be able to do this and for them it would be
 7 all upside."
 8 What did you mean by this language?
 9 A. The -- my understanding was that Sun was
 10 comprehensive license and incorporated things that
 11 may not have been passed on to SCO. And so the
 12 uncertain part is very clearly I was uncertain at
 13 that point whether or not that was conveyed because
 14 the Sun was clearly the gold standard for licenses
 15 that they did. It was the biggest and broadest
 16 license.
 17 Q. What things did you have uncertainty as to
 18 whether they were transferred to SCO?
 19 A. It was -- again, there was -- there was --
 20 I don't remember --
 21 MR. GONZALEZ: Object --
 22 THE WITNESS: -- the specific clauses.
 23 MR. GONZALEZ: Objection.
 24 THE WITNESS: So I just knew that there
 25 was -- that we might -- it was enough that I

1 wouldn't -- we wouldn't be able to offer as broad a
 2 license, but I didn't know -- I was clearly saying
 3 as -- I'm a little bit flustered by the language
 4 here, and I'm not a lawyer so I can't interpret which
 5 takes precedence over what.
 6 Q. (By Mr. Melaugh) And when you say in this
 7 first sentence, "I'm uncertain whether we can offer a
 8 Sun like license," do you mean here I'm uncertain
 9 whether we can offer Microsoft such a license or do
 10 you mean something else?
 11 A. You know, I was a salesman. I was looking
 12 for something to sell. So if you look at the SVR 5,
 13 everybody licensed it. Microsoft was probably one of
 14 the only companies out there that didn't license it.
 15 So -- because they gave up their license because they
 16 wrote some it. But that was some of the other
 17 stuff -- the Xenix stuff.
 18 So I was looking for something to sell.
 19 It was referring to Microsoft at that point. I would
 20 like to offer -- Sun was the biggest deal that they
 21 had prior to that. It was, like, a hundred million
 22 dollars. And I would like to have offered another
 23 one like that, so I was referring to that. I wanted
 24 something big to sell because Microsoft was a big
 25 company.

1 Q. So in the answer you just gave, you said,
 2 If you look at SVR 5, everybody licensed it.
 3 Microsoft was probably one of the only companies
 4 there that didn't.
 5 I take it, then, that one of your purposes
 6 in these negotiations was to license SVR 5 to
 7 Microsoft?
 8 MR. GONZALEZ: Objection.
 9 THE WITNESS: I should clarify that that
 10 wasn't -- Microsoft was one of the few people that
 11 didn't have a license that I knew of, that wasn't on
 12 their customer list. So if I was going out to
 13 license stuff to people, I was looking for people
 14 that weren't already customers, and that's actually
 15 hard to find in this space because there's a huge
 16 number of people that have licensed UNIX at some
 17 level across the board. It seemed like a who's who
 18 of who's a company in the country.
 19 Q. (By Mr. Melaugh) But is it a fair reading
 20 of your previous answer to say that one of your
 21 objectives was to go out and license SVR 5 to
 22 Microsoft?
 23 MR. GONZALEZ: Objection.
 24 THE WITNESS: My objective was to sell
 25 something big to Microsoft that they didn't have

1 already --
 2 Q. (By Mr. Melaugh) Potentially --
 3 A. -- and that they would be happy with what
 4 they bought. That was it. It was really -- it
 5 really was that simple. It was what do we have to
 6 offer that we can license them that would have value?
 7 It was never really as specific as -- I didn't care
 8 and it was an X-server. I didn't care if it was a
 9 document management piece. I didn't care if it was a
 10 patent. I was looking for something they perceived
 11 to have value in.
 12 So I was looking to see -- and to make
 13 sure that whatever -- you know, I just wanted to --
 14 tell me what I can sell. Give me a list of things I
 15 can go sell these people and make sure they didn't
 16 buy it already because they'll get pissed at me --
 17 or, angry at me. Excuse me.
 18 Q. And SVR 5 was one of the things on those
 19 lists that you were given?
 20 MR. GONZALEZ: Objection. Asked and
 21 answered.
 22 THE WITNESS: It was on the previous --
 23 yeah, in the contract. It was clearly one of the
 24 listed items.
 25 Q. (By Mr. Melaugh) Now, you say here in the

1 text that we were reading, "with Novell's support we
2 may be able to do this and for them it will be all
3 upside."

4 What did you mean by that?

5 A. My assumption was if they got -- that they
6 would be happy because it was, you know, money from
7 heaven. It was something they weren't expecting out
8 of the license deal and that, you know, getting
9 additional money for -- you know, by further
10 leveraging IP, that they would -- that they would be
11 happy to get an additional check for whatever part
12 they were entitled to.

13 So I thought it was something that should
14 be pretty easy to -- I didn't -- I didn't contemplate
15 at all that there would be a conflict there with
16 Novell and SCO.

17 Q. So was it contemplated, then, at this
18 point that Novell would get a portion of the deal
19 that you were going out to negotiate?

20 MR. SCOFIELD: Object to the form. It's
21 vague.

22 MR. GONZALEZ: Same objection.

23 THE WITNESS: I didn't make any
24 assumptions on that. I...

25 Q. (By Mr. Melaugh) Well, when you talked

1 about Novell getting money from heaven, what did you
2 mean?

3 MR. SCOFIELD: I'll object to the form as
4 vague.

5 You can tell him what you mean by the
6 phrase "money from heaven."

7 THE WITNESS: Money that they -- they
8 weren't -- they weren't necessarily expecting in an
9 additional license agreement.

10 Clearly -- clearly Novell got -- had --
11 was receiving royalty payments from SCO at that point
12 in time for certain products in the product line.

13 What exactly those were and -- what that agreement
14 was -- I never saw it -- I don't know what was in
15 that agreement. I don't know what -- I didn't know
16 what they had to pay royalties on. I didn't really
17 care. What I needed to know was what could I sell.

18 And so what I -- those agreements were
19 things I didn't know. They gave me a list of things
20 that I could sell, and those are the things that I
21 did sell.

22 And to the extent that there was -- that
23 there were other -- that if it required Novell's
24 approval for any of it, I expected them to ask for
25 compensation for it. And I thought that they would

1 actually be pretty easy to negotiate with because it
2 would be additional money and I knew at that point
3 Novell was hurting, from a financial standpoint, or
4 certainly could use the money or would have liked the
5 money.

6 Q. (By Mr. Melaugh) Do you know whether
7 Novell ended up getting any additional revenue from
8 the licenses with which you assisted?

9 A. I have no idea.

10 Q. Was the prospect of paying Novell money,
11 as concerns those licenses, ever discussed with you?

12 MR. GONZALEZ: Objection to the extent
13 it -- this will be privileged.

14 MR. SCOFIELD: Well, he's only asking
15 whether that subject matter was discussed. You can
16 answer that yes or no.

17 THE WITNESS: No, not that I recall.

18 MR. MELAUGH: Let's go on to the next.

19 (Discussion off the record.)

20 (EXHIBIT-164 WAS MARKED.)

21 Q. (By Mr. Melaugh) Exhibit No. 164 is a
22 document I believe you produced. It's marked S2 148.
23 It's two pages. It's an e-mail from you to
24 Mr. McBride and Mr. Sontag. We're now in June --
25 about five months after the last exchange of

1 e-mails -- 2003.

2 Do you recognize this document?

3 A. Yeah, it's -- not specifically, but, yeah,
4 I'm sure it's a letter I sent.

5 Q. I'm wondering if you can first set the
6 context of this e-mail for me. It looks like you're
7 forwarding a portion of the United States Code
8 concerning copyright law, and then you've made some
9 comments about it.

10 Do you recall why you're engaging in this
11 kind of communication with Mr. McBride and
12 Mr. Sontag?

13 MR. SCOFIELD: I object to the form of the
14 question in that it is impossible to tell strictly
15 from this exhibit that that's the United States Code.
16 If you want to lay a foundation as to whether he
17 recognizes it as that, I'll withdraw my objection.

18 Q. (By Mr. Melaugh) You can answer the
19 question.

20 A. Yeah. To the extent everything on the
21 Internet you find is true, this will be -- clearly
22 they were a company that was in the business of
23 licensing intellectual property. And this was an
24 item of interest, and I typically will send out
25 documents that I run across that were interesting.

1 And this one was dealing with copyright transfers,
2 and I just thought that might be -- they might find
3 that interesting. It was not -- I don't believe that
4 it was in response to anything specific on their
5 part. It was just an FYI.

6 Q. So to be clear, is this something that
7 they've asked you to go out and look at or something
8 that you're doing on your own?

9 A. No, very few things that were -- were
10 things that they asked me specifically at that point.

11 Q. Now, in the second paragraph of this
12 e-mail, the sentence begins, "I guess the key is to
13 get past the copyright issue..."

14 What do you mean by "the copyright issue"?

15 A. I think that that was one of the things
16 that was listed in the -- as a -- as a limitation in
17 the -- in the contract. However, again, I wasn't
18 privy to the amendments to the contract which the
19 attorney found, so I don't -- you know, I think that
20 kind of preempted the license.

21 But I also never saw that. I just
22 heard -- I was in the hallway when they said Joanie
23 found something in her drawer and it was great news.
24 And so, you know, to the extent that it -- this was
25 mostly relevant to what I saw in the original

1 contract, and that's why the disclaimer's down below
2 it, saying, I'm not an IP attorney, but this seemed
3 to me to be something that would be interesting.

4 Q. You mentioned again Joanie finding a
5 contract in her drawer. Do you recall roughly when
6 that occurred?

7 A. No idea, but I -- I can tell you -- is
8 that I know there was a phone call from Darl to
9 Novell right after that, that same day, I think,
10 probably 30 seconds later. You can probably track
11 that.

12 Q. How do you know that?

13 A. Because I believe that they thought it was
14 relevant.

15 Q. Did Mr. McBride talk about this telephone
16 call with you?

17 A. No. He just said that he -- the comment
18 was, Joanie found something important, you know, that
19 related to the -- that changed the contract, I guess,
20 or was an amendment to the contract.

21 Q. What I mean is how do you know that he
22 called Novell about this?

23 A. I was -- I was assuming that there was --
24 if I said -- if I was you, I would look for a phone
25 call, basically. If you wanted the exact date, I

1 would bet that there was a phone call 30 seconds
2 later after that. That would be a good place to time
3 it, but I don't know that exact date and time.

4 Q. This sentence goes on to say, "...get past
5 the copyright issue by saying Novell transferred some
6 exclusive rights that are actionable and protected
7 under copyright law and are owned separately, from
8 the original copyright."

9 What did you mean by "some exclusive
10 rights"?

11 A. That's a nonlawyer's interpretation of
12 copyright law, which is take that for what it's
13 worth. It's a -- I would say is that's probably --
14 that's probably not worth a whole lot. It was my
15 interpretation of reading the contract -- or the --
16 what I found below, and it was just saying is that --
17 seeing that there may have been a way if -- to the
18 extent that they weren't transferred.

19 You know, that certain things -- I was
20 always curious as to how you could sell -- how you
21 could sell source code and not copyrights? How could
22 they be separated? That was news to me as part of
23 this whole process here, as are a lot of other issues
24 related to copyright and IP law. So I didn't
25 understand that they could be separated, and anything

1 that tells me that copyrights are separate from words
2 and things that they copyright was fascinating to me,
3 and I would bring it up.

4 Q. How did you come to understand that
5 copyrights could be separated from the source code?

6 A. Part of the contract said of -- what was
7 transferred and what the arguments were related to
8 transfer but also in this document, you know, what
9 was noted in this ownership of copyright.

10 Q. Did Mr. McBride or Mr. Sontag have any
11 response or reaction to this e-mail or the topics
12 that you raise in this e-mail?

13 A. They may have, but I don't recall any
14 response to this one.

15 Q. Do you recall conversations generally
16 about the concepts that are raised in this e-mail,
17 aside from the three that we've discussed earlier?

18 A. I mean copyright law would be outside of
19 the scope of what they would talk to me about. By
20 June of that year, they had lots of good attorneys
21 around, telling them what copyright law was. You
22 know -- you know, I was very much a lay consultant,
23 just throwing up, you know, things that I believed
24 were of interest and -- to a team of -- of people who
25 were a lot better -- in a lot better position to know

1 what they meant.
 2 Q. I take it that's no, you don't recall such
 3 conversations aside from --
 4 A. No. I said I don't recall any
 5 specifically related to these.
 6 (EXHIBIT-165 WAS MARKED.)
 7 Q. (By Mr. Melaugh) This is Exhibit No. 165.
 8 It's marked SCO1273118. It's an e-mail from you,
 9 again, to Darl and Mr. Sontag dated just a couple
 10 days after the last e-mail, titled Amendment No. 2.
 11 Do you recognize this document?
 12 A. I don't remember it, but, again, it's -- I
 13 believe it's one that I sent to Darl and Chris.
 14 Q. And, now, you begin this e-mail by
 15 stating, "From the amendment added language our focus
 16 has to be on converting or upgrading as opposed to
 17 negotiating buyouts of those customers still paying
 18 royalties to Novell."
 19 What did you mean by that?
 20 A. You know, I don't recall what this was in
 21 response to, whether it was an e-mail with a subset
 22 of the terms or -- I don't recall what I was
 23 responding to in this case. I really -- you know,
 24 clearly it was something related to Amendment 2, but
 25 it could have been Darl sending me -- or somebody

1 giving me paraphrasing what it meant so --
 2 Q. Do you recall why -- why you felt it was
 3 important to focus on converting or upgrading as
 4 opposed to negotiating buyouts?
 5 MR. GONZALEZ: I'm sorry. Can you repeat
 6 the question?
 7 (The question was read as follows:
 8 "Question: Do you recall why -- why you
 9 felt it was important to focus on converting or
 10 upgrading as opposed to negotiating buyouts?"
 11 THE WITNESS: I think that's listed in --
 12 in sentence two, that they needed additional
 13 approvals for -- from Novell for -- for that, based
 14 again, on my read of, you know, whatever was sent to
 15 me that I was -- I was reading.
 16 Q. (By Mr. Melaugh) Do you know whether this
 17 concept, namely, focusing on converting or upgrading
 18 as opposed to buyouts, played a role in the structure
 19 of the SCO-Microsoft agreement?
 20 MR. GONZALEZ: Objection.
 21 THE WITNESS: No, I don't -- I don't
 22 believe that -- that that was the case. These are --
 23 they were looking at different revenue sources, and I
 24 think it was just giving them -- to me it would seem
 25 like there was an artificial distinction between

1 what -- what they got paid for in the original
 2 agreement and how they got paid. And the issue was
 3 is it sound like the upgrades and some of those other
 4 things were just -- you could do in the normal course
 5 of business, and the other things that any buyout of
 6 it required -- required -- like, if IBM paid out a
 7 contract, it required Novell and SCO to basically
 8 approve it.
 9 So that's more of an FYI. A lot of these
 10 things that were related to the -- the license
 11 flowing over to Microsoft, it was completely
 12 distinction conversations, because they -- they had a
 13 list of things that they wanted and SCO had a list of
 14 things that they could provide. From my perspective,
 15 they were completely distinction.
 16 You know, I was just in this case looking
 17 for other sources of revenue and other ideas on their
 18 sources of revenue based on what I knew of the
 19 contracts, which was -- again, was -- you know, of
 20 all the people involved, I had just fragments of the
 21 information, you know, in some cases a big fragment,
 22 but it was not -- I don't even know what fragment
 23 because I haven't seen at least several other parts
 24 of the agreements.
 25 Q. (By Mr. Melaugh) Did you have an

1 understanding as to the differences between these two
 2 categories of things you're talking about here,
 3 namely, converting or upgrading on the one hand and
 4 buyouts on the other hand?
 5 A. I clearly understood what that meant.
 6 There was -- there was always a buyout clause in
 7 these contracts where you stopped paying royalties.
 8 And, you know, that was something that, you know --
 9 an upgrade was to a different level where you might
 10 be paying a different royalty. A buyout meant that
 11 you terminated paying the royalties.
 12 And that was -- you know, you -- almost
 13 every license deal that -- that was done had a
 14 buyout. Most of the larger companies exercised their
 15 right and bought them out.
 16 So to the extent that you were offering a
 17 buyout of the rights, that seemed to require Novell's
 18 approval. To the extent you were just offering just
 19 an upgrade or a move from one to the other, that was
 20 basically what that original agreement was from. It
 21 had a table of conversion rates and a table of fees
 22 and how to do it and even estimated conversions,
 23 numbers, in that original contract.
 24 So I did understand what that meant, you
 25 know, but this is mostly existing customers.

1 Q. If not in the context of Microsoft, do you
2 know in what context -- what companies this e-mail
3 falls?
4 A. The tens of thousands of -- SCO had just a
5 couple -- you know, they had tens of thousands of
6 people, of customers that were paying that there
7 was -- that there was revenue coming to SCO for. So
8 it was really just looking at their different revenue
9 sources and seeing, you know, what is theirs and what
10 can they actually derive more revenue from and what
11 can they do in the normal course of business and
12 which ones should they ask permission for?
13 (EXHIBIT-166 WAS MARKED.)
14 Q. (By Mr. Melaugh) This is Exhibit 166. It
15 is, again, something I believe came -- that came from
16 your production. It's marked S2 160. And it's an
17 e-mail from Mr. Neil Calvin of Microsoft to
18 Mr. Sontag and Mr. Broderick, and you are among the
19 CCs.
20 A. Bill was the attorney in New Jersey I
21 think that I -- whose name escaped.
22 Q. I see. Thank you.
23 Now, in this e-mail Mr. Calvin asks for
24 SCO to "...please send us any agreements, assignments
25 or other information that we need to evaluate and

1 understand Novell's claims." It goes on from there.
2 Did you ever -- aside from this e-mail,
3 did you have communications with Microsoft about the
4 claims that are talked about here, Novell's claims
5 that it owns certain IP?
6 A. I just -- like I said, I may have sent
7 them a -- when that thing hit the public -- hit the
8 public, I may have forwarded that to -- to the -- to
9 their group, letting them know that this was coming
10 out. And it had the same -- the exact effect I
11 thought it would have, which is it caused them to
12 basically -- get their attention and then they were
13 asking those guys what -- tell me about this, because
14 they -- it was between the option agreement. I was
15 afraid it was going to affect what they bought.
16 Q. Did it end up affecting what they bought?
17 MR. GONZALEZ: Objection.
18 THE WITNESS: I don't know what -- the
19 results of this, but they did exercise the option.
20 Q. (By Mr. Melaugh) Aside from forwarding --
21 potentially forwarding something like this press
22 release referenced here to Microsoft, what other
23 communications did you have, if any, with Microsoft
24 about this subject?
25 MR. GONZALEZ: Objection. Asked and

1 answered.
2 THE WITNESS: I -- I don't recall.
3 (EXHIBIT-167 WAS MARKED.)
4 Q. (By Mr. Melaugh) This is Exhibit 167.
5 It's marked S2 002 (sic). It's an e-mail from you to
6 Bill Broderick, cc'ing Darl McBride, title, "A draft
7 license agreement."
8 Just to put this in time for you, this is
9 now after the execution of the original deal with
10 Microsoft and also after each of the four amendments
11 to that original deal.
12 What -- can you set the context for this
13 e-mail for me, what's being talked about here?
14 MR. GONZALEZ: Just to be clear, you're
15 representing to him the time?
16 Q. (By Mr. Melaugh) I'm representing the
17 time. You don't have to accept that. I'm just
18 saying I'm familiar with the dates of those
19 amendments. I want to set the stage for you.
20 MR. SCOFIELD: Don't accept anything as
21 true that anyone says to you.
22 THE WITNESS: You know, to put this just
23 in simple terms, I was looking -- we were looking at,
24 okay, what did we sell them? You know, we sold them
25 everything but the kitchen sink. Now we're going to

1 sell them the kitchen sink too.
2 Q. (By Mr. Melaugh) What didn't you sell
3 them?
4 A. That's what the question was from Bill. I
5 was asking -- I said, Apparently we didn't sell them
6 everything because there was something different that
7 we sold Sun to what we sold you -- or sold Microsoft.
8 What was it? I think source distribution rights
9 might have been part of it, was a right to sublicense
10 the source, right, to give it out, so let's see if we
11 can sell them that too because they asked -- they
12 would ask me to get more money, to see if I could go
13 back and get more money from different sources and --
14 specifically Microsoft, and I -- the first question
15 out of my mouth is, What didn't we sell them?
16 Q. Do you know whether SCO ended up going to
17 Microsoft with this -- with the kind of deal
18 contemplated in this e-mail?
19 A. I believe -- I believe that there was more
20 comprehensive deals offered to them, yes.
21 Q. That included, as you've described, source
22 distribution rights?
23 A. I don't know whether or not this was the
24 one -- you know, I'll have to look at the -- at
25 whether or not this -- there was a deal that actually

1 finished after this. I don't know. I don't -- I
 2 should remember, but I don't remember.
 3 Q. Would this have been a deal that you would
 4 have still been involved in, or are we nearing the
 5 end of your involvement?
 6 A. It was -- you know, I was -- I was
 7 involved in -- I was involved, but there were other
 8 people that were getting involved also more actively
 9 in the Microsoft -- on the Microsoft side.
 10 Q. Who were those people?
 11 A. Chris and Ken Jenkins and Darl directly.
 12 Q. I should back up. Speaking generally,
 13 what was Kim Jenkins's role in the dealings with
 14 Microsoft?
 15 A. Well, he really had no role initially, but
 16 then he started -- at some point he started attending
 17 meetings after -- he just start -- I think he was
 18 another consultant and another person who's been --
 19 another lawyer who's -- who had input that Darl
 20 valued.
 21 (EXHIBIT-168 WAS MARKED.)
 22 Q. (By Mr. Melaugh) This is Exhibit 168.
 23 It's marked S2 1739. It also bears an exhibit label
 24 from the SCO vs. IBM matter, 1279, and it bears a SCO
 25 Bates number, SCON77495. It's an e-mail from Sean

1 Wilson to David Politis and Darl McBride, cc'd to
 2 you, and there's another e-mail in the chain.
 3 Am I pronouncing that right? Is that
 4 Politis?
 5 A. Politis.
 6 Q. Politis.
 7 Who is Mr. Politis?
 8 A. He's a marketing -- he owns a marketing
 9 and PR firm here in town.
 10 Q. What was his relationship to SCO?
 11 A. I know Darl had worked with him in the
 12 past when he was with Icon. Dave was actually just
 13 the -- did a lot of the press and the PR work for
 14 Icon. And I think he -- I don't know if he ever
 15 managed to get in place a contract with -- with SCO,
 16 but I know that he did some work for them.
 17 Q. He's asking here how secure and private
 18 SCO's e-mail accounts are. Do you know why he's
 19 asking that?
 20 A. I -- it's just Dave in the normal course
 21 of business. He works with a lot of public companies
 22 and a lot of people, and I think he just wanted to
 23 make sure that, you know, he wasn't accidentally --
 24 he didn't want to be the source of a leak because
 25 he's the guy that has to respond to it. You know,

1 he's the guy that stands in front and had to explain
 2 it. So it would be kind of embarrassing if it was
 3 his stuff. I'm sure that -- that's my assumption,
 4 anyway.
 5 MR. SCOFIELD: Don't speculate. If you
 6 don't know, the answer is "I don't know."
 7 Q. (By Mr. Melaugh) So do I understand your
 8 testimony correctly that this fellow is potentially
 9 going to be a PR consultant to SCO? Is that the --
 10 the potential relationship with SCO?
 11 A. Yeah, I believe so. That's what Dave
 12 does.
 13 MR. MELAUGH: Here's another one. We're
 14 almost through these.
 15 (EXHIBIT-169 WAS MARKED.)
 16 Q. (By Mr. Melaugh) This is Exhibit 169.
 17 Bates label begins S2 1752. It's from a Mr. Ed
 18 Powell of Pointserve to Rick Wickham and you, cc'd to
 19 Mr. Sontag -- or Rich Wickham. I'm sorry.
 20 Rich Wickham is someone at Microsoft; is
 21 that right?
 22 A. That's correct.
 23 Q. And what was his role at Microsoft?
 24 A. He worked with -- he was a liaison. He
 25 worked with Dan Neault and, again, another lawyer.

1 Q. And then Mr. Ed Powell of Pointserve, who
 2 is he?
 3 A. Ed is the CEO of Pointserve, and it's a
 4 company that Darl used -- that Darl was the CEO of at
 5 one point. And I'm currently on the board at the
 6 moment.
 7 Q. What sort of services does Pointserve
 8 provide?
 9 A. Enterprise service optimization, optimal
 10 routing of services, like of -- vehicles and cars and
 11 things like that but optimizing it over a company.
 12 Q. At the time here in this e-mail, October
 13 2003, what's Pointserve's relationship with SCO?
 14 A. It -- that's Ed's e-mail address. Ed also
 15 owned a company called IPX. So Ed was basically --
 16 IPX was -- Ed was asked by Darl at some point to --
 17 they had a company that could actually do -- Ed's
 18 former MIT link and labs guy, and he basically had
 19 developed some utilities for basically comparing
 20 source code and basically saying these things are --
 21 you know, identifying potential matches in source
 22 code. And he developed a company in and around that
 23 called IPX.
 24 Q. So is he -- he being brought in here to do
 25 source code comparison for SCO?

1 A. I believe that he had -- yeah, that one of
2 the things that IPX did was source code comparison
3 for SCO.
4 Q. Do you know what source code Mr. Powell
5 and his company reviewed for SCO?
6 A. I don't know what the list of stuff that
7 they compared was, no.
8 Q. Why are you a part of the recipients of
9 this e-mail? What was your involvement in this?
10 A. At some point in time, I developed some
11 ideas about some -- some IP that -- that we offered
12 to SCO related to compare -- comparing source code
13 types and ways of comparing them and kind of ways of
14 reducing source code to methods and concepts so that
15 you could compare them to the patent database.
16 We filed a patent jointly with Ed and
17 myself and some of these people. SCO subsequently
18 did not pick up that patent and gave it back to IPX.
19 So it was subsequently filed, and it's -- it's a
20 source code comparison.
21 So I was related to it from that
22 standpoint, but I was not related to any of the
23 comparisons that IPX does, although we -- we did try
24 to sell it to other companies including Novell and
25 Microsoft and IBM. It was just a -- it was just a

1 tool.
2 Q. You used the phrase "we" a couple times in
3 your answer, we filed a patent we offered to SCO.
4 Who is the "we" you were referring to?
5 A. It would be -- it's actually listed out
6 there in the -- as a -- -- as a -- it's been -- it's
7 been published on -- you'd find it on uspto.gov under
8 Ed Powell and my name and two or three of the other
9 people within his company, Mark Lane another person
10 who's a another Ph.D.
11 So the patent's filed out there. We
12 thought that SCO would want to own that. They
13 decided that they did not want to own that and -- and
14 gave Ed back the rights to it.
15 Q. So "we" is that group of people? Or is it
16 Pointserve, or is it IPX?
17 A. Let me read just a second.
18 When I said "we" -- could -- could you
19 rephrase the -- the question? I'm sorry. I lost the
20 context.
21 Q. I apologize.
22 When you say, We offered this technology
23 to SCO, who are you referring to?
24 A. The -- the people that filed the patent.
25 I worked -- I was introduced to this -- to Ed -- Ed's

1 work in the process, and I approached Ed and said,
2 Here are some ideas about a patent that should be
3 filed. Ed and his team added to that, and it got
4 filed.
5 At that point we were all working for SCO,
6 I was as a consultant, Ed was as a consultant. It
7 was offered up to them. They decided they didn't
8 want it, and then it went to -- back out.
9 So when I say -- we then had the ability
10 to sell it to other companies and they offered it to
11 other people. And we did offer it to other people.
12 We offered it to Microsoft and others. It's just a
13 tool to basically identify -- identify potential code
14 that might be infringing on somebody else's code.
15 MR. MELAUGH: Let's take a break here to
16 switch the tapes.
17 THE VIDEOGRAPHER: Off the record, 2:29.
18 (Recess from 2:29 p.m. to 2:37 p.m.)
19 THE VIDEOGRAPHER: The time is 2:37. On
20 the record.
21 Q. (By Mr. Melaugh) So the fact that --
22 we're looking at this e-mail still. The fact that
23 Mr. Wickham is cc'd on this is a indication that
24 you're also offering this technology to him or that
25 you're planning to run comparisons on his code?

1 MR. SCOFIELD: Objection. Calls for
2 speculation.
3 THE WITNESS: In this case the answer is
4 at this point in time that it was offered, it was
5 another part of the kitchen sink. It was something
6 else that SCO owned --
7 Q. (By Mr. Melaugh) Ah.
8 A. -- right, and they were offering Microsoft
9 the use of it for their own purposes, completely
10 distinction from this case as trying to sell them
11 something else.
12 You know, they have a hundred million
13 lines of code. The assumption was they would need
14 it, IBM would need it, Novell would need it. It was
15 offered, at some level, to all of them.
16 But at that point it just happened to be
17 owned by SCO, and that's why Chris was still copied
18 on it. You know, they had the rights to the patent,
19 or some of it, and I think they had expressed an
20 interest in buying IPX at that point. I know they
21 had.
22 Q. Do you own any SCO stock?
23 A. No.
24 Q. Have you -- do you own any SCO stock
25 options?

Page 138

1 A. No.
 2 Q. Have you been promised any compensation by
 3 SCO in connection with your testimony here or in the
 4 SCO v. IBM action?
 5 A. My contract had a provision for if my time
 6 was taken up regarding any legal proceedings with
 7 anybody, that I get paid. So --
 8 Q. And what is the rate at which you're being
 9 paid for your time in this -- in that case?
 10 A. You know, I don't remember because it was
 11 a -- I believe it was in the last deposition. It
 12 was -- it was in the IBM deposition. I don't
 13 remember exactly. I just don't. It's been two
 14 years. But it's -- but it certainly was in the last
 15 deposition I gave to IBM.
 16 Q. And as far as you're --
 17 A. Nothing changed.
 18 Q. Sorry. I didn't mean to talk over you.
 19 As far as you're aware, you're -- you're
 20 still being paid under that contract, for example,
 21 for your time here today?
 22 A. You know, I believe so, but that's always
 23 a -- I believe so.
 24 Q. Apart from that hourly compensation under
 25 the contract, have you been promised any compensation

Page 139

1 related to your testimony in this action or in the
 2 SCO v. IBM action?
 3 A. No.
 4 THE REPORTER: I'm sorry. No?
 5 THE WITNESS: No.
 6 Q. (By Mr. Melaugh) Is SCO paying your legal
 7 fees in connection with this action?
 8 A. Again, I believe so.
 9 (EXHIBIT-170 WAS MARKED.)
 10 Q. (By Mr. Melaugh) This is Exhibit 170. It
 11 bears a number of identifying marks. I'll just go
 12 through them quickly. It was apparently used in your
 13 last SCO v. IBM deposition and bears the number 271.
 14 It bears your own Bates label, S2 02764m and it bears
 15 a SCO Bates label, SCON41286. It appears to be an
 16 e-mail from you to Mr. McBride, Mr. Sontag,
 17 Mr. Bench, cc to Ken Jenkins and to another address I
 18 don't recognize.
 19 Who is -- as a preliminary matter, who is
 20 scall?
 21 A. That's Scott of Anderson & Karrenberg.
 22 Q. Ah. Why was Scott cc'd?
 23 A. Until the Novell issue, Scott was my
 24 attorney.
 25 Q. Ah.

Page 140

1 A. At that point, there wasn't a dispute with
 2 Novell.
 3 Q. Does he continue to be your attorney?
 4 A. No. He actually referred me to Dave and
 5 decided to keep Novell as a client, for some reason.
 6 Makes us little people feel little.
 7 MR. SCOFIELD: Error in judgment, no doubt.
 8 MR. MELAUGH: I won't comment.
 9 Q. (By Mr. Melaugh) So you say here in the
 10 first sentence, "Chris called me up and threatened me
 11 if I did not rescind my payment on the Baystar deal."
 12 What did you mean by this?
 13 A. Chris Sontag called me on my cell phone
 14 and told me that -- threatened me, basically,
 15 threatened me very explicitly if I not rescind my
 16 request for payment on getting Microsoft to refer
 17 them in and help set up the Baystar deal, the Baystar
 18 money which was \$50 million that they got paid.
 19 Q. And what was the explicit threat that he
 20 made against you?
 21 A. That he would ruin me with Microsoft and
 22 I'd never end up doing business with them again, like
 23 I said here, which is interesting because, like I
 24 said, in the com because I brought it to them.
 25 Q. Do you know whether Mr. Sontag has made

Page 141

1 good on this threat in any way?
 2 A. You know, I don't know.
 3 Q. Aside from the threat you reference here,
 4 have you received any other threats from current or
 5 former SCO employees?
 6 A. No.
 7 MR. MELAUGH: Those are the last of my
 8 questions.
 9 MR. GONZALEZ: Let's take a break for a
 10 few minutes.
 11 MR. MELAUGH: Of course.
 12 MR. GONZALEZ: Thank you.
 13 THE VIDEOGRAPHER: Off the record, 2:44.
 14 (Recess from 2:44 p.m. to 2:48 p.m.)
 15 THE VIDEOGRAPHER: The time is 2:49. On
 16 the record.
 17 MR. GONZALEZ: Other than thank you,
 18 Mr. Anderer, we have nothing further. Thank you.
 19 MR. MELAUGH: Tremendous.
 20 MR. SCOFIELD: I have no questions.
 21 THE VIDEOGRAPHER: Off the record, 2:49.
 22 (Discussion off the record.)
 23 MR. SCOFIELD: Send the original to him to
 24 review.
 25 (The deposition concluded at 2:51 p.m.)

1 REPORTER'S CERTIFICATE
2 STATE OF UTAH)
) ss.
3 COUNTY OF SALT LAKE)
4

I, Susette M. Snider, Registered
5 Professional Reporter, Certified Realtime Reporter
and Notary Public in and for the State of Utah, do
6 hereby certify:

7 That prior to being examined, the witness,
Michael Anderer, was by me duly sworn to tell the
8 truth, the whole truth, and nothing but the truth;

9 That said deposition was taken down by me
in stenotype on March 30, 2007, at the place therein
10 named, and was thereafter transcribed and that a true
and correct transcription of said testimony is set
11 forth in the preceding pages;

12 I further certify that, in accordance with
Rule 30(e), a request having been made to review the
13 transcript, a reading copy was sent to Michael
Anderer to read and sign before a notary public and
14 then return to me for filing with David E. Melaugh,
Attorney at Law.

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

18 WITNESS MY HAND AND OFFICIAL SEAL this 3rd
day of April, 2007.

19
20
21
22
23 Susette M. Snider, RPR, CRR
Notary Public
Residing in Salt Lake County.

24
25

1 Case: The SCO Group v. Novell.
Case No.: 2:04CV00139
2 Reporter: Susette M. Snider
Date taken: March 30, 2007
3

4 WITNESS CERTIFICATE

5 I, MICHAEL ANDERER, HEREBY DECLARE:
That I am the witness in the foregoing
6 transcript; that I have read the transcript and know
the contents thereof; that with these corrections I
7 have noted this transcript truly and accurately
reflects my testimony.

8 PAGE-LINE	CHANGE/CORRECTION	REASON
9		
10		
11		
12		
13		
14		
15		

16 _____ No corrections were made.

17 I, MICHAEL ANDERER, HEREBY DECLARE
UNDER THE PENALTIES OF PERJURY OF THE LAWS OF THE
18 UNITED STATES OF AMERICA AND THE LAWS OF THE STATE OF
UTAH THAT THE FOREGOING IS TRUE AND CORRECT.

19
20 Michael Anderer
21 SUBSCRIBED and SWORN to at _____,

22 _____, this _____ day of _____,
23 2006.

24
25 Notary Public