

SNELL & WILMER LLP
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
15 West South Temple
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler (admitted pro hac vice)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

-against-

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DECLARATION OF TODD M.
SHAUGHNESSY**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

139

I, Todd M. Shaughnessy, declare as follows:

1. I represent IBM in the lawsuit filed against IBM by Caldera Systems, Inc., a Delaware corporation that has since changed its name to The SCO Group, Inc. (“SCO”), The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003).

2. The Court issued an order on March 3, 2004 (the “Order”) directing both SCO and IBM to produce certain discovery. This declaration is submitted in response to Section III of the Order, instructing each party “to provide to the Court an affidavit detailing their efforts in complying with this order”. IBM has complied fully with the Order.

3. On March 4, 2004, IBM produced the bulk of the releases of AIX and Dynix ordered by the Court to be produced in Section II.1 of the Order, and on March 9, 2004, IBM completed its production of all such source code. Although the Court gave IBM a deadline of 45 days from the date of the Order to produce this source code, IBM produced the source code immediately to provide SCO time to evaluate the code and take it into account in answering IBM’s discovery requests.

4. With respect to Section II.2 of the Order, IBM undertook a reasonable search to identify any “non-public” contributions it made to Linux. Since Linux is publicly developed and available via the Internet, however, all of IBM’s contributions to Linux are a matter of public record. IBM nevertheless also endeavored to identify materials that IBM unsuccessfully attempted to contribute to

Linux and are not publicly available. To the extent IBM identified any such material, IBM has produced it.

5. With respect to Section II.3 of the Order, IBM has undertaken a reasonable search for and has produced all non-privileged responsive documents, including those from the files of Sam Palmisano and Irving Wladawsky-Berger.

6. Although not ordered to complete its document production by any specific date, IBM has already substantially completed its document production in response to SCO's first set of document requests and expects to shortly complete the production.

7. IBM has, pursuant to Section II.5 of the Order, provided additional supplemental answers to SCO's first set of interrogatories. With respect to Interrogatory No. 2, IBM has included the names of persons outside of IBM whom IBM believes may have knowledge about the issues of this lawsuit. With respect to Interrogatory No. 5, IBM has provided contact information, where such information exists in IBM's records, for each person for whom SCO requested such information. IBM believes that the reference to Interrogatory No. 11 in Section II.5 of the Order was a typographical error, because the time for responding to Interrogatory No. 11 had not yet passed, and was not the subject of SCO's motion to compel. In any event, IBM served on SCO its responses to SCO's Interrogatory No. 11 today, April 19, 2004, in accordance with an agreement between SCO and IBM.

8. In response to Section II.6 of the Order, IBM asked SCO on March 9, 2004 to let IBM know for which 1,000 of the persons listed by IBM in response to

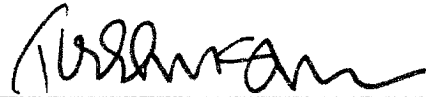
SCO's Interrogatory Nos. 4 and 5 SCO wished to obtain contact information. On March 26, 2004, SCO informed IBM that it wished to have contact information for all persons listed on Attachment E to IBM's answers to SCO's first set of interrogatories, as well as for 81 additional persons listed by SCO. SCO indicated that it would in the future request contact information for additional persons as appropriate, up to a total of 1,000 names. Of the 328 persons listed on Attachment E, IBM was able to locate contact information for 326 of them, and has provided such contact information to SCO. Of the 81 additional persons listed by SCO, only 32 of them (not including persons already appearing on Attachment E) were listed in IBM's answers to SCO's Interrogatory Nos. 4 and 5. IBM has provided contact information for each of those 32 persons. Thus, to date, IBM has provided SCO with contact information for 358 of the persons listed by IBM in response to SCO's Interrogatory Nos. 4 and 5. IBM will provide contact information for additional names as SCO requests such information, up to a total of 1,000 names.

9. With respect to Section III of the Order, IBM has provided, and will continue to provide, SCO with source logs that identify how documents were kept in the ordinary course of business, for all materials produced in discovery.

10. The documents and interrogatory answers provided to SCO are given to the best of IBM's knowledge and are complete, detailed and thorough.

11. I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 19, 2004



Todd M. Shaughnessy

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April, 2004, a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP
100 Southeast Second Street, Suite 2800
Miami, Florida 33131

Kevin P. McBride
1299 Ocean Avenue, Suite 900
Santa Monica, California 90401

