

Shaughnessy, Todd

From: Mark J. Heise [MHeise@BSFLLP.com]
Sent: Monday, October 13, 2003 12:52 PM
To: Shaughnessy, Todd
Cc: Dave Marriott; CArena@Cravath.com; Debra Weiss Goodstone
Subject: RE: SCO v. IBM

Todd,

I will try to address your points below. Some of these issues are also raised in the two letters that you faxed to me on Friday afternoon. I will address those letters by separate correspondence, but will note at this time that I disagree with the scope of the list of witnesses that we agreed to exchange. It called for far more than just identifying employees and officers and general areas of knowledge. In any event, I will wait to get your list and will address it in greater detail in my correspondence later this week.

On point 1, as we have stated repeatedly, we are providing supplemental answers which will resolve many, if not all of the issues raised in your Motion to Compel. As a result, I will observe that the Motion to Compel is therefore premature. Rather than spending additional time and focus on responding to your Motion to Compel, our intention is to assure that we obtain the responses and documents to which IBM is entitled. While we could simply respond to the court that your motion was premature, particularly based on the fact that both sides are continuing to address the discovery issues, I propose that IBM agree to an enlargement of time within which to respond to its Motion to Compel. As I indicated to you in an earlier e-mail, we are simply trying to get the responsive information in a usable format, which I hope to have accomplished very shortly. To assure you that we are not simply delaying for delaying sake, we will provide you the information, particularly the IBM's files contributed to Linux by a date certain. We should be able to have all of this information on or before October 23, 2003. In the event you determine that those answers are insufficient, we will agree to respond to your Motion to Compel ten (10) days thereafter. Please advise whether this will be acceptable.

On point 2, although we previously provided the code to you in the manner that you requested, we are glad to provide it to you in this alternative manner. I have been collecting discs for all of the versions that you have requested. However, some of these materials are archived and may take a bit of time to get. I will provide the remaining discs as soon as I have resolved on possible issue regarding notice to a third party. I am investigating that issue this week and should have a better answer this week if that will cause any delay in providing the discs. I do not believe it will and thus hope to get these discs to you by the end of the week or by the October 23 deadline mentioned above at the very latest.

On point 3, what is the latest ETA for the AIX and Dynix code?

On point 4, you have already received additional documents and will be receiving them as they are put into an electronic format.

On point 5, I am not going to debate who has produced more or better documents. As I have indicated, we are producing documents as they become available electronically. Last week, we had a technical issue with the transfer to CD that resulted in a slight delay, but we have been reviewing and producing documents as they become available and will continue to do so.

On IBM's production, if you look at the source log, it lists some of the same people on several occasions. This production is essentially e-mails involving these individuals. The information we are looking for is what search was conducted to obtain these e-mails? If, for example, a word search was undertaken, what was the word being searched? If it was not a word search, what were the parameters?

Thanks

11/19/2003

Message

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