

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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COPY

THE SCO GROUP, INC.,

Plaintiff/Counterclaim Defendant,

vs.

No. 2:04CV00139

NOVELL, INC.,

Defendant/Counterclaim Plaintiff,

Videotaped Rule 30 (b)(6) Deposition of

MICHAEL J. DANAHER

Friday, April 27, 2007

Reported by:

Leslie Rockwood

CSR No. 3462

Job No. 193580

11:46:49 1 have talked to the Novell team about this without getting  
11:46:54 2 permission from the client.

11:46:56 3 Q. And would it have been a conflict, in your  
11:46:58 4 view, for the Wilson Sonsini team in 2000 to read and  
11:47:03 5 interpret the 1995 transaction documents --

11:47:07 6 A. And give advice to SCO?

11:47:09 7 Q. Right. And then give advice to SCO?

11:47:12 8 A. Yeah, yeah, that would be a conflict. And it  
11:47:14 9 would be unwise for us; right? To be giving advice to  
11:47:18 10 both sides on what something meant. It would be a  
11:47:20 11 conflict and it would be unwise.

11:47:22 12 Q. And is that something that occurred to you at  
11:47:24 13 the time in 2000 or 2001?

11:47:28 14 MR. PARNES: Lacks foundation.

11:47:30 15 You can answer.

11:47:31 16 THE WITNESS: I don't think we were ever  
11:47:33 17 asked to read it. You know, this was Steve Sabbath had  
11:47:38 18 handled all this without -- (indicating) on his side  
11:47:41 19 without help from Wilson, was handling the IP licensing  
11:47:45 20 part of the Caldera transaction without our help. So he  
11:47:47 21 wouldn't have asked for my interpretation of that.

11:47:49 22 Q. BY MR. NORMAND: So the phrasing of the  
11:47:51 23 question was -- I understand what counsel's objecting  
11:47:53 24 to -- is this something you thought of?

11:47:56 25 A. No, I didn't. I didn't.

11:47:57 1 Q. It didn't come up?

11:47:58 2 A. It didn't come up. And I didn't know the  
11:48:01 3 details of whatever the agreement was between SCO and  
11:48:04 4 Novell. In my mind, you know, the higher level would  
11:48:10 5 have been whatever SCO's rights are go in that bucket  
11:48:14 6 that are being transferred over to Caldera, and whatever  
11:48:16 7 they are they are. You know, other people can read that  
11:48:19 8 and figure it out.

11:48:23 9 Q. And was your -- were you willing to take that  
11:48:29 10 approach that you just described in your answer as a  
11:48:32 11 function of confidence you had in Steve Sabbath and his  
11:48:35 12 team or were there other factors at play?

11:48:38 13 A. Well, confidence -- first, he's the one  
11:48:46 14 running the show, number one. Number 2, they're the ones  
11:48:50 15 with -- whose responsibility it was in this transaction,  
11:48:52 16 handling the license and IP part. Number 3, what SCO was  
11:48:58 17 essentially representing to you here is we're describing  
11:49:00 18 to you everything we have that's being transferred.  
11:49:04 19 Here's all the patent numbers, here's all the third-party  
11:49:08 20 agreements, et cetera. Go and read them.

11:49:10 21 And that's -- and so it wasn't that SCO  
11:49:15 22 was -- here I'm going to go partly into what's in a  
11:49:19 23 typical transaction. You're just telling the buyer  
11:49:21 24 here's all the stuff you need to be aware of and here's  
11:49:24 25 what you're getting, here's a list of agreements, there's

11:49:28 1 correspondence if you need to see it, et cetera, and you  
11:49:30 2 make that information available to the buyer. And you  
11:49:33 3 try to avoid interpreting particular things, if you can.  
11:49:39 4 You just say it is what it is, you know, this is our  
11:49:42 5 business.

11:49:42 6 Q. I mean, this goes to something we discussed  
11:49:47 7 earlier, but I think it's a distinct issue. You must  
11:49:50 8 come across clients who you say we have to do everything  
11:49:53 9 for them. I mean, it's a small company, or they're just  
11:49:56 10 not competent.

11:49:57 11 A. Okay.

11:49:57 12 Q. So what I'm trying to explore is: Why, with  
11:50:00 13 respect to Santa Cruz, if I've understood what you've  
11:50:02 14 said, were there categories of these transaction  
11:50:05 15 documents that Wilson Sonsini did not get involved with?  
11:50:09 16 Why were you comfortable on behalf of the firm with that  
11:50:14 17 scenario?

11:50:15 18 MR. PARNES: Counsel, it's been asked and  
11:50:17 19 answered several times.

11:50:17 20 THE WITNESS: Yeah, it's our responsibility  
11:50:19 21 to serve SCO and to play the role they want us to play  
11:50:24 22 and not to run up the bill. So we do what -- you know,  
11:50:32 23 how the client wants the task allocated.

11:50:36 24 Q. BY MR. NORMAND: What if you have a client  
11:50:38 25 that is saying the same things, but you think they're

12:25:36 1 Q. BY MR. BRAKEBILL: Turn your attention to  
12:25:38 2 page 39.  
12:25:46 3 A. Bates Numbered 39?  
12:25:47 4 Q. The page 39 of the proxy statement.  
12:25:50 5 A. Okay.  
12:25:50 6 Q. And at the very bottom, it says "Dissenter's  
12:25:54 7 Rights"?  
12:25:54 8 A. Okay.  
12:25:54 9 Q. If you could take a quick moment to look at  
12:25:57 10 that.  
12:25:57 11 A. Yes.  
12:25:57 12 Q. Does this refresh your memory that Santa Cruz  
12:26:00 13 was provided dissenter's rights --  
12:26:02 14 A. Yeah, Santa Cruz shareholders.  
12:26:03 15 Q. Santa Cruz shareholders were provided  
12:26:06 16 dissenter's rights?  
12:26:08 17 A. Yes, yes.  
12:26:08 18 Q. As you sit here today, do you have any  
12:26:11 19 understanding as to why dissenter's rights were given to  
12:26:15 20 Santa Cruz shareholders?  
12:26:15 21 A. It would have been required by the corporate  
12:26:17 22 code.  
12:26:18 23 Q. Do you know why it would have been required  
12:26:19 24 by the corporate code?  
12:26:21 25 A. Because it was a sale of substantially all of

12:26:23 1 the assets of the business.

12:26:25 2 MR. BRAKEBILL: No more questions.

12:26:26 3 MR. NORMAND: I have no questions.

12:26:30 4 MR. PARNES: All right, gentlemen.

12:26:33 5 THE VIDEOGRAPHER: This concludes today's

12:26:38 6 proceedings. The number of videotapes used was two. We

12:26:42 7 are now going off the video record. The time is

12:26:48 8 12:26 p.m.

9 (The deposition concluded at 12:26 p.m.)

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REPORTER'S CERTIFICATE

I certify that the witness in the forgoing  
deposition,

was by me duly sworn to tell the truth, the whole truth  
and nothing but the truth in the within-entitled cause;  
that said deposition was taken at the time and place  
herein named; that the testimony of said witness was  
reported by me, a duly certified shorthand reporter and  
a disinterested person, and was thereafter transcribed  
under my direction into typewriting.

I further certify that I am not of counsel or  
attorney for either or any of the parties to said  
deposition, nor in any way interested in the outcome of  
the cause named in said caption.

Dated

Leslie Rockwood

Leslie Rockwood  
Certified Shorthand Reporter  
State of California  
Certificate No. 3462