

STATE OF MICHIGAN

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IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

2004 NOV 17 P 4: 04

THE SCO GROUP, INC.,  
a Delaware corporation,

Plaintiff,

-vs-

DAIMLERCHRYSLER  
CORPORATION, a Delaware  
corporation,

Defendant.

04-056587-CK



OAKLAND JUDGE RAE LEE CHABOT  
COUNTY SCO GROUP INC V DAIMLERCHRYSLER

Case No. 04-056587-CK  
Hon. Rae Lee Chabot

Hearing Date: November 24, 2004

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MOTION FOR STAY OF PROCEEDINGS

NOW COMES Plaintiff The SCO Group, Inc., by and through its attorneys, Seyburn, Kahn, Ginn, Bess & Serlin, P.C., and moves this Honorable Court to stay the proceedings in this matter for a period of time to be determined by the Court for the following stated reasons:

1. On March 3, 2004, Plaintiff The SCO Group, Inc. ("SCO") filed a Complaint in this matter alleging that Defendant DaimlerChrysler Corporation ("DCX") had breached a license agreement between the parties, governing the use of SCO's UNIX computer operating system.

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2. Specifically, SCO alleged that DCX, as an end-user, had failed to comply with the agreement's certification requirements governing its use of the UNIX operating system, by failing to respond to SCO's request that DCX so certify its compliance with the terms of the license agreement between the parties.

3. On August 9, 2004, this Court, pursuant to a motion filed by DCX, entered an Order Granting in Part and Denying in Part Defendant's Motion for Summary Disposition ("Order"), holding that DCX had satisfied its certification obligation, but finding an issue of fact as to whether DCX had been timely in serving its certification upon SCO.

4. The remaining claim is scheduled for case evaluation on November 30, 2004 and trial on January 11, 2005.

5. SCO is currently engaged in litigation in the United States District Court for the District of Utah with International Business Machines Corporation ("IBM") over the interpretation of a license agreement between SCO and IBM that is substantially similar to the license agreement in the case before this Court. That case is SCO Group, Inc v International Business Machines Corporation, No. 2:03CV294.

6. IBM has argued that the license agreements, contrary to their express terms, protect against only the literal copying of UNIX source code, while SCO has argued that the protections sweep broader, to protect, among other things, all modifications and derivatives prepared by licensees based on the original UNIX source code. IBM has filed a motion for summary judgment based on its interpretation of the license agreements, which motion is currently being briefed. No hearing date has been set on the motions, but it is likely that they will be heard sometime early next year.

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7. A ruling in the IBM case will provide important guidance concerning the obligations of end users like DCX under the certification requirement at issue here. Specifically, as noted above, a resolution of the contract-interpretation issue currently pending in the IBM case will permit all parties to know with some certainty the scope of the obligations and restrictions under the license agreements to which licensees must certify their compliance.

8. Given this Court's narrow interpretation of the certification requirement contained in the license agreement, it may no longer be productive for SCO to attempt to gather information from UNIX end users by means of requests for certification until a ruling on the contract issue in the IBM case is forthcoming.

9. Moreover, if SCO's interpretation of the license agreement is rejected by the court in the IBM case, SCO may choose never to litigate the sufficiency and timeliness of certification prepared by DCX and other end users of the UNIX operating system.

10. SCO is engaged in two other disputes relating to its UNIX rights in federal court in Nevada and Delaware. Both of these cases have been stayed by the respective federal judges pending the resolution of the key issues in the IBM case. Copies of the stay orders from these Courts are attached hereto.

11. In the two cases that have been stayed, SCO has been filing court-ordered periodic reports on the progress of the IBM case.

12. It would be a waste of valuable judicial and attorney resources to proceed with a case evaluation and a trial on SCO's remaining damage claim as to timeliness, followed by an appeal of this Court's order regarding the sufficiency of DCX's certification, when these issues may become moot upon the conclusion of the pending summary judgment proceedings in the IBM case.

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13. Courts have the inherent power to control their dockets, and a motion for stay is directed to the court's sound discretion. Amersham International PLC v Corning Glass Works, 618 F Supp 507, 509 (ED Mich, 1984).

14. SCO requested that DCX consent to a stay of proceedings in October, 2004, but DCX indicated it would not consent to a stay; DCX has further stated that if SCO does not intend to pursue the claim as to the timeliness of DCX's certification at this time, then it insists that SCO dismiss its remaining claim with prejudice.

WHEREFORE, Plaintiff The SCO Group, Inc. respectfully requests that this Honorable Court stay the proceedings in this matter for a period of time to be set by the Court.

Respectfully submitted,

SEYBURN, KAHN, GINN,  
BESS AND SERLIN, P.C.

By: 

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