

Brent O. Hatch (5715)  
Mark F. James (5295)  
HATCH, JAMES & DODGE, P.C.  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101  
Telephone: (801) 363-6363  
Facsimile: (801) 363-6666

FILED  
-4 JUN 04 PM 4:28  
DISTRICT COURT UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

Stephen N. Zack (admitted pro hac vice)  
Mark J. Heise (admitted pro hac vice)  
BOIES, SCHILLER & FLEXNER LLP  
Bank of America Tower, Ste. 2800  
100 Southeast Second Street  
Miami, Florida 33131  
Telephone: (305) 539-8400  
Facsimile: (305) 539-1307

*Attorneys for Plaintiff*

---

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

---

THE SCO GROUP, INC.  
  
Plaintiff,

vs.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,  
  
Defendant.

**REPLY MEMORANDUM IN  
SUPPORT OF SCO'S EXPEDITED  
MOTION FOR A PROTECTIVE  
ORDER**

Case No. 2:03CV0294DAK

Honorable Dale A. Kimball  
Magistrate Judge Brooke C. Wells

---

Plaintiff The SCO Group, Inc. ("SCO") respectfully submits this brief reply in support of its Expedited Motion for a Protective Order.

174

Contrary to IBM's assertions, SCO acted diligently in attempting to address the issue of the timing of the depositions at issue. For reasons set forth in SCO's reply memorandum in support of its pending Motion to Amend the Scheduling Order, the compounded impact of discovery problems in this case reached an untenable point requiring SCO to request an expedited hearing on that motion. On June 2, 2004, within just two business days of learning that the Court had scheduled an expedited hearing on SCO's Motion to Amend the Scheduling Order and a full week before the depositions noticed for next week were to begin, SCO contacted IBM about rescheduling next week's depositions. Immediately after IBM's counsel responded that IBM would not agree to postpone the depositions, on June 3, 2003, SCO gave IBM advance notice and then filed its protective order motion.

Significantly, IBM's opposition brief fails to address SCO's argument that it would be inefficient and inconvenient to proceed with the depositions next week in light of the status of discovery as outlined in the pending Motion to Amend the Scheduling Order. As discovery stands, one of two outcomes would ensue from proceeding with the depositions:

(1) SCO would not be permitted to ask questions of the witnesses regarding relevant documents that have not yet been produced and/or that SCO has not yet had a fair opportunity to review (because they were among the 670,000 pages of documents that IBM produced in March and April); or (2) the depositions would be subject to being reopened once SCO has had an adequate opportunity to review IBM's relevant documents (including documents not yet produced). The first outcome would be plainly unfair to SCO, while the second outcome would be plainly inefficient.

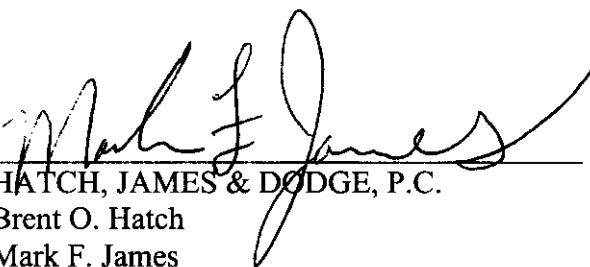
Moreover, contrary to IBM's suggestion, SCO does not contend that IBM acted unreasonably in scheduling the depositions in the first instance to comply with the scheduling order. Rather, SCO contends that under the circumstances it is not reasonable to proceed with a discovery schedule whose status the District Court has seen fit to address on an expedited basis the very day the depositions are scheduled to begin.

Accordingly, SCO respectfully submits that, as set forth in its opening brief, the sensible course is to suspend the depositions in order to permit the District Court to resolve the pending Motion to Amend the Scheduling Order before rescheduling them.

DATED this 4<sup>th</sup> day of June, 2004.

Respectfully submitted,

By:

  
HATCH, JAMES & DODGE, P.C.  
Brent O. Hatch  
Mark F. James

BOIES, SCHILLER & FLEXNER, L.L.P.  
Stephen N. Zack  
Mark J. Heise

*Counsel for Plaintiff/Counterclaim defendant*

**CERTIFICATE OF SERVICE**

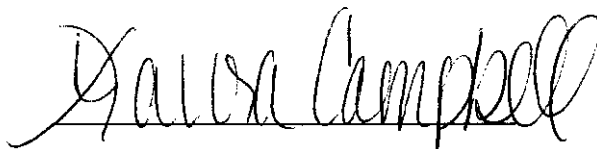
I hereby certify that a true and correct copy of the foregoing was served on Defendant International Business Machines Corporation on this 4<sup>th</sup> day of June, 2004, by fax copy to:

Alan L. Sullivan, Esq.  
Todd Shaughnessy, Esq.  
801-257-1800  
Snell & Wilmer L.L.P.  
15 West South Temple, Ste. 1200  
Gateway Tower West  
Salt Lake City, Utah 84101-1004

Evan R. Chesler, Esq.  
212-474-3700  
Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019

and also by U.S. Mail, first class, postage prepaid to:

Donald J. Rosenberg, Esq.  
1133 Westchester Avenue  
White Plains, New York 10604

A handwritten signature in cursive script, reading "Gailisa Campbell". The signature is written in black ink and is positioned above a horizontal line.