

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 01: 06-mc-00046 PTS

The SCO Group, Inc.,)
)
 Plaintiff,)
)
 v.)
)
 International Business Machines Corp.,)
)
 Defendant.)
)
)

**BRIEF IN SUPPORT OF MOTION
FOR LEAVE TO FILE DECLARATION**

Otis L. Wilson, through undersigned counsel and pursuant to L. R. 7.3 (M.D.N.C.), submits this memorandum in support of his Motion for Leave to File the Declaration of Todd Shaughnessy.

Plaintiff SCO Group, Inc. filed its Motion to Compel Deposition and Enforce Subpoena on April 12, 2006. That Motion contained an Affidavit of Edward Normand, purporting to recite what happened in a conference call with the Magistrate judge in the Utah Action to which the proposed deposition in this district relates. At SCO Group's request, the Court entered an order on April 19, 2006, giving Mr. Wilson until Friday, April 21, to respond to SCO Group's Motion.

In accordance with the Court's expedited briefing order, Mr. Wilson filed his response and a corresponding Motion to Quash April 21. As noted in those papers, counsel for IBM had a different understanding of events in the conference call than the description set forth in Mr. Normand's Affidavit. Unfortunately, that counsel was out of the country during the period covered by the expedited briefing schedule, so that an affidavit or declaration could not be

obtained from him in time for inclusion with the papers filed on the expedited deadline. Mr. Wilson's papers informed the Court of this problem.

SCO Group's most recent filings continue to rely on the interpretation of the conference call with the Magistrate judge in Utah that differs from that of the IBM attorney who participated in the same conference call. That IBM attorney has now returned to the country and counsel for Mr. Wilson has obtained a declaration executed by him to document his recollection of the disputed conference call with the Magistrate judge and certain other matters addressed in SCO Group's affidavit and papers. Mr. Wilson now seeks leave of court to file that declaration, and this brief is submitted in support of that motion.

ARGUMENT

It is in the interest of the fair and efficient administration of justice that Mr. Wilson be granted leave to file the Shaughnessy declaration to the extent that leave of court is required. That declaration was not included with Mr. Wilson's original papers solely because Mr. Shaughnessy's absence from the country until after expiration of the expedited deadline precluded Mr. Wilson from obtaining the declaration at that time. It would be unfair to Mr. Wilson if he were precluded from providing the Court with the opposing affidavit of Mr. Shaughnessy solely because of the interaction of the expedited briefing schedule with Mr. Shaughnessy's trip out of the country.

CONCLUSION

For the reasons stated, the Motion for Leave to File the Shaughnessy declaration should be granted.

This the 28 day of April, 2006.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the *Brief in Support of Motion For Leave to File Declaration* was duly served this date on counsel for all parties by electronic means if available or otherwise by forwarding a copy thereof enclosed in a postage-paid envelope, deposited in the United States Mail, addressed as follows:

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This the 28 day of April, 2006.

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