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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE SCO GROUP, INC.,
A DELAWARE CORPORATION,

Plaintiff,

VS.

Civil Action File No.
CV-S-04-0237-RCJ-LJL

AUTOZONE, INC., A NEVADA
CORPORATION,

Defendant.

VIDEOTAPED DEPOSITION OF BOB CELMER

MAY 9, 2005

ALPHA REPORTING CORPORATION
KORIAN NEAL, RPR, CCR
100 North Main Building, The Lobby
Memphis, Tennessee 38103
(901) 523-8974

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1 The videotaped deposition of BOB CELMER,
 2 taken on behalf of the Plaintiff, pursuant to Notice,
 3 on May 9, 2005, beginning at approximately 9:00 a.m.,
 4 in the law offices of Baker, Donelson, Bearman &
 5 Caldwell, 165 Madison Avenue, Suite 2000, Memphis,
 6 Tennessee.

7 This deposition is taken in accordance
 8 with the terms and provisions of the Federal Rules of
 9 Civil Procedure.

10 All forms and formalities are waived, and
 11 objections alone as to relevancy, materiality and
 12 competency are reserved, to be presented at or before
 13 the hearing. Objections as to the form of the
 14 question must be made at the time of the taking of the
 15 deposition. The signature of the witness is not
 16 waived.

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1 - APPEARANCES -
 2 For Plaintiff: DAVID STONE, ESQ.
 3 CHRIS IANNICELLI, ESQ.
 4 Boies, Schiller & Flexner, LLP
 5 Attorneys at Law
 6 150 JFK Parkway
 7 Suite 100
 8 Short Hills, New Jersey 07078
 9 (973) 218-1111

10 KEVIN MCBRIDE, ESQ.
 11 1299 Ocean Avenue
 12 Suite 900
 13 Santa Monica, California 90401
 14 (310) 393-1080

15 RYAN TIBBITTS, ESQ.
 16 SCO General Counsel
 17 355 South 520 West
 18 Suite 100
 19 Lindon, Utah 84042
 20 (801) 765-4999

21 For Defendant: DOUGLAS J. STEWART, ESQ.
 22 DOUGLAS BRIDGES, ESQ.
 23 Alston & Bird, LLP
 24 Attorneys at Law
 25 One Atlantic Center
 1201 West Peachtree Street
 Atlanta, Georgia 30309-3424
 (404) 881-7000

ALSO PRESENT: REBECCA W. BALLOU, ESQ.
 JOHN DUBOIS
 WILL SMITH, VIDEO SPECIALIST

COURT REPORTING FIRM: ALPHA REPORTING CORPORATION
 Koran Neas, RPK, CCR
 100 North Main Street
 The Lobby
 Memphis, Tennessee 38103
 (901) 523-8974

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1 VIDEO SPECIALIST: Today is May 9th,
 2 2005, 9:05. Location is Baker, Donelson, Bearman &
 3 Caldwell, 165 Madison Avenue in Memphis, Tennessee.
 4 My name is Will Smith, certified video specialist with
 5 Alpha Legal Productions, located in the lobby of the
 6 100 North Main Building in Memphis.

7 This case is entitled The SCO Group, Inc. versus
 8 AutoZone, Inc. Our deponent today is Mr. Bob Celmer.
 9 This video deposition is requested by the plaintiff's
 10 counsel, Mr. David Stone. Will counsel and all present
 11 please identify themselves for the record at this time.

12 MR. STONE: David Stone and Chris
 13 Iannicelli from Boies, Schiller & Flexner for the
 14 plaintiff, SCO Group.

15 MR. MCBRIDE: Kevin McBride for the
 16 plaintiff.

17 MR. TIBBITTS: Ryan Tibbitts, general
 18 counsel, and John DuBois, both from the SCO Group.

19 MR. STEWART: David Stewart and Doug
 20 Bridges, Alston & Bird for the defendant, AutoZone.

21 MS. BALLOU: Rebecca Ballou from
 22 AutoZone.

23 MR. CELMER: Bob Celmer, senior
 24 technology advisor for AutoZone.

25 VIDEO SPECIALIST: The deponent may now

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1 A. Yes.
2 Q. Other than Spirit and Wrangler, did you find
3 COFF files on any of the other machines in your
4 headquarters?
5 A. Other than Spirit or Wrangler. I really don't
6 remember specifically where we found COFF files. Seems
7 that we may have -- I just don't know. We may have
8 found them on other machines. I just don't remember
9 right now.
10 Q. If you found them on other machines, did you
11 produce discovery to us which would allow us to
12 determine what the files were and what machines you
13 found them on?
14 A. Yes.
15 Q. Am I right that Spirit and Wrangler were
16 machines that you used when you -- when AutoZone made
17 the migration to Linux?
18 A. Yes.
19 Q. And am I correct that what you did is you --
20 you had the Spirit machine was running OpenServer and
21 the Wrangler machine was running Linux?
22 A. Right.
23 Q. And that Mr. Greer told us -- and that's why
24 I'm saying it -- you can tell me if you understand that
25 to be the case -- that you were running these two

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1 machines simultaneously and using them to help port the
2 source code that had been written for the OpenServer
3 system to the Linux system. Is that right?
4 A. Wrangler was the development machine on which
5 we did compiles and editing of source. Spirit was the
6 source code repository. So we would have checked code
7 out of the repository from Spirit on to Wrangler, made
8 our changes on Wrangler, and then put those changed
9 files back on to Spirit to safe keep source.
10 Q. And Spirit also had SCO licensed code on it,
11 as well. Correct? It didn't just have your source
12 code?
13 A. It was an OpenServer machine. Yes.
14 Q. Right. And you kept those machines till -- to
15 the date of filing of this lawsuit. And when you looked
16 as those machines, you found that there were COFF files
17 that that been compiled for OpenServer on both those
18 machines. Correct?
19 A. That's right.
20 Q. And I'll get into it in the letter. But you
21 found that. Correct?
22 A. Yes.
23 Q. Is Spirit currently being used for any purpose
24 by AutoZone or was it prior to the filing of this
25 lawsuit?

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1 MR. STEWART: I'm sorry. Which question?
2 MR. STONE: Well, let's start with the
3 first one.
4 Q. (BY MR. STONE) Is it currently being used
5 for any purpose?
6 A. Yes, it is.
7 Q. What is it used for?
8 A. It is still our source code repository.
9 Q. So this is the source code that you wrote
10 during the time that you were licensing the OpenServer
11 software that you used to compile binaries to work on
12 the OpenServer software stored on the Spirit server. Is
13 that right?
14 A. Yes.
15 Q. And then there's additional source code you've
16 written since that time since you migrated to Linux? Is
17 that right?
18 A. Yes.
19 Q. Is that -- yes?
20 A. Yes.
21 Q. Is that also stored on the Spirit server?
22 A. Yes.
23 Q. And is the Wrangler machine currently being
24 used?
25 A. Yes, it is.

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1 Q. What is it being used for?
2 A. It is still a Linux development machine.
3 Q. So was it used as a Linux development machine
4 from the time that you first started using it when you
5 began the porting process until this date, essentially?
6 A. Yes.
7 Q. Have you heard of a machine called Vision?
8 A. Yes.
9 Q. Tell me what that is.
10 A. It was the development machine for SCO
11 development.
12 Q. So that was the equivalent of Wrangler for
13 Linux? Is that right?
14 A. That's right. It was the machine that
15 developers used while we were using SCO.
16 Q. And does Vision still exist?
17 A. Yes, it does.
18 Q. And is it still used for any purpose?
19 A. It doesn't get much use. But the files that I
20 made copies of before deleting them from our stores are
21 housed on Vision. And it probably gets occasional use
22 but not much.
23 Q. Do you know if Vision was used during the
24 porting process by AutoZone?
25 A. It was definitely in use during the porting

1 process because we were still using SCO in our stores.
 2 And so we were still doing development on that machine.
 3 Q. Did you look at the Vision machine -- I guess
 4 you're telling me the Vision machine had the OpenServer
 5 operating system on it, then?
 6 A. That's right.
 7 Q. So it had SCO license code on it, as well?
 8 A. Yes.
 9 Q. And have you produced to us whatever code you
 10 found on that Vision machine? Do you know?
 11 A. I doubt it.
 12 Q. Okay. So the code that you produced to us is
 13 the only code that you found on Linux server machines
 14 and on Spirit. Is that right?
 15 A. That's right.
 16 Q. All right. Let's take a look at Exhibit 36.
 17 You recall that after the previous exhibits we looked
 18 at, you went back and you looked further at what
 19 OpenServer compiled programs might be in the Linux
 20 operating system at AutoZone?
 21 A. Say that again.
 22 Q. We've discussed, you know, the request for
 23 admissions and the interrogatories. Correct?
 24 A. Right.
 25 Q. And we went through the answers that you gave

1 on behalf of AutoZone in those. Correct?
 2 A. Right.
 3 Q. And you agree that you later learned that
 4 those were incomplete. Correct?
 5 A. Right.
 6 Q. And in some cases, they were inaccurate where
 7 you, for example, denied using a program which you later
 8 learned was used, for example, Derompx and Compx.
 9 Correct?
 10 A. Right.
 11 Q. What I'm talking about now is that this
 12 Exhibit 36 was the document by which you were informing
 13 us of this additional information that you'd learned
 14 since the previous exhibits that we've discussed. Okay?
 15 A. Okay.
 16 Q. And what I was asking you is, in order to come
 17 up with the information in Exhibit 36, did you go back,
 18 and did you look at the store servers and the servers in
 19 AutoZone to discover whether there was additional COFF
 20 files that were compiled for OpenServer on Linux
 21 machines?
 22 A. Again, I'm not sure of the timing. But we
 23 have -- after the initial release that identified and
 24 removed the COFF files on the very first round, we did
 25 go back to the stores just to verify that they were a!

1 gone, and we went back through the Linux servers in the
 2 corporate offices, also.
 3 Q. Okay. All right. Well let's just look at the
 4 document and go from there. It says in the second
 5 paragraph under the word store servers. Do you see
 6 that?
 7 A. Yes.
 8 Q. It says, On October 19th, 20th, and 21,
 9 AutoZone sent the release of its software to its store
 10 servers that updated the store servers to replace 9 COFF
 11 files with Linux files and to delete 19 unused COFF
 12 files. Do you see that?
 13 A. Yes.
 14 Q. So does this refresh your recollection that
 15 there were 9 COFF files that were used up until that
 16 date in the store servers and that there were 19 files
 17 that you believed were unused?
 18 MR. STEWART: Object to form. You can
 19 answer.
 20 A. There were 9 COFF files, which -- let me start
 21 at the other side. There were 19 that we were never
 22 going to use. They were just useless files. There were
 23 9 that we might some day need. Therefore, they were not
 24 obsolete programs. So we needed to replace them in case
 25 they were needed.

1 Q. (BY MR. STONE) Okay. Let me -- with that
 2 clarification, let me ask the question again. When
 3 you referred to the 19 unused COFF files, you were
 4 confident that they hadn't been used based on your
 5 review of those files. Is that correct?
 6 A. That's right.
 7 Q. With respect to the 9 COFF files referred to
 8 here, we discussed this before, you're not sure, as you
 9 sit here today, whether or not they may have been used
 10 at some time. Is that correct?
 11 A. That's right.
 12 Q. Okay. And you had to rewrite them because
 13 they were needed for -- well, you had to do something
 14 with them -- I don't want to use the wrong term. But
 15 you had to do something with them because this type of
 16 program was needed for your stores. Is that right?
 17 MR. STEWART: Object to form.
 18 A. It might be needed for the stores. In
 19 particular, I keep saying might because of those sort
 20 programs.
 21 Q. (BY MR. STONE) Okay. And these nine
 22 programs, you recompiled for Linux. Is that right?
 23 A. That's right.
 24 Q. And are these programs that as we discussed,
 25 you went in and modified the source code so it would

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1 did the program actually do?

2 A. It converted data formats from a pre-Y2K

3 format, that was in use on the mainframe, to a post-Y2K

4 format that is required by the stores.

5 Q. And that was -- was that something that had to

6 be done every time a program that had that pre-Y2K

7 format was being sent to the stores?

8 A. The process of creating an image for a new

9 store involves loading that image with programs but also

10 with some of the data that the store is going to need.

11 So when we decide today's the day to build an

12 image, part of that process involves running some

13 programs on the mainframe that generate data. We move

14 that data to the store image machine. We convert its

15 format along the way. And that way when the computer

16 arrives at the store, it already has some foundation

17 data to go along with the executables.

18 So that program was used basically once every time

19 you would open -- every time we wanted to open a new

20 store.

21 Q. Okay. So every time you opened a new store,

22 then you -- how did you reco -- you say that you

23 recompiled this program. What did you do to recompile

24 this program?

25 A. I didn't personally recompile it. So I don't

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1 know whether there were any code changes necessary. But

2 I do know it only took a short period of time to

3 recompile and test. So the changes could not have been

4 extensive.

5 Q. And as you sit here today, you can testify

6 that the current version of this program does not

7 contain any SCO licensed code?

8 A. That's right. It was recompiled on the Linux

9 machine for Linux.

10 Q. And then what did you do? Did you take a

11 previous copy and make a copy and put it on the Spirit

12 machine?

13 A. Vision.

14 Q. I'm sorry. The Vision machine?

15 A. (Witness nod affirmatively.)

16 Q. Is that what you did with all the -- anything

17 that you deleted, any program that you deleted?

18 A. Yes.

19 Q. And would that copy contain the information

20 about, you know, when the program was deleted and when

21 it was loaded on the machine?

22 A. I don't know. For some of the copies of COFF

23 files over to Vision, the system administrators used a

24 utility called CPIO, which may retain the original date

25 on the file. So that when you load it on to Vision, it

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1 will look as if it's been there for a long time.

2 For other files, that's not the case. We FTPed a

3 copy from -- used a utility called FTP to transfer a

4 file from wherever it was originally on to Vision. And

5 in that case, it would retain the date on which it was

6 copied.

7 Q. Okay. Was dexpan.d.x a binary that was created

8 with the SCO developer kit to run on OpenServer?

9 A. Originally, yes.

10 Q. By AutoZone?

11 A. Yes.

12 Q. Okay. Go on, it says AutoZone's IT personnel

13 also discovered that the Spirit server had some

14 OpenServer compiled programs on it because of a recent

15 restoration of the server after it crashed. The Spirit

16 server is -- isn't that an OpenServer machine?

17 A. Spirit was an OpenServer machine. We were

18 having some problems with Spirit. In particular, we

19 knew the disks were going bad. And so our system

20 administrators were preparing a replacement machine.

21 Well, apparently, they didn't prepare it quickly enough.

22 Because one evening, Spirit died. And so we worked

23 through most of the night trying to restore all of

24 Spirit's data on to that replacement machine.

25 Q. The replacement machine that was being

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1 prepared?

2 A. Right.

3 Q. Is that what you mean?

4 A. Right.

5 Q. And in doing that, you loaded 1130 SCO

6 compiled programs on to the machine? Is that right?

7 A. Right. We restored everything onto that

8 replacement machine, and that included some SCO

9 binaries.

10 Q. And what was that replacement machine going to

11 be used for after that?

12 A. It was going to continue to be used for our

13 software repository.

14 Q. Okay. So this is this revision control system

15 that you had spoken of earlier where you keep your

16 source code? Is that right?

17 A. That's right.

18 Q. So had you originally intended to remove the

19 SCO code from that machine and only have AutoZone's home

20 grown codes, so to speak?

21 A. Right. In an orderly migration, we would have

22 copied the repository, and then we would have copied

23 only the other directories that we needed rather than

24 just a wholesale replacement of everything.

25 Q. So based on what you've now done, did you do

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1 something to remove all the SCO licensed code from that
 2 machine?
 3 A. Yes.
 4 Q. So that was one machine that these 1130
 5 programs were on. Right? It was not --
 6 A. Right.
 7 Q. Do you know what -- what operating system did
 8 that machine use?
 9 A. It was OpenServer 505, I think, before the
 10 crash, and then it was Red Hat. I don't -- I really
 11 don't know what it is right now. I believe it's 7 dot
 12 2, but it might be Red Hat Version 9. I really don't
 13 know.
 14 Q. So it's some version of Red Hat's Linux
 15 distribution.
 16 A. That's correct.
 17 Q. You switched it from a OpenServer machine to a
 18 Linux machine after the crash.
 19 A. That's right.
 20 Q. But when you did that, you copied these 1130
 21 programs on to the machine?
 22 A. Right.
 23 Q. When did that occur?
 24 A. I'm sorry. I don't remember the date.
 25 Q. Can you give me the year?

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1 A. No. I really can't. I don't know when that
 2 was. I believe it was last year, but I really don't
 3 know.
 4 Q. So there may be a year that you were using
 5 this machine where it had the 1130 -- the 1,130 SCO
 6 files on it. Is that right?
 7 A. I don't know how long that Linux machine was
 8 up before we removed these files.
 9 Q. Do you know whether any of these files were
 10 used during that time period?
 11 A. I don't think any of these files would have
 12 been used because they would have been in individuals'
 13 home directories. And that machine is no longer used as
 14 the machine that people log into to perform work. So...
 15 Q. What machine is used as the machine that
 16 people log in to perform work?
 17 A. Only a machine called Wrangler and a machine
 18 called Jeep for Linux development.
 19 Q. So Jeep and Wrangler are two different
 20 machines?
 21 A. (Witness nods affirmatively.)
 22 Q. Is this something to do with the Jeep Wrangler
 23 or just a coincidence?
 24 A. Our system administrators find it an amusing
 25 policy to name machines after cars.

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1 Q. So Wrangler was the machine that you
 2 originally used, right, to develop Linux?
 3 A. Yes.
 4 Q. Did Jeep come after that or something?
 5 A. Jeep came after that.
 6 Q. Did you look on Jeep to see if Jeep had any
 7 COFF files on it?
 8 A. Yes.
 9 Q. Did you find any?
 10 A. I think we did, but I really don't remember.
 11 Q. But they would be in that -- the CDs or that
 12 hard drive that you produced to us. Is that right?
 13 A. Yes.
 14 Q. It goes on and says, finally, we've reviewed
 15 the relevant OpenServer agreements between SCO and
 16 AutoZone. These agreements are still in place and do
 17 not include any prohibitions on AutoZone's use of
 18 OpenServer compiled code on Linux machines. Did you
 19 have anything to do with that review?
 20 A. I tried to find copies of these agreements.
 21 But no, I didn't have anything to do with the review.
 22 Q. Did you find any copies of the agreements?
 23 A. I did find some documents that I forwarded to
 24 the attorneys.
 25 Q. Can you tell me the names of the documents?

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1 Do you remember?
 2 A. No. I'm sorry. I don't remember.
 3 MR. STONE: Okay. This seems like a good
 4 time to break for lunch. Actually, can we stay on for
 5 one second?
 6 Q. (BY MR. STONE) I just have one question
 7 about something that we had gone over earlier. It's
 8 on Page 2 of Exhibit 36. It says, In addition to
 9 the -- it's in the first paragraph like five lines
 10 down -- five lines down. In addition to the help
 11 utilities, there were four SCO compiled programs
 12 that were copied to the Linux machines errantly
 13 because the programs were not located in the proper
 14 directory. We talked about the fact that that
 15 happened. Correct?
 16 A. Yes.
 17 Q. I just wanted to know what these four programs
 18 were intended to do, if you remember.
 19 A. I'm sorry. I don't remember. I believe they
 20 were located in the directory where we usually keep
 21 data. But I don't -- I don't remember what the programs
 22 were.
 23 Q. You don't remember what they were actually
 24 intended to do? Is that right?
 25 A. That's right.