

15

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RED HAT, INC.

Plaintiff,

v.

THE SCO GROUP, INC.

Defendant.

Civil Action No. 03-772-SLR

**DEFENDANT’S MOTION TO STAY DISCOVERY
PENDING RESOLUTION OF MOTION TO DISMISS**

On August 4, 2003, amid great fanfare, Red Hat, Inc. (“Red Hat”) filed suit against The SCO Group (“SCO”). Immediately thereafter, Red Hat’s counsel repeatedly contacted undersigned counsel to attempt to set up a Rule 26(f) conference. After pointing out that such a conference would be entirely premature because SCO had not yet appeared in the action or filed any type of response to the complaint, SCO nonetheless agreed to talk on September 8, 2003. Shortly before that meeting, Red Hat prepared a proposed schedule for the case and forwarded it for discussion during the meeting. On September 8, 2003, counsel for both parties held a brief telephonic discussion regarding Red Hat’s proposed schedule. During this discussion, SCO observed that the schedule was unworkable, particularly because it did not account for the necessary discovery in the related action SCO had previously filed against IBM pending in federal court in Utah. Nothing further came from this meeting purportedly held as a Rule 26(f) conference—not a revised schedule, not a proposed report, not an initial disclosure by Red Hat. Nothing.

The true purpose of this premature and wasteful meeting became apparent the very next day. Red Hat apparently viewed the call as a green light to commence discovery. Thus, on September 9, 2003, Red Hat propounded to SCO forty-nine requests for production [Exhibit A]

and sixteen interrogatories [Exhibit B]. Red Hat's requests are sweeping, and would be time-consuming and expensive to fulfill. For example, Red Hat has asked for:

- "All documents concerning the subject matter of the Complaint."¹ Read literally, this request could cover nearly every document in SCO's possession.
- "All documents concerning any customer, or potential customer, of Red Hat."² To the extent that Linux is a derivative of UNIX and these two operating systems are closely related, every one of SCO's customers is potentially a customer of Red Hat's, and as a result this request encompasses all documents pertaining to all of SCO's customers.
- "All documents concerning SCO's legal claims against IBM or any pending litigation against IBM."³ This request duplicates the entire discovery now underway in SCO's litigation against IBM in the District Court for the District of Utah.

Shortly after Red Hat served these requests, SCO filed a motion to dismiss the underlying action in its entirety for lack of subject matter jurisdiction and for failure to state a claim. Because SCO is seeking to dismiss the complaint in its entirety, responding to this extensive discovery when the entire matter may be dismissed would be wasteful. Moreover, none of the requested discovery is needed by Red Hat for responding to or otherwise addressing the pending motion to dismiss. Indeed, Red Hat has already filed its answer brief to SCO's motion to dismiss. Under these circumstances, good cause exists for this Court to stay discovery, including any initial disclosures, pending its ruling on SCO's Motion to Dismiss.

Under the Federal Rules of Civil Procedure, this Court has the discretion to stay discovery upon a showing of good cause. Fed. R. Civ. P. 26(c)(1). Good cause exists, and a stay is therefore proper, where the likelihood that a pending motion to dismiss may result in the narrowing or outright elimination of discovery outweighs the likely harm to be produced by the

¹Request 1.

²Request 2.

³Request 17.

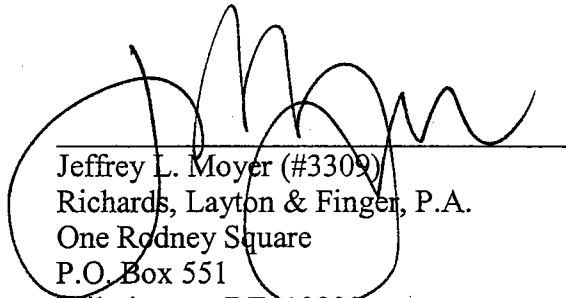
delay. *Weisman v. Mediq, Inc.*, 1995 U.S. Dist. LEXIS 5900 at *4 (E.D.Penn. May 3, 1995) [Exhibit C]. SCO's Motion to Dismiss, now pending before this Court, addresses every count of Red Hat's Complaint. This Court need not express any opinion regarding the merits of that motion to find that it is comprehensive, that it may be decided on the pleadings, and that it may potentially lead to the dismissal of the entire action. *Weisman v. Mediq, Inc.*, 1995 U.S. Dist. LEXIS 5900 at *6.

The harm to SCO in responding to these onerous discovery requests is apparent. "If the district court dismisses a nonmeritorious claim before discovery has begun, unnecessary costs to the litigants and to the court system can be avoided." *Chudasama v. Mazda*, 123 F.3d 1353, 1368 (11th Cir. 1997). Red Hat's discovery requests, which were propounded before SCO filed its motion to dismiss the case, are not directed towards supporting the sufficiency of its Complaint but go to the merits of the case and, more importantly, would cause SCO to spend significant sums to respond to discovery that may ultimately prove unnecessary.

Balanced against the harm to SCO is the fact that there is little, if any, prejudice to Red Hat if a brief stay is entered until the court has ruled upon the pending motion to dismiss. First, a delay in discovery would not prejudice Red Hat's ability to respond to SCO's Motion to Dismiss because this motion does not raise factual issues. *Rae v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984); *Chudasama v. Mazda*, 123 F.3d at 1367. Second, it is also apparent that, were this Court to grant a stay of discovery, there is no danger that any of the requested documents or information might become unavailable by reason of the delay. The ongoing discovery in SCO's litigation against IBM covers much of the same ground as does this case and it proceeds apace.

Given the expense and effort involved, and the small likelihood of harm caused by the delay, it would be a proper exercise of this Court's discretion to grant a temporary stay of discovery while SCO's Motion to Dismiss is pending. *Jackson v. Northern Telecom, Inc.*, 1990

U.S. Dist. LEXIS 3572 (E. D. Penn. April 2, 1990) (court exercised discretion to stay discovery until such time as time as the court ruled on the motion to dismiss) [Exhibit D]. SCO, therefore, respectfully requests that this Court stay all discovery, including initial disclosures, until it rules upon the pending motion to dismiss. Specifically, if this Court grants the motion to dismiss in its entirety, then there will be no need to ever respond to the discovery. Conversely, if the motion to dismiss is denied in whole or in part, then SCO seeks 30 days in which to respond to Red Hat's discovery requests.



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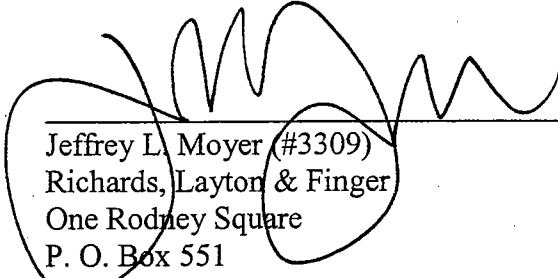
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Miami, FL 33131

Dated: October 1, 2003

**CERTIFICATION PURSUANT TO
DISTRICT OF DELAWARE LOCAL RULE 7.1.1**

Counsel for defendants has consulted with counsel for plaintiff pursuant to District of Delaware Local Rule 7.1.1 and determined that plaintiff is not in a position to consent to the relief sought by the foregoing motion.

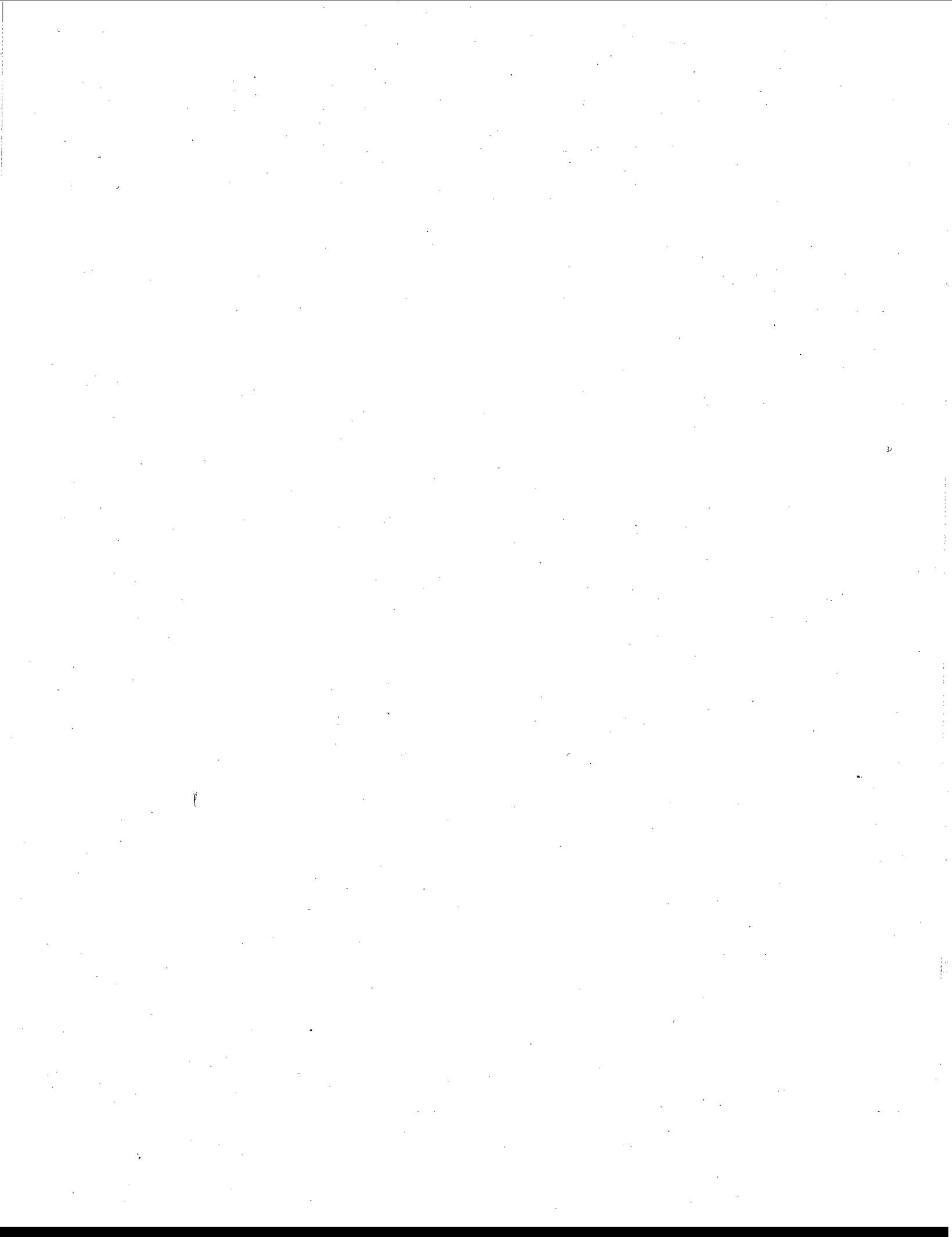


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Dated: October 1, 2003



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RED HAT, INC.,)	
)	
Plaintiff,)	Civil Action No.: 03-772-SLR
)	
v.)	
)	
THE SCO GROUP, INC. (formerly Caldera International, Inc.),)	
)	
Defendant.)	

**PLAINTIFF RED HAT, INC.'S FIRST REQUEST
FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

Please take notice that, pursuant to Rule 34 of the Federal Rules of Civil Procedure, The SCO Group, Inc. ("SCO") is commanded to produce and permit Red Hat, Inc. ("Red Hat") to inspect and copy each of the documents and things requested below on or within thirty (30) days at the offices of Hale and Dorr LLP, 60 State Street, Boston, Massachusetts, 02109.

DEFINITIONS

A. The term "documents" shall mean both "documents" and "things" as those terms are used in Fed. R. Civ. P. 34, and includes without limitation data, computer files or other information stored electronically or by any other means.

B. The phrase "documents sufficient to show" shall mean enough documents to adequately, accurately and completely address the subject matter of the request.

C. The term "communication" as used herein shall mean any document or tangible thing, oral statement, meeting or conference, formal or informal, at any time or place and under

any circumstance whatsoever, whereby information of any nature was stated, written, disclosed, transferred, exchanged, recorded or in any manner transmitted or transferred.

D. The term "concerning" shall mean referring to, describing, evidencing, or constituting.

E. The term "all" as used herein also shall mean "any and all."

F. The terms "and" and "or" as used herein shall be construed conjunctively or disjunctively to bring within the scope of these interrogatories any and all information which might otherwise be construed as outside their scope.

G. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa; the use of the masculine form of a pronoun also includes within its meaning the feminine form of the pronoun so used, and vice versa; and the use of any tense of any verb includes also within its meaning all other tenses of the verb so used.

H. The term "SCO" shall mean The SCO Group, Inc., including any officers, directors, employees, representatives, attorneys, agents and any predecessor of SCO (e.g., Caldera International, Inc.).

I. Unless specified in a particular request, the term "you", "your", or "yours" as used herein shall mean SCO, and any other person acting or authorized to act on the defendant's behalf.

J. The terms "person" and "persons" as used herein shall mean any legal entity including natural persons, corporations, partnerships, estates, unions, associations, federations, or any other kind of legal entity.

K. All legal entities referred to herein shall be deemed to include any parent companies, predecessors-in-interest, subsidiaries, affiliates, directors, officers, employees, agents, and representatives thereof, including attorneys, consultants, accountants, and investment bankers.

L. The term "Action" shall mean Red Hat, Inc. v. The SCO Group, Inc., Civil Action No. 03-772, as referenced in the above caption.

M. "Complaint" shall refer to the Complaint filed by Red Hat against SCO on August 4, 2003 in the United States District Court for District of Delaware.

N. The term "interest" shall mean any right, claim, title or legal share, including without limitation any right, claim, title or legal share arising as an assignee, assignor, transferee, transferor, licensee or licensor.

O. Unless otherwise stated, the term "LINUX" refers generally to any version of a LINUX kernel, any LINUX operating system or other LINUX software.

P. Unless otherwise stated, the term "UNIX" refers to any version of a UNIX kernel, any UNIX operating system or other UNIX software generally and not any specific version of UNIX.

Q. The phrase "UNIX intellectual property" means all intellectual property associated with any UNIX software product including patents, trademarks, copyrights, trade secrets or any other type of proprietary information.

INSTRUCTIONS

A. You shall produce all responsive documents and things (including any stored by electronic means). Should you withhold any documents or things responsive to these requests, you are requested to state the basis for withholding the documents and things in a manner sufficient to enable plaintiffs and the Court to evaluate the validity of your withholding of such

materials, including in the case of any documents and things withheld on the grounds of privilege or work product, the following information for each document or thing:

- 1) The request to which the document is responsive;
- 2) The title of the document;
- 3) The date appearing on the document, and if no date appears thereon, so state and give the date, or approximate date, on which the document was prepared;
- 4) The type or general nature of the document (i.e., whether it is a letter, memorandum, minutes of a meeting, etc.);
- 5) The name, title, and company affiliation of the person who prepared the document;
- 6) The name, title, and company affiliation of the person who signed the document;
- 7) The name, title, and company affiliation of each person to whom the document was disclosed, including the person or persons to whom it was addressed and the person or persons to whom the document, or copies of the document, were sent;
- 8) The name, title, and company affiliation of the person or persons who maintain custody of the document; and
- 9) The general subject matter of the document and the basis for withholding the document, in a manner sufficient to determine the validity of any claim of privilege and/or work product.

B. If any one of the document production requests contained herein is claimed to be objectionable, then (1) the portion of such document production request that is claimed to be objectionable shall be identified and the nature and basis of the objection shall be set forth in sufficient fashion to permit the court to rule on the validity of the objection; (2) any document withheld from production pursuant to such objection shall be identified with sufficient particularity and in sufficient detail to permit the Court to determine that such document falls within the scope of such objection; and (3) documents shall be produced in response to any portion of such document production request that is not claimed to be objectionable.

C. If no documents exist that are responsive to a particular request, please state that no documents exist.

D. Produce entire documents, including attachments, enclosures, cover letters, memoranda, and appendices, with all staples and clips attached and with all associated file folders, dividers and file labels.

E. Any document bearing marks that are not part of the original text, or any non-identical reproduction thereof is to be considered a separate document and must be separately produced.

F. If a requested document is in a language other than English, both the original and any existing English translation thereof should be produced. Should you find the meaning of any term in these discovery requests to be unclear, then you should assume a reasonable meaning, state what that assumed meaning is, and answer the request on the basis of that assumed meaning.

G. These document requests are deemed to be continuing in nature. You are requested to amend and/or supplement your responses to the extent required by Fed. R. Civ. P. 26(e).

REQUESTS FOR DOCUMENTS

1. All documents concerning the subject matter of the Complaint.
2. All documents concerning any customer, or potential customer, of Red Hat.
3. All communications between SCO and Red Hat, or any employee of Red Hat.
4. All communications between SCO and any user or potential user of a LINUX product, including any Red Hat LINUX product, concerning any rights to LINUX or UNIX that SCO claims to have or concerning any actions by Red Hat that SCO claims are wrongful.
5. All documents that concern any and all copyrights in which SCO claims an ownership or other legal interest of any kind and that also concern any UNIX software or UNIX product.
6. All documents concerning the registration of any copyrights in any UNIX software or UNIX product, including, without limitation, all documents submitted by SCO to the United States Copyright Office concerning UNIX.
7. All documents concerning the purposes of SCOsource, the formation of SCOsource, any intellectual property managed by SCOsource, and all correspondence to or from SCOsource or any director, officer, employee, attorney or agent employed by, assigned to, or acting on behalf of SCOsource.
8. At least one example of each license agreement that SCO has used to license each and every UNIX product, UNIX software, or UNIX service, any open source software, product or service, any LINUX product, LINUX software or LINUX service, or to license each of the following: UnixWare, UnixWare 7, UnixWare 7.1.1, UnixWare 7.1.2, UnixWare 7.1.3, Open UNIX, Open UNIX 8, Reliant HA, NeTraverse Merge, Merge, Merge 5, SCO OpenServer, SCO OpenServer Release 5.0.5, SCO OpenServer Release 5.0.6, SCO OpenServer Release 5.0.7,

OpenServer Kernel Personality, OpenServer Kernel Personality for UnixWare 7.1.3, SCOx Web Services, SCOx, SCO Update Service, SCO Linux, SCO Linux 4.0 Server for the Itanium[®] Processor Family, SCO Linux 4, SCOoffice, SCO Volution, Caldera Volution Manager 1.1, SCOoffice Mail Server 2.0, Caldera Volution Messaging Server 1.1.1, Caldera Volution Messaging Server 1.1, OpenLinux, OpenLinux 3.1, OpenLinux 3.1.1, OpenLinux 64, UnitedLinux, UnitedLinux 1.0, UnitedLinux 1.0 Service Pack 2, UnitedLinux 1.0 Service Pack 1, Samba, Samba Multi byte version, Cdrtools, Mozilla Browser.

9. Documents sufficient to show each and every entity that had access to any portion of UNIX code that SCO contends was copied or was otherwise incorporated into any LINUX software in violation of any of SCO's copyrights, trade secret or other intellectual property.

10. All documents that concern any SCO licensing program, including any licensing program offered by or in conjunction with SCOsource.

11. All documents concerning any license of any UNIX kernel, UNIX operating system or UNIX intellectual property that SCO has offered, is offering or intends to offer, including, without limitation, all license agreements with any entity that had access to each and every portion of the UNIX code SCO contends was copied or was otherwise incorporated into any LINUX software in violation of any of SCO's copyrights.

12. All documents concerning any SCO license with Microsoft and Sun Microsystems, Inc. ("Sun"), including copies of the licenses, correspondence concerning the licenses, and notes or other documents related to any meeting concerning the licensed technology or negotiation of the license.

13. All documents concerning communications between SCO and Microsoft and/or SCO and Sun Microsystems regarding: Red Hat, Red Hat's actual or potential customers, UNIX,

LINUX, IBM, and Sun Microsystems' or Microsoft's licensing of any SCO technology, software or product.

14. All documents concerning SCO's ownership of UNIX intellectual property and/or concerning SCO's right or ability to enforce or protect UNIX intellectual property.

15. All documents concerning any other person or entity's ownership of any UNIX intellectual property and/or concerning any other person or entity's rights to enforce or protect UNIX intellectual property.

16. All documents concerning communications between SCO and Novell Inc. ("Novell") regarding ownership of UNIX intellectual property, including, without limitation, contracts or agreements between SCO and Novell regarding UNIX or LINUX, all correspondence between SCO and Novell concerning UNIX or LINUX, and documents concerning Novell's past or present ownership of any rights in any UNIX or LINUX technology, software, product or service.

17. All documents concerning SCO's legal claims against IBM or any pending litigation with IBM.

18. All documents concerning both the development of UNIX and ownership rights in UNIX intellectual property.

19. All documents and communications regarding IBM's misappropriation, or alleged misappropriation, of UNIX intellectual property, code, structure, sequence, organization or other proprietary information, including, without limitation, all such documents concerning any agreements with IBM regarding UNIX, the development of UNIX, rights to UNIX software or technology, LINUX, the development of LINUX, or rights to LINUX software.

20. A copy of the source code of each and every version of UNIX software in which SCO claims to own any intellectual property rights or have any other legal interest, and a copy of the source code of each and every version of LINUX software in SCO's possession custody, or control that was created on or after January 1, 2000, whether or not released for public use, licensing or sale, and a copy of the source code of each and every version of UNIX software that SCO has sold, offered for sale, licensed, and offered to license

21. The source code of any SCO LINUX product and any third party LINUX product identified in response to Interrogatory No. 6.

22. A copy of the source code for each version of the following: UnixWare, UnixWare 7, UnixWare 7.1.1, UnixWare 7.1.2, UnixWare 7.1.3, Open UNIX, Open UNIX 8, Reliant HA, NeTraverse Merge, Merge, Merge 5, SCO OpenServer, SCO OpenServer Release 5.0.5, SCO OpenServer Release 5.0.6, SCO OpenServer Release 5.0.7, OpenServer Kernel Personality, OpenServer Kernel Personality for UnixWare 7.1.3, SCO Linux, SCO Linux 4.0 Server for the Itanium[®] Processor Family, SCO Linux 4, OpenLinux, OpenLinux 3.1, OpenLinux 3.1.1, OpenLinux 64, UnitedLinux, UnitedLinux 1.0, UnitedLinux 1.0 Service Pack 2, UnitedLinux 1.0 Service Pack 1.

23. All documents concerning examples of UNIX and LINUX software code that SCO has shown to any third-party in conjunction with its claims that LINUX infringes SCO's intellectual property rights in any UNIX software or technology, including without limitation, all such documents concerning any examples of UNIX code that were displayed to the public, including without limitation at SCO Forum and/or in Las Vegas, Nevada and/or during the month of August 2003, and including, without limitation, all such documents concerning any examples of UNIX and LINUX code that have been displayed at any facility that SCO has set up

to show examples of UNIX code to any third-party in conjunction with any claim by SCO that any LINUX software or kernel infringes any intellectual property right of SCO in UNIX or any UNIX software.

24. All documents concerning any non-disclosure agreement that SCO or any other person has executed in conjunction with its claims that LINUX infringes SCO's intellectual property rights in any UNIX software or technology.

25. If SCO contends that any portion of the UNIX code, or the structure, sequence, or organization of the UNIX software, was made a part of LINUX, copies of all UNIX code generally, and specifically copies of that which SCO contends has been made a part of LINUX.

26. All documents identifying any portion of the UNIX code, or the structure, sequence, or organization of the UNIX software that is a part of LINUX.

27. All documents identifying any SCO intellectual property or proprietary information that has been incorporated into LINUX, including, without limitation, any trade secret or copyrighted software, and/or concerning the circumstances whereby any SCO intellectual property, trade secret or proprietary information became a part of LINUX.

28. All documents concerning IBM's development of LINUX to the extent that that development relates to any UNIX intellectual property right, including such documents regarding Project Monterey, and all documents that establish when SCO first became aware that IBM had made or may have made contributions to LINUX.

29. All documents concerning SCO's and/or SCOsource's review and enforcement of its intellectual property rights surrounding the UNIX operating system.

30. All documents concerning SCO's distribution or involvement in the distribution of LINUX, including UnitedLinux.

31. All documents concerning SCO's development of LINUX software and UnitedLinux software, including, without limitation, communications regarding any SCO employee or former employee's contributions to LINUX and UnitedLinux, and documents concerning whether UnitedLinux contains any SCO UNIX intellectual property.

32. All documents concerning any analysis or comparison of UNIX and LINUX, and all documents and communications concerning any investigation into LINUX and whether that software contains UNIX intellectual property.

33. All documents describing Open UNIX 8, including all technical documentation, licensing parameters, how the product is sold, distributed and/or implemented, and any comparison or analysis of Open UNIX 8 and LINUX.

34. All documents concerning any analysis or comparison of UNIX and LINUX code, sequence, structure, or organization, including, without limitation, such documents regarding the benefits or functionality of LINUX as compared to the UNIX software product.

35. All documents concerning the statements made in a letter posted on SCO's website providing that SCO's own LINUX customers would not be liable to SCO for actions it may take against other LINUX users who are not SCO customers.

36. All documents concerning the basis for SCO's claim for damages in the action pending against IBM in the District of Utah.

37. All documents concerning the statements made in the letter dated on or about May 12, 2003, sent by SCO to approximately 1,500 LINUX users or potential users including the documents that form the basis for SCO's statement in that letter that SCO believed its intellectual property and other rights were infringed.

38. All documents referred to in preparation of or concerning the SCO presentation made at Deutsche Bank Securities ("DBS") on or about July 22, 2003, and all documents provided to DBS for the preparation of any DBS financial and/or industry report.

39. From January 1, 2003 to present, all documents concerning any communications with financial or industry analysts, including any communications or meetings with financial analysts that cover Red Hat stock.

40. All documents concerning any public statements made by SCO that pertain to the subject matter of the Complaint.

41. All documents concerning the statements made by Darl McBride in a CRN.com interview entitled, "Update: CRN Interview: SCO Defends \$1 Billion Lawsuit Against IBM," including the following statements: (a) "[t]here will be a day of reckoning for Red Hat and SuSE when this is done"; and (b) "IBM took chunks [of code] out of [Project] Monterey, and gave it away. You can find it in Red Hat and SuSE Linux."

42. All documents concerning the statements made by Chris Sontag in a Mozilla QuestOnline Magazine article entitled "SCO-Caldera v. IBM: SCO Clears Linux Kernel but Implicates Red Hat and SuSE," available at http://www.mozillaquest.com/Linux03/ScoSource-10_Story01.html including the following statements: (a) "We are using objective third parties to do comparisons of our UNIX System V source code and Red Hat as an example. We are coming across many instances where our proprietary software has simply been copied and pasted or changed in order to hide the origin of our System V code in Red Hat"; and (b) "We're not talking about the Linux kernel that Linus and others have helped develop. We're talking about what's on the periphery of the Linux kernel."

43. All documents concerning the following statements:

- a) made in SCO's May 14, 2003 press release, including the statement that "The SCO® Group . . . today warned that Linux is an unauthorized derivative of UNIX and that legal liability for the use of Linux may extend to commercial users";
- b) made in SCO's May 14, 2003 press release, including the statement that "SCO will continue to support existing SCO Linux and Caldera OpenLinux customers and hold them harmless from any SCO intellectual property issues regarding" those products;
- c) made by Chris Sontag in a CNET News.com interview entitled "SCO May Expand Linux Case Soon," including the statements (a) that SCO "may bring subsequent actions against Linux software developers such as Red Hat and SuSE"; and (b) "Do we have potential issues with Red Hat, SuSE and other commercial Linux distributors – yes, we might";
- d) made by Darl McBride in a CNET News.com interview entitled "Why SCO Decided to Take IBM to Court" including the statement that "if in fact users are running systems that have basically pirated software inside of there, or stolen software inside of their systems, they have liability. We're not saying that they created that liability; we think there are a number of parties along the way that generated that. But we feel like we have an absolute requirement to let them know what was going on as we went down this path";
- e) made by Chris Sontag in a VNUnet.com interview entitled "Interview: SCO chief Darl McBride part 2" included the response "Yeah. That one is a no-

brainer” to the question “Are you still saying categorically that there is offending code in the Linux kernel?”;

f) made in SCO’s July 21, 2003 Press Release including the statements that SCO “will offer UnixWare® licenses tailored to support run-time, binary use of Linux for all commercial users of Linux based on kernel version 2.4.x and later. SCO will hold harmless commercial Linux customers that purchase a UnixWare license against any past copyright violations, and for any future use of Linux in a run-only, binary format”;

g) made in SCO’s July 21, 2003 Press Release including the statements that “SCO indicated last week that Linux end users could face liability for running it in their organization. Beginning this week, the company will begin contacting companies regarding their use of Linux and to offer a UnixWare license”;

h) “Since the year 2001 commercial Linux customers have been purchasing and receiving software that includes misappropriated UNIX software owned by SCO”;

i) made in SCO’s July 21, 2003 Press Release including the statements that “Today, we’re stating that the alleged actions of IBM and others have caused customers to use a tainted product at SCO’s expense. With more than 2.4 million Linux servers running our software, and thousands more running Linux every day, we expect SCO to be compensated for the benefits realized by tens of thousands of customers”; and

- j) made in SCO's July 21, 2003 Press Release including the statements that "We have a solution that gets [Linux users] clean, get [Linux users] square with the use of Linux without having to go to the courtroom."

44. SCO's quarterly and annual financial reports from the date SCO acquired the rights to UNIX to present, and documents sufficient to identify SCO's sales and profits since the date SCO acquired the rights to UNIX to the present.

45. All documents concerning a LINUX Lottery or the phrase the "LINUX Lottery".

46. All documents concerning revenue generated by any SCO licensing program or licensing initiative, including any analysis or projection of revenue that could be earned by virtue of a LINUX licensing program, UNIX Licensing program, SCOSource licensing program, or SCOSource licensing initiative.


47. All documents concerning the establishment or setting of UNIX licensing fees by SCO, including without limitation documents related to licensing fees associated with any technology owned or managed by SCOSource, any contention by SCO that users of LINUX must pay a fee of any kind to SCO, and any licensing fees related to other SCO UNIX technology, software, products and services.

48. All documents concerning both the Canopy Group and UNIX, including without limitation, communications with the Canopy Group regarding UNIX.

49. If SCO contends that Red Hat or its customers have violated any of its rights in UNIX software (including without limitation any copyrights or trade secrets), all documents concerning that contention.

DATED: September 9, 2003

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



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CERTIFICATE OF SERVICE

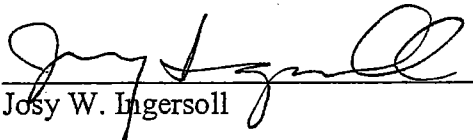
I, Josy W. Ingersoll, Esquire, hereby certify that on September 9, 2003, caused copies of the foregoing document to be served by hand on the following attorneys of record at the addresses indicated below:

BY HAND:

Jesse A. Finkelstein, Esquire
Richards, Layton & Finger
One Rodney Square
Wilmington, DE 19801

BY FEDERAL EXPRESS:

Stephen N. Zack, Esquire
Boies, Schiller & Flexner, L.L.P.
Bank of America Tower
100 S. East 2nd Street, Suite 2800
Miami, FL 33131



Josy W. Ingersoll



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RED HAT, INC.,)	
)	
Plaintiff,)	Civil Action No.: 03-772-SLR
)	
v.)	
)	FIRST SET OF
THE SCO GROUP, INC. (formerly Caldera)	INTERROGATORIES
International, Inc.),)	
)	
Defendant.)	
)	

Pursuant to Fed. R. Civ. P. 26 and 33 and the Local Rules of this Court, Plaintiff Red Hat, Inc. ("Red Hat") hereby propounds the following interrogatories to Defendant The SCO Group, Inc. ("SCO"). These interrogatories are to be answered separately, fully, in writing and under oath within thirty days from the date hereof.

DEFINITIONS

A. The term "communication" as used herein shall mean any document or tangible thing, oral statement, meeting or conference, formal or informal, at any time or place and under any circumstance whatsoever, whereby information of any nature was stated, written, disclosed, transferred, exchanged, recorded or in any manner transmitted or transferred.

B. The term "concerning" shall mean referring to, describing, evidencing, or constituting.

C. The term "all" as used herein also shall mean "any and all."

D. The terms "and" and "or" as used herein shall be construed conjunctively or disjunctively to bring within the scope of these interrogatories any and all information which might otherwise be construed as outside their scope.

E. The term "documents" shall mean both "documents" and "things" as those terms are used in Fed. R. Civ. P. 34, and includes without limitation data, computer files or other information stored electronically or by any other means.

F. As used herein, the term "identify" shall be construed as follows:

1. "Identify" a communication, record, document, thing, source of information or other requested item means to list the following information:
 - (a) the source(s) or author(s) of the requested item;
 - (b) the recipient(s) of the requested item;
 - (c) the date of the requested item;
 - (d) where the requested item is located;
 - (e) whether the requested item was made, sent, recorded or maintained in the ordinary course of business; and
 - (f) the substance of any information contained in the requested item.

2. "Identify" a person means to list the following information:
 - (a) name;
 - (b) title and position (if a natural person);
 - (c) last known business address;
 - (d) last known home address, if applicable; and
 - (e) if the person identified is not a natural person, the name and address of the natural person employed by or otherwise associated with the identified person whom you believe has the most knowledge regarding the subject matter of the interrogatory.

G. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa; the use of the masculine form of a pronoun also includes within its meaning the feminine form of the pronoun so used, and vice versa; and the use of any tense of any verb includes also within its meaning all other tenses of the verb so used.

H. The term "SCO" shall mean The SCO Group, Inc., including any officers, directors, employees, representatives, attorneys, agents and any predecessor of SCO (e.g., Caldera International, Inc.).

I. Unless specified in a particular request, the term "you", "your", or "yours" as used herein shall mean SCO, and any other person acting or authorized to act on the defendant's behalf.

J. The terms "person" and "persons" as used herein shall mean any legal entity including natural persons, corporations, partnerships, estates, unions, associations, federations, or any other kind of legal entity.

K. All legal entities referred to herein shall be deemed to include any parent companies, predecessors-in-interest, subsidiaries, affiliates, directors, officers, employees, agents, and representatives thereof, including attorneys, consultants, accountants, and investment bankers.

L. The term "Action" shall mean Red Hat, Inc. v. The SCO Group, Inc., Civil Action No. 03-772, as referenced in the above caption.

M. "Complaint" shall refer to the Complaint filed by Red Hat against SCO on August 4, 2003, in the United States District Court for District of Delaware.

N. The term "interest" shall mean any right, claim, title or legal share, including without limitation any right, claim, title or legal share arising as an assignee, assignor, transferee, transferor, licensee or licensor.

O. Unless otherwise stated, the term "LINUX" refers generally to any version of a LINUX kernel, any LINUX operating system or other LINUX software.

P. Unless otherwise stated, the term "UNIX" refers to any version of a UNIX kernel, any UNIX operating system or other UNIX software generally and not any specific version of UNIX.

Q. The phrase "UNIX intellectual property" means all intellectual property associated with any UNIX software product including patents, trademarks, copyrights, trade secrets or any other type of proprietary information.

INSTRUCTIONS

A. You are requested to respond to these interrogatories by drawing upon all information that is in your personal knowledge or possession, as well as all information that you can procure or obtain from other sources by exercising due diligence. These sources include, but are not limited to business associates, employees, agents, attorneys, or other representatives.

B. If, after exercising due diligence, you are unable to answer any of the interrogatories in full, you nevertheless still must: (a) answer said interrogatory to the fullest extent possible; (b) explain your inability to answer the remainder of the interrogatory; (c) state the nature of all efforts you made to do so, including identification of all persons of whom inquiry was made and whether each such person was unwilling or unable to furnish such information; and (d) provide whatever information, if any, is known or available to you concerning the unanswered portion of said interrogatory.

C. In the event that you file a proper and timely objection to any portion of an interrogatory propounded herein, you are required to respond to all other portions of that interrogatory not covered by your objection.

D. If you withhold information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, you shall make the claim

expressly and shall describe the nature of the information not disclosed in a manner that will enable the plaintiff to assess the applicability of the privilege or the protection.

E. These interrogatories are continuing and you are required to supplement these responses pursuant to Fed. R. Civ. P. 26(e).

INTERROGATORIES

Interrogatory No. 1

If SCO contends that Red Hat or its customers are violating or have violated any UNIX intellectual property rights in which SCO has any legal interest, set forth with specificity the basis for that contention.

Interrogatory No. 2

If SCO contends that Red Hat or its customers are misappropriating or have misappropriated any of its trade secrets, set forth with specificity the basis for that contention, including without limitation, the identity of any trade secrets and the circumstances under which those trade secrets were misappropriated.

Interrogatory No. 3

If SCO contends that Red Hat or its customers have infringed any of SCO's rights protected by the Copyright Act, 17 U.S.C. §§ 101 et seq., set forth with specificity the basis for that contention, including without limitation, the identity of any copyrights that SCO claims are infringed and the basis for SCO's claim that Red Hat or any Red Hat customer has infringed that copyright.

Interrogatory No. 4

If SCO contends that Red Hat or any of Red Hat's customers are required to pay a fee to license SCO's UNIX intellectual property, set forth the basis for that contention, including without limitation the amount of each and every such fee, the method used to establish the amount of that fee, the basis for the fee, and the terms of any associated license.

Interrogatory No. 5

Provide the following information in a manner that precisely identifies each and every instance of copyright infringement that SCO maintains exists in any of Red Hat's LINUX software or products:

(a) Identify by title, version, module(s) and line(s) each and every portion of UNIX source code that you claim has been copied or has otherwise been incorporated into any LINUX software in violation of any of SCO's copyrights;

(b) For each and every portion of UNIX source code identified in 5(a) above, identify by title, version, module(s) and line(s) each and every corresponding portion of LINUX source code that you claim was copied or otherwise incorporated from the identified portion of UNIX source code in violation of any of SCO's copyrights;

(c) For each and every portion of LINUX source code identified in 5(b) above, describe whether SCO claims that the UNIX source code was literally copied, is a derivative of UNIX source code, copies the structure, sequence, and organization of the UNIX code, and any other manner in which SCO claims the LINUX code infringes any of SCO's copyrights;

(d) For each portion of the UNIX code identified in 5(a) above, identify the individual(s) who authored that portion of the code, the date that portion was written, and the date that portion became a part of the UNIX code; and

(e) For each portion of the UNIX code identified in 5(a) above, identify each entity that had access to that portion of the UNIX code and the dates it had such access.

Interrogatory No. 6

Identify every SCO LINUX product, and every third party LINUX product, that contains any code corresponding to the LINUX code identified in 5(b) above.

Interrogatory No. 7

Provide the following information to precisely identify each and every instance of misappropriation of SCO's trade secrets that SCO maintains exists in any of Red Hat's LINUX software or products:

(a) Identify by title, version, module(s) and line(s) each and every portion of LINUX source code that you claim contains a trade secret of SCO's that has been misappropriated or otherwise wrongfully incorporated;

(b) For each and every portion of LINUX source code identified in 7(a) above, identify by title, version, module(s) and line(s) any portion of UNIX code that contains or embodies SCO's trade secret(s) that SCO contends has been misappropriated or otherwise wrongfully incorporated into the LINUX source code;

(c) For each and every portion of LINUX source code identified in 7(a) above, describe SCO's legal basis for claiming that the LINUX source code contains a trade secret of SCO's that has been misappropriated or otherwise wrongfully incorporated into LINUX;

(d) For each portion of the UNIX code identified in 7(a) above, identify the individual(s) who authored that portion of the code, the date that portion was written, and the date that portion became a part of the UNIX code; and

(e) For each portion of the UNIX code identified in 7(a) above, identify each entity that had access to that portion of the UNIX code and the dates it had such access.

Interrogatory No. 8

Excluding the instances of copyright infringement and trade secret misappropriation identified in SCO's responses to Interrogatory Numbers 5 and 7, provide the following information to precisely identify each and every instance of infringement of SCO's intellectual property rights that SCO maintains exists in any of Red Hat's LINUX software or products:

(a) Identify by title, version, module(s) and line(s) each and every portion of LINUX source code that SCO claims infringes any intellectual property right of SCO;

(b) For each and every portion of LINUX source code identified in 8(a) above, identify each and every intellectual property right(s) of SCO that SCO claims is/are infringed by the identified portion of LINUX software (e.g., patent number and claim, contract by parties and date or similar identifying information, a description of the know how at issue and a description of the methods at issue); and

(c) for each and every portion of LINUX source code identified in 8(a) above, further specifically identify by title, version, module(s) and line(s) each and every corresponding portion of UNIX source code that you claim embodies the intellectual property right(s) that is/are infringed.

Interrogatory No. 9

Describe with particularity the process(es) that SCO undertook to determine that LINUX infringed the intellectual property rights of SCO, including without limitation, the date the process(es) began, the intellectual property rights examined or analyzed, the identity of all persons involved in determining for SCO that LINUX infringed the intellectual property rights of SCO and each such persons specific role(s), and all reports or other documents concerning the infringement of SCO's intellectual property rights that were generated.

Interrogatory No. 10

Identify the manner in which any SCO LINUX product that contains any code corresponding to the LINUX code identified in Interrogatory Numbers 5(b) or 7(a) above was marketed and created, identify the extent of any modifications to non-SCO LINUX that SCO made in creating SCO LINUX, and identify the individuals involved with the marketing and creation of such SCO LINUX product(s).

Interrogatory No. 11

For the period from 1993 to present, identify each and every version of UNIX (including each UNIX kernel or UNIX operating system) and LINUX (including each LINUX kernel or LINUX operating system) that SCO, or any company that was or is affiliated with SCO, has sold, licensed, distributed, or otherwise transferred rights to.

Interrogatory No. 12

Identify each license, including the parties, dates and terms, that SCO has executed or negotiated since January 1, 2003 in conjunction with any licensing initiative, licensing program,

SCO source, or otherwise in conjunction with SCO's claims that LINUX infringes any of SCO's copyrights, trade secrets or other intellectual property rights of SCO.

Interrogatory No. 13

Identify each LINUX end user or potential LINUX end user that SCO has contacted concerning its claims that LINUX infringes SCO's copyrights, trade secrets or other intellectual property rights of SCO.

Interrogatory No. 14

Identify each person that SCO has shown examples of UNIX or LINUX source code that SCO claims provides a basis for any of SCO's claims that LINUX infringes any of SCO's copyrights, trade secrets or other intellectual property rights of SCO, including all persons that viewed such examples at any "viewing facility" established by SCO.

Interrogatory No. 15

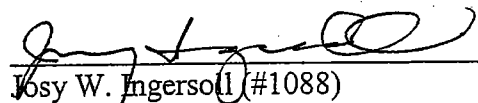
Identify each and every meeting SCO has had with any financial, stock or industry analyst (including with Deutsche Bank) from January 1, 2001 to present, including without limitation the date of each meeting, the persons that attending each meeting, the subjects discussed at each meeting, and the reason for each meeting.

Interrogatory No. 16

Describe with particularity the relationship between the Canopy Group and SCO, including without limitation, any direct or indirect ownership interests of each company in the other, the

corporate structure of and purpose of the Canopy Group, the instances and amounts of money and stock transferred between SCO and the Canopy Group from January 1, 2001 to the present, any intellectual property transferred between Canopy and SCO from January 1, 2001 to the present, all agreements between SCO and Canopy, including any license agreements, from January 1, 2001 to present.

YOUNG CONAWAY STARGATT
& TAYLOR, LLP



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CERTIFICATE OF SERVICE

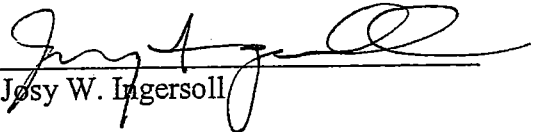
I, Josy W. Ingersoll, Esquire, hereby certify that on September 9, 2003, caused copies of the foregoing document to be served by hand on the following attorneys of record at the addresses indicated below:

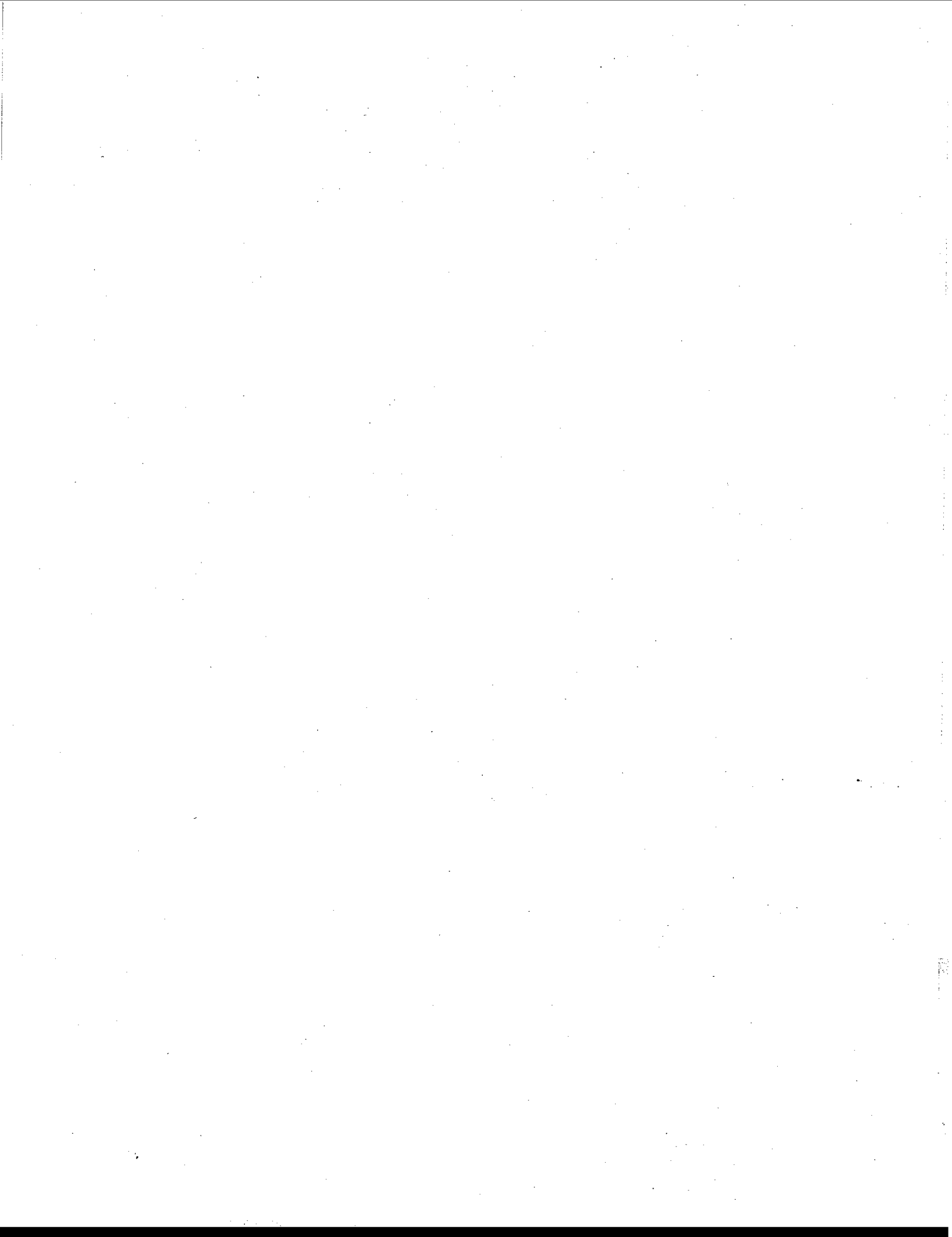
BY HAND:

Jesse A. Finkelstein, Esquire
Richards, Layton & Finger
One Rodney Square
Wilmington, DE 19801

BY FEDERAL EXPRESS:

Stephen N. Zack, Esquire
Boies, Schiller & Flexner, L.L.P.
Bank of America Tower
100 S. East 2nd Street, Suite 2800
Miami, FL 33131


Josy W. Ingersoll



LEXSEE 1995 US DIST LEXIS 5900

WEISMAN v. MEDIQ, INC., et al.

CIVIL ACTION NO. 95-1831

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

1995 U.S. Dist. LEXIS 5900

May 3, 1995, Decided

May 3, 1995, FILED; May 4, 1995, ENTERED

COUNSEL: [*1] For JEFFREY S. WEISMAN, DR.,
PLAINTIFF: BRIAN P. KENNEY, MARK J.
 SCHWEMLER, ELLIOTT, REIHNER,
 SIEDZIKOWSKI, NORTH & EGAN, P.C., BLUE
 BELL, PA.

For MEDIQ, INC., **DEFENDANT:** DAVID H.
 PITTINSKY, BALLARD, SPAHR, ANDREWS AND
 INGERSOLL, PHILA, PA. For MEDIQ IMAGING
 SERVICES, INC., AMERICAN CARDIOVASCULAR
 IMAGING LABS, INC., MEDIQ MOBILE X-RAY
 AND EKG, INC., **DEFENDANTS:** MICHAEL J.
 HOLSTON, PHILA, PA.

JUDGES: Majorie O. Rendell, J.

OPINIONBY: Majorie O. Rendall

OPINION:

MEMORANDUM

Rendell, J.

May 3, 1995

Before the Court are (1) plaintiff's Motion for Leave to Take Expedited Discovery; (2) defendants' Motion to Stay Discovery; and (3) plaintiff's Motion to Compel Non-Party Mediq Mobile X-Ray and EKG, Inc. to Comply with Subpoena. For the following reasons, plaintiff's motions will be denied and defendants' motion will be granted.

I. Background

Plaintiff filed the instant action on March 29, 1995,

alleging various acts of misconduct relating to fraudulent Medicare overcharges in violation of the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962, et seq., the whistleblower provision of the False Claims Act, 31 U.S.C. § 3730(h), and various state [*2] laws. Defendants filed a motion to dismiss on May 2, 1995.

Prior to the filing of the motion to dismiss, the parties filed the three discovery motions now before the Court. Plaintiff's two motions respectively seek leave to take expedited discovery of both defendants and non-parties, and to compel one non-party to comply with a subpoena previously issued by plaintiff. Defendants' motion seeks a stay of discovery during the pendency of the motion to dismiss.

II. Discussion

As grounds for its motion to expedite, plaintiff contends that defendants are currently engaged in a whitewashing scheme to disguise their alleged misconduct, which scheme may include destruction of evidence, attempts to mislead potential witnesses, and other like acts. Plaintiff offers no evidence of such a scheme, other than two letters authored by defendant Stephen Doppelt, an executive of Mediq Imaging Services, Inc. ("MIS"), in which Mr. Doppelt, writing to MIS clients, addresses certain of the issues raised in plaintiff's complaint. While plaintiff construes these letters as a deceptive attempt to cover up acts of wrongdoing, defendants characterize the letters as a sincere effort to clarify proper [*3] billing procedures in light of the concerns previously raised by plaintiff. n1

n1 Plaintiff also argues that expedited discovery is warranted in light of defendants' alleged current attempt to buy out all of its shareholders and take the company "private." I view this argument as a red herring. Plaintiff fails to articulate any valid reason why such a restructuring should be deemed justification for expedited discovery. A corporation's conversion from public to private status certainly does not entitle it to dispose of documents which may prove relevant to a lawsuit.

These arguments on the issue of expedited discovery must be considered in conjunction with the arguments presented by the parties in regard to defendants' motion to stay discovery. In fact, the motion to expedite is now technically moot. On March 30, 1995, plaintiff provided defendants with its self-executing disclosures pursuant to the Eastern District's Civil Justice Expense and Delay Reduction Plan ("District Plan") Section 4:01, and at that [*4] time made a written demand for early disclosure from defendants pursuant to Section 4:01(a)(1)(D); thirty days having passed since plaintiff's disclosure and demand, plaintiff is now entitled to "seek discovery" from both defendants and non-parties. District Plan, Section 4:01(b). Thus, the relevance of the aforementioned arguments is now directed toward the issue of whether discovery should be stayed rather than whether it should be expedited.

In regard to the motion to stay discovery, courts are empowered under the Federal Rules of Civil Procedure to impose a stay of discovery on a showing of good cause. Fed. R. Civ. P. 26(c); *Howard v. Galesi*, 107 F.R.D. 348 (S.D.N.Y. 1985). In the instant case, defendants argue that their motion to dismiss, now pending, may dispose of the entire action and therefore constitutes good cause for staying the broad discovery sought by plaintiff--as to both defendants and non-parties--until the motion is decided. Plaintiffs respond with three arguments: (1) that defendants cannot ensure that their employees will preserve potentially incriminating evidence (i.e. the arguments raised in support of the motion to expedite); (2) that dismissal of the [*5] entire case is unlikely; and (3) that non-party discovery is of no moment to defendants.

While a court should not automatically stay discovery when a motion to dismiss is filed, a stay is proper where the likelihood that such motion may result in a narrowing or outright elimination of discovery outweighs the likely harm to be produced by the delay. See *Coca-Cola Bottling Co. v. Grol*, 1993 U.S. Dist. LEXIS 3734, at * 6-7 (E.D.Pa.). Where a pending motion

to dismiss may dispose of the entire action and where discovery is not needed to rule on such motion, the balance generally favors granting a motion to stay. See *Rae v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984) (affirming stay where dispositive motion decided strictly on pleadings); *Jackson v. Northern Telecom, Inc.*, 1990 U.S. Dist. LEXIS 3572, 1990 WL 39311, at * 1 (E.D.Pa.) (granting stay under same circumstances); cf. *United Mine Workers of America v. Arch Mineral Corp.*, 145 F.R.D. 3, 7 (D.D.C. 1992) (denying stay where discovery relevant to disposition of motion).

Applying these standards to the case at hand, I conclude that a stay of discovery is appropriate. Having reviewed the motion to dismiss, but without having formed an opinion [*6] as to the merits, I find that the comprehensive motion--which challenges both federal claims as well as all state claims--may be decided on the pleadings and may potentially lead to dismissal of the entire action. The motion is now before me and, assuming that both parties submit response and reply briefs in a timely fashion, will be decided in the near future. By imposing a stay while ruling on the motion, when discovery proceeds the parties will have full knowledge as to which claims are viable and, correspondingly, as to what discovery need occur. In short, the stay will potentially save time and money for all concerned.

Conversely, I do not find that plaintiff will be prejudiced by a stay in any significant way. More specifically, I am not persuaded by plaintiff's contention that a delay will result in loss or alteration of potential evidence or witness testimony. Such conduct would constitute a serious breach of ethics and a possible violation of law. n2 This case is no different from the tens of hundreds of cases where a plaintiff accuses a defendant of fraudulent acts; such accusation does not carry with it a presumption that evidence will be destroyed, nor is the argument [*7] proffered by plaintiff, without evidentiary support, either direct or by inference, sufficiently compelling to create such a presumption.

n2 As mentioned in plaintiff's response brief, defendant Mediq, Inc.'s annual report to the Securities and Exchange Commission acknowledges an ongoing criminal investigation of non-party Mediq Mobile X-Ray relating to improper billing practices, noting its cooperation with authorities. In light of such investigation, defendants are clearly aware of the seriousness of such allegations and the importance of preserving documents and other evidence that may pertain to

such matters.

In regard to the scope of the stay, I will not allow defendants to avoid their responsibility to produce their self-executing discovery in accordance with the District Plan; plaintiff has fulfilled his duty of disclosure, made his demand, and is entitled to reciprocity. I will extend the stay to all non-self-executing discovery, which includes defendants and non-parties alike. Defendants have argued [*8] that allowing non-party discovery to proceed will effectively subject defendants to potentially needless expenses--by way of participation and monitoring of non-party discovery--which the stay is intended to prevent. While I am aware that at least one court has ruled that such burdens do not constitute "good cause" for staying discovery, see *Howard, 107 F.R.D. at 350*, I find that the breadth of non-party discovery sought by plaintiff, combined with the other factors addressed above, warrants granting a stay across the board.

Accordingly, the motion to expedite will be denied as moot and the motion for a stay of discovery will be granted. In light of the stay to be imposed, the motion to compel non-party compliance with subpoena will be denied without prejudice to plaintiff's ability to refile the motion if and when the stay is lifted.

ORDER

AND NOW, this 3rd day of May, 1995, upon consideration of (1) plaintiff's Motion for Leave to Take Expedited Discovery; (2) defendants' Motion to Stay Discovery; and (3) plaintiff's Motion to Compel Non-Party Mediq Mobile X-Ray and EKG, Inc. to Comply with Subpoena, and all responses and replies thereto, for the reasons addressed in an [*9] accompanying Memorandum, it is hereby ORDERED:

1. Plaintiff's Motion for Leave to Take Expedited Discovery is DENIED AS MOOT.

2. Defendants' Motion to Stay Discovery is GRANTED, in that all non-self-executing discovery is hereby STAYED, as to defendants and non-parties alike, until further ordered by this Court.

3. Plaintiff's Motion to Compel Non-Party Mediq Mobile X-Ray and EKG, Inc. to Comply with Subpoena is DENIED WITHOUT PREJUDICE. Should circumstances warrant the refile of this motion if and when discovery is reopened, plaintiff is granted leave to do so.

BY THE COURT:

Marjorie O. Rendell, J.



LEXSEE 1990 US DIST LEXIS 3572

ARTHUR JACKSON v. NORTHERN TELECOM, INC., MICHAEL
LOPIANO, RALPH PAPA, PETER DEPIERRO, NANCY GALLIGAN, AND
JOHN KILCOYNE

Civil Action No. 90-0201

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

1990 U.S. Dist. LEXIS 3572

March 29, 1990, Decided; March 30, 1990, Filed; April 2, 1990, Entered

LexisNexis (TM) HEADNOTES - Core Concepts:

COUNSEL: [*1]

Arthur Jackson, Esq., Philadelphia, Pennsylvania,
for Plaintiff.

NORTHERN TELECOM; MICHAEL LOPIANO;
RALPH PAPA, PETE DIPIERRO; NANCY
GALLIGAN; JOHN KILCOYNE: Bertrand Pogrebin,
Esq., Alan C. Becker, Esq., Richard G. Kass, Esq.,
RAINS & POGREBIN, P.C., Mineola, New York, Pro
Hac Vice.

OPINIONBY:

NAYTHONS, Magistrate

OPINION:

MEMORANDUM AND ORDER

EDWIN E. NAYTHONS, UNITED STATES
MAGISTRATE

Presently before the court are plaintiff's motion to compel discovery and defendants' cross-motion to stay discovery until defendants' motion to dismiss the complaint is ruled upon. For the reasons which follow, defendants' motion to stay discovery is granted. The court will reserve its ruling on plaintiff's discovery motion until such time as this court rules upon defendants' motion to

dismiss.

DISCUSSION

A district court may properly exercise broad discretion in discovery matters. *Scroggins v. Air Cargo, Inc.*, 534 F.2d 1124, 1133 (5th Cir. 1976). See, e.g., *Swanner v. United States*, 406 F.2d 716, 719 (5th Cir. 1969). In particular, a United States Magistrate is given broad discretion to stay discovery pending decision on a dispositive motion. *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1560 [*2] (11th Cir. 1985); *Scroggins, supra*, at 1133 ("no possible abuse of discretion in order staying general discovery until the court could determine whether the case would be resolved at summary judgment stage"); *Swanner, supra*, at 719. See, e.g., *Ingram Corp. v. J. Ray McDermott & Co.*, 698 F.2d 1295, 1304 n.13 (5th Cir. 1983) ("decision to prevent unnecessary discovery because the case could well be decided on the parties' motions"). An exception is made when a party would be denied discovery which relates to the dispositive motion. See *Scroggins, supra*, at 1133. However, that circumstance is not present in the instant matter.

In the present matter, defendants have informed the court that they "will serve their motion to dismiss the complaint on April 6, 1990," see, March 27, 1990 letter to the court from Richard G. Kass, Esquire, and that all discovery relevant to such a motion has been completed. See, defendants' reply brief, at 2. Therefore, in the interest of judicial economy, and with a view toward

preventing possibly unnecessary and expensive discovery, this court will grant defendants' motion to stay discovery. See *Ingram Corp., supra*, at 1304 n. 13; [*3] *Scroggins, supra*, at 1133. Cf. *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30 (3d Cir. 1970).

An appropriate order follows.

ORDER

AND NOW, this 29th day of March, 1990, upon consideration of defendants' cross-motion to stay discovery until defendants' motion to dismiss is ruled upon, it is hereby ORDERED that defendants' motion is GRANTED. All discovery is hereby stayed until such time as the court rules upon defendants' motion to dismiss the complaint, said motion to be made by April 6, 1990.

CERTIFICATE OF SERVICE

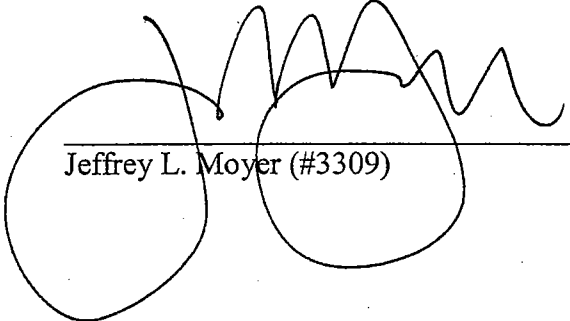
I do hereby certify that on this 1st day of October, 2003, a true and correct copy of the within document was caused to be served on the attorneys of record at the following addresses in the manner indicated:

HAND-DELIVERED:

Josy W. Ingersoll
Adam W. Poff
Young, Conaway, Stargatt & Taylor LLP
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, Delaware 19899

VIA FEDERAL EXPRESS:

William F. Lee
Mark G. Matuschak
Michelle D. Miller
Doland R. Steinberg
Hale and Dorr, L.L.P.
60 State Street
Boston, MA 02109



Jeffrey L. Moyer (#3309)