

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE SCO GROUP, INC.,

Plaintiff,

v.

DAIMLERCHRYSLER CORPORATION,

Defendant.



Civil Action No. 04-056587-CKB

Honorable Rae Lee Chabot

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**SUPPLEMENTAL AFFIDAVIT OF WILLIAM BRODERICK**

WILLIAM BRODERICK, being duly sworn, deposes and says:

1. I am the Director of Software Licensing at the SCO Group, Inc. ("SCO"), and I submit this supplemental affidavit based on my personal knowledge and in opposition to DaimlerChrysler Corporation's ("Daimler") motion to strike several paragraphs of an affidavit I swore to on June 15, 2004 ("June 15 Affidavit"), which was submitted in connection with SCO's opposition to Daimler's motion for summary disposition. If sworn as a witness, I can testify competently to the facts stated herein.

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2. I understand that Daimler has asked the Court to disregard portions of my June 15 Affidavit, claiming that I lacked personal knowledge to make certain of the statements made in that document. I will attempt to provide fuller detail below about my personal knowledge underlying the statements made in the June 15 Affidavit.

**Personal Knowledge of and Involvement With  
the License Agreement At Issue In This Case**

3. First, Daimler is not correct in asserting that I could not have any personal knowledge about the Software Agreement, numbered SOFT-01341, dated September 2, 1988 ("License Agreement"), which is at issue in this case, before May 2001, when I began working for SCO.

4. As I stated in paragraph 2 of the June 15 Affidavit, I have been involved in sales and licensing of UNIX System V software for SCO *and its predecessors* since 1991.

5. From December 1991 through February 1993, I was the manager of sales operations at UNIX Systems Laboratories. UNIX Systems Laboratories was a subsidiary of AT&T. As sales manager, I was responsible for generating sales forecasts, managing the expenses for the sales force, managing the sales compensation plan, and generally assisting and supporting the sales force in connection with the sale of UNIX System V source licenses and related products. Although I worked with UNIX Systems Laboratories, my employer was AT&T. AT&T Information Systems, Inc., the original party to the License Agreement, was an operating subsidiary of AT&T.

6. In February 1993, UNIX Systems Laboratories merged with Novell, Inc. Shortly after the companies merged, I assumed the position of contracts manager, with direct responsibility for the licensing of UNIX System V source code. My job included

issuing licenses for new releases of source code to existing customers as well as new licensees, monitoring licensees' compliance with the obligations of their respective license agreements, working with the finance department to track and monitor the revenue streams earned from license agreements, and generally working with licensees in the daily application of the terms of their license agreements.

7. In 1996, The Santa Cruz Operation, Inc. purchased the UNIX business from Novell, Inc. While the business changed hands, I remained as contracts manager, with essentially the same responsibilities as I had before the acquisition. In addition to licensing UNIX System V source code, I also became responsible for licensing UNIX System V packaged products. A UNIX System V packaged product license differs from a UNIX System V source license in that it only allows a licensee to use a binary run-time copy of the UNIX System V software, not modify it. In contrast, the UNIX System V source license provides the licensee with access to the software source code so the source code can be modified to meet the licensee's commercial needs.

8. In May 2001, SCO (then named Caldera International, Inc.) purchased the UNIX business from The Santa Cruz Operation, Inc. From May 2001 until the present, I have served in the role of the Director of Software Licensing at SCO. My job duties as Director of Software Licensing are the same as when I was contracts manager. I am responsible for managing software licensing activities, including reviewing and monitoring licensees' compliance with the obligations of their respective license agreements and working with licensees in the implementation of the license agreements.

9. I have been familiar with the License Agreement at issue in this case since 1993, shortly after I became contracts manager at Novell, Inc.



10. To familiarize myself with the customers and relationships for which I was at that time assuming responsibility, I reviewed all the license agreements Novell or its predecessors were party to, including the License Agreement with Daimler. I reviewed the terms and conditions of each license and any amendments or special letter agreements. It was at that time that I first personally familiarized myself with the License Agreement and Supplements at issue in this case.

11. My responsibilities over the past 11 years have required familiarity with the UNIX System V source code License Agreement, research into any amendments to the License Agreement, issuance of supplements to the License Agreement, monitoring (with the finance department) the revenue streams derived from the License Agreement, and answering questions from the sales department and from customers regarding their rights and responsibilities under the License Agreement. For years I worked closely with and was trained by the very lawyers and contract managers from Western Electric (later AT&T Information Systems) who had been involved with the UNIX System V source code License Agreement from its inception.

12. During the past decade, I have been called upon to apply the terms and conditions of the UNIX System V source code License Agreement that is the subject of this lawsuit. I have personally managed the relationships of hundreds of UNIX System V licensees under licenses containing the same provisions as are found in the License Agreement at issue in this proceeding. In the course of my work, I have gained personal knowledge of and experience with these license provisions.

**Paragraph 8, 56 and 57  
of the June 15 Affidavit**

13. Daimler seeks to strike paragraph 8 of my June 15 Affidavit. That paragraph merely states the date and title of the License Agreement and states that a copy of the License Agreement is attached to the affidavit.

14. As the Director of Software Licensing and the employee in charge of managing the License Agreement, I have personal knowledge of the dates on the License Agreement indicating when it was entered into. In addition, I am personally responsible for maintaining the system that contains all of SCO's license agreements, including the License Agreement that is the subject of this action. SCO maintains custody of all of its license agreements in this way.

15. Daimler also seeks to strike paragraphs 56 and 57 of the June 15 Affidavit. Inasmuch as I am responsible for maintaining custody of the License Agreement, I am also responsible for maintaining the custody of any amendments to the License Agreement, such as the two Supplements executed on April 14, 1992. As with paragraph 8, paragraphs 56 and 57 of my June 15 Affidavit simply recite the terms of the Supplements and state that true and correct copies of the documents are attached to my affidavit.

16. The License Agreement and Supplements were made and kept in the regular course of SCO's business.

17. It was routine for SCO to enter into license agreements and supplements, such as the License Agreement and Supplements between SCO and Daimler.

18. The License Agreement and Supplements were made at or near the time they were executed by persons at SCO or its predecessors who were acting in the regular course of SCO's business in doing so.

**Paragraphs 10 Through 24  
of the June 15 Affidavit**

19. Daimler also seeks to strike paragraphs 10 through 24 of the June 15 Affidavit.

20. As noted above and in the June 15 Affidavit, I am responsible for managing all UNIX System V source code licensing activities. As such, I am responsible for understanding the terms and conditions of the License Agreement and applying those terms on a day-to-day basis in SCO's relationships with its licensees.

21. In paragraphs 10 through 24 of the June 15 Affidavit, I either quoted certain provisions of the License Agreement (for example, ¶ 11); restated the subject of certain provisions of the License Agreement (for example, ¶ 12); or set forth a general statement of the subject of certain provisions of the License Agreement followed by a full quotation of the pertinent provisions of the License Agreement (for example, ¶ 16).

**Paragraphs 35, 44, 45 and 59  
of the June 15 Affidavit**

22. Daimler seeks to strike paragraphs 35, 44, 45 and 59 of the June 15 Affidavit. As I have noted above, in my current position at SCO and in previous positions at SCO's predecessors, my responsibilities have included working with customers that have licensed UNIX System V source code under the License Agreement. As part of my job, I have frequently contacted licensees with questions about Designated CPUs under the License Agreement. I have also worked with licensees to resolve



questions about their rights of access to particular source code under the UNIX System V License Agreement. Because of my interaction with many UNIX System V licensees over the past 11 years, I have experience and understanding of how long it normally takes a licensee to respond to questions regarding the status and implementation of its UNIX System V license. It is on this basis that I believe I am qualified to estimate the amount of time it should take a licensee with a functioning Information Technology ("IT") department that maintains control of its licensed third-party software to respond to a certification request under the License Agreement, as I did in paragraph 35 of the June 15 Affidavit.

23. The duties of my current position also require me to monitor and manage compliance with the UNIX System V License Agreement, including the requirements for obtaining certifications required under Section 2.05 of the License Agreement. As such, I am fully familiar with the provisions of the License Agreement that bear upon certifications under Section 2.05 of the License Agreement. In order to do my job, I must apply these provisions in situations in which SCO has requested a licensee to certify compliance with the License Agreement, including those situations in which the licensee indicates that it has stopped using UNIX System V on its Designated CPUs. In paragraphs 44, 45 and 59 of the June 15 Affidavit, I state my understanding of the application of the provisions of the License Agreement that deal with the interplay of certification of compliance, termination of the license and confidentiality.

24. In paragraphs 35, 44, 45 and 59 of the June 15 Affidavit, therefore, I stated my knowledge and understanding of what it means to act in accordance with and to

comply with Section 2.05 of the License Agreement based on my experience over a decade with the UNIX System V licensing program.

**Paragraphs 25 and 26 of the  
June 15 Affidavit**

25. Daimler seeks to strike paragraphs 25 and 26 of my June 15 Affidavit. The statements in these paragraphs are based upon my personal knowledge acquired from over twenty years' experience in the computer industry, including my knowledge of the market for UNIX System V products.

26. My knowledge of the industry was based on my work for computer manufacturers Perkin-Elmer and Concurrent Computer Corporation, before joining AT&T, keeping abreast of industry market research, and communications with customers and licensees. Specifically, in the decade between 1980 and 1990, during which time Daimler signed the License Agreement, I observed a shift on the part of large commercial computer purchasers toward the use of UNIX as a primary operating system and movement away from the use of proprietary operating systems that computer manufacturers had developed to run on their own computers. This is the basis for my statement in paragraph 25 of my June 15 Affidavit regarding Daimler and other companies' reliance on UNIX as a core operating system in the late 1980s.

27. In my sales, contract management and software licensing positions, it has been my responsibility to be aware of market trends and data, including sales and economic information about UNIX and its competitors. Linux was not a competitor of UNIX in 1988. Linux was not even in existence in 1988, as it was first created in 1991 by Linus Torvalds, who was then a student at Helsinki University, and its first version did not appear until 1994. My observation about a lack of commercial awareness of Linux at



the time Daimler signed the License Agreement is simply a logical conclusion from the facts of which I am aware regarding the industry.

**Paragraphs 28 and 65 of  
the June 15 Affidavit**

28. Daimler seeks to strike paragraphs 28 and 65 of the June 15 Affidavit in which I stated that Daimler has utilized Linux since at least October 2002 and that it is now using Linux. I have knowledge of those facts from Daimler's own admissions in public statements. Attached hereto as Exhibit A is an article that appeared in *Computerworld*, dated October 21, 2002, reporting Daimler's statements to this effect.

**Paragraphs 62 Through 64  
of the June 15 Affidavit**

29. Finally, Daimler is challenging my statements in paragraphs 62 through 64 of the June 15 Affidavit, regarding Daimler's employees' access to and knowledge of UNIX System V source code.

30. In those paragraphs I made factual statements based on my personal knowledge of Daimler's right of access to UNIX System V source code under the License Agreement. Through my job responsibilities, I have knowledge of the software product provided to Daimler, and I know for how long Daimler employees have had access to UNIX System V source code.

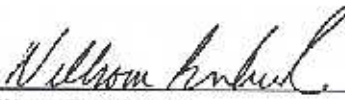
31. I also know that because the License Agreement was a source code license agreement, Daimler obtained the right to use and make certain modifications to the UNIX System V source code. The very purpose of a source code license is to allow a licensee to modify UNIX System V to meet its commercial needs. If a licensee did not want to use or modify UNIX System V source code, it need not purchase a source license, but

could instead obtain a far less expensive packaged product license. A packaged product license costs one-tenth of what a source code license costs. Daimler paid \$65,000 for its source license. Had Daimler not intended to modify the UNIX System V source code for its commercial purposes, it could have purchased a run time copy of UNIX System V software from a computer manufacturer for only a few thousand dollars.

32. I know through my last decade of working with UNIX System V that such modifications to the UNIX System V source code for the purpose of customizing the software cannot take place without gaining an understanding of the Unix System V source code and the methods and concepts contained within, as stated in paragraph 63 of my June 15 Affidavit.

33. I also understand that Daimler actually utilized the UNIX System V source code because in 1992 it changed the designated computers on which it was authorized to use UNIX System V, a modification of its license that would have been unnecessary had Daimler not been using UNIX System V source code to meet its commercial needs. In addition, Daimler admitted in its April 6, 2004 letter responding to SCO's certification request that it used UNIX System V source code as recently as seven years ago. Finally, I can ascertain that Daimler used and modified UNIX System V source code because it purchased in October 1997, a "read only" reference copy of a later UNIX System V release, UnixWare 2.1, presumably to aid it in its work with the earlier version of the UNIX System V source code.

34. To the extent that I do not have personal knowledge of how Daimler modified the UNIX System V source code, that information may be obtained from Daimler's IT program manager responsible for the UNIX System V source code licensed from SCO and its predecessors and those Daimler employees who were granted access to that code.

  
\_\_\_\_\_  
William Broderick

Sworn to before me this  
15<sup>th</sup> day of July, 2004

  
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Notary Public  
SHIRLEY REINHARD  
NOTARY PUBLIC OF NEW JERSEY  
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## Chrysler adopts Linux for vehicle crash testing

News Story by [Todd R. Weiss](#)

OCTOBER 21, 2002 (COMPUTERWORLD) - Chrysler Group is using a new Linux cluster computer for crash simulation testing and analysis in an effort to make safer cars and trucks.

In an [announcement](#) today, Chrysler, a unit of Germany-based DaimlerChrysler AG, said the new system is expected to improve simulation performance by 20%, while saving about 40% in costs compared with the Unix-based hardware used previously.

The new system, which has been running at the Chrysler Group Technology Center in Auburn Hills, Mich., since August, was built by IBM using 108 IBM IntelliStation M Pro 6850 workstation PCs -- each equipped with dual 2.2-GHz Intel Xeon processors and Red Hat Linux. The cluster is running modified LS-DYNA crash-testing software from [Livermore Software Technology Group](#) in Livermore, Calif. The software was originally designed for Unix operations.

The system includes 2.6TB of disk space in a TotalStorage FAST500 storage device attached through Gigabit Ethernet.

Mary Beth Halprin, a spokeswoman for Chrysler Group, said the idea of using a Linux cluster for crash simulation testing came from Chrysler IT workers who saw Linux being used in a wider range of applications in many businesses.

"This was one area where they saw different activity going on in other industries and they thought this might work for us," Halprin said.

The crash simulation software tells vehicle engineers what happens to the passengers in a crash and how a vehicle, including interior and exterior materials, reacts to the stresses of impact, she said.

"We try to look at a whole series of factors," Halprin said.

Using Linux and the new supercomputer cluster, some 18 simultaneous impacts can be conducted at once. The new system replaces three previous supercomputer clusters that ran Unix, she said.

The price tag for the deal isn't being released. Cost savings were a major motivator for the project, which was first considered about a year ago.

For years, automakers have used supercomputers costing tens of millions of dollars to do crash simulation testing of their vehicles, according to Chrysler. By the late 1990s, Unix clusters were brought

in to do the work at a lower cost.

This is believed to be the first time a Linux cluster is being used by an automaker for vehicle crash simulation testing, Halprin said. Chrysler said it will consider Linux for other vehicle simulation testing, including computational fluid dynamics, noise vibration and metal forming.

Karen Smith, vice president of Linux strategy at IBM, said the deal shows that IBM is beginning to see Linux used in new applications every day in corporate computing. The cluster signals a marked change in the price/performance curve seen in the past for this kind of analysis, she said.

"This is yet another leap in the curve," Smith said. "We're starting to see increased uses of Linux technology and are leveraging it into other workloads."