

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
 )  
The SCO GROUP, INC., et al.,<sup>1</sup> ) Case No. 07-11337 (KG)  
 ) (Jointly Administered)  
 )  
Debtors. )

Objection Deadline: June 10, 2008 at 4:00 p.m. (prevailing Eastern time)  
Hearing: June 17, 2008 at 2:00 p.m. (prevailing Eastern time)

**SECOND MOTION BY DEBTORS UNDER SECTION 1121(d)  
FOR EXTENSION OF EXCLUSIVITY DEADLINES**

For cause shown, the above captioned Debtors<sup>2</sup> request the Court to extend the Debtors' exclusive period to file and seek approval from impaired classes of claims and interests, if any, for a plan of reorganization (collectively, the "Exclusive Periods") for an additional 90 days through and including August 11, 2008, and October 13, 2008, respectively. In support of this motion (the "Motion"), the Debtors state:

**Jurisdiction and Background**

1. The Court has jurisdiction over the matters subject of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The procedural predicates for the relief sought herein is 11 U.S.C. § 1121(d), implemented by Fed.R.Bankr.P. 3016.

2. On September 14, 2007 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

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<sup>1</sup> The Debtors and the last four digits of each of the Debtors' federal tax identification numbers are as follows: (a) The SCO Group, Inc., a Delaware corporation, Fed. Tax Id. #2823; and (b) SCO Operations, Inc., a Delaware corporation, Fed. Tax ID. #7393.

<sup>2</sup> The Debtors and the last four digits of each of the Debtors' federal tax identification numbers are as follows: (a) The SCO Group, Inc., a Delaware corporation, Fed. Tax Id. #2823; and (b) SCO Operations, Inc., a Delaware corporation, Fed. Tax ID. #7393. The address for both Debtors is 355 South 520 West, Lindon, Utah 84042.

3. For greater detail regarding the background of the Debtors' business and events leading up to the filing of these cases, the Debtors refer the Court and parties to the *Declaration of Darl C. McBride, Chief Executive Officer of the Debtors, in Support of First Day Motions* (the "McBride Declaration") filed on the Petition Date and incorporated herein.

4. Pursuant to 11 U.S.C. § 1121(b), the initial period in which only the Debtors may file a plan was scheduled to expire on January 12, 2008. On January 2, 2008, the Debtors filed the *Motion by Debtors Under Section 1121(D) for Extension of Exclusivity Deadlines* (D.E. No. 289). On February 5, 2008, the Court entered the *Order Pursuant to 11 U.S.C. § 1121(d) Further Extending Debtors' Exclusive Periods in Which to File a Chapter 11 Plan and Solicit Votes Thereon* (D.E. No. 329) extending the Debtors' exclusive period for filing a chapter 11 plan through May 11, 2008 and the exclusive period to solicit acceptances of such plan through July 11, 2008.

5. On February 29, 2008, the Debtors filed the *Debtors' Joint Plan of Reorganization* (the "Plan") (D.E. No. 368) and the *Disclosure Statement in Connection with Debtors' Joint Plan of Reorganization* (the "Disclosure Statement") (D.E. #369). In summary, the Plan provided for payment in full and with interest to all creditors, including Novell and IBM on the earlier of the effective date or the date such claims became allowed. The mechanism for implementation of the Plan included: (i) the extinguishment or cancellation of existing stock in SCO Group, in favor of new securities to be issued as provided for in the Plan (ii) the issuance of preferred and common stock in the reorganized SCO Group, including preferred stock (convertible to at least 51% of the common stock) issued to Stephen Norris Capital Partners, LLC ("SNCP"), and issuance of all the common stock (representing between 15 – 49% of the

reorganized entity's equity securities) to a trust for the benefit the current holders of equity interests (and equity equivalents) in SCO Group, (iii) payment by SNCP of \$5,000,000, which would be used to fund the Plan, as well as (iv) establishment of a non-revolving line of credit in an amount up to \$95,000,000 with SNCP. Various parties in interest filed objections to the Disclosure Statement, relating to, among other things: (a) the relatively high leverage ratio required by the Plan, and the high interest cost of the debt component contemplated by the Plan, and (b) various uncertainties pertaining to the Novell litigation pending in Utah District Court, and the difficulties of evaluating and confirming the Plan before the District Court rendered a final ruling therein.

6. Within the extended Exclusive Periods, the Debtors have filed the Plan. Since the filing of the Plan, the Debtors and SNCP have been working to modify the financial structure of the Plan in order to, among other things, improve its debt/equity ratio. The parties continue to make good faith progress towards improving the structure of the transaction.

7. In addition, during this period, the Utah District Court has made substantial progress toward issuing a final ruling in the Novell case, and in fact completed its four-day trial so that the parties are presently awaiting its final judgment. In its Trial Brief and counsel's opening statement, Novell reduced the amount of its maximum claim against the SCO Group, Inc. by more than a third, from \$31 million to approximately \$20 million.<sup>3</sup> The impact of this improved position is now being considered in the negotiations regarding the terms of the transactions the Debtors propose with SNCP.

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<sup>3</sup> Novell filed a proof of claim (Claim No. 146) in the principal amount of \$20,906,110 and prejudgment interest of at least \$10,000,000. Novell's counsel remarked to the Utah Court that it now seeks a judgment of \$19,979,561. See Excerpt of May 2, 2008 Transcript (Novell's closing argument), pp. 699 - 701, lines 20 - 11 (attached as **Exhibit A** hereto).

8. In addition, the Utah District Court suggested on the record that it will issue its final judgment “without undue delay”, and solicited proposed Findings of Fact and Conclusions of Law from the parties. In doing this, the Utah District Court expressly acknowledged the need for expeditious determination (evidently alluding to the pendency of these Chapter 11 cases). On this basis, the Debtors anticipate and are hopeful that the Utah District Court will issue its ruling within 45 to 60 days. Such a ruling will eliminate a substantial uncertainty surrounding the Plan and otherwise help the process of confirming it.

### **Relief Requested**

9. By this motion, the Debtors seek to extend the section 1121(b) deadline to August 11, 2008 and to extend the exclusive period to solicit a plan through and including October 13, 2008. The Debtors submit that section 1121(d) and existing case law amply support such an extension.

10. The court may extend the exclusive period within which only a debtor may file a plan for “cause.” 11 U.S.C. § 1121(d). Section 1121(d) of the Bankruptcy Code grants this Court authority to extend the Exclusive Periods “for cause” after notice and hearing. Although the Bankruptcy Code does not define the term “cause” in this context, the legislative history indicates that “cause” should be interpreted flexibly “in order to allow the debtor to reach an agreement.” H.R. Rep. No. 95, 95<sup>th</sup> Cong., 1st Sess. 232 (1997): see also, In re McLean Indus., Inc., 87 B.R. 830, 833 (Bankr. S.D. N.Y. 1987) (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. 231 (1978), reprinted in 1978, U.S.C.C.A.N. 5963, 6190) and In re Public Serv. Co. of New Hampshire, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (“[T]he legislative intent . . . [is] to promote maximum flexibility.”).

11. To facilitate this legislative intent, the court should give a debtor a reasonable opportunity to negotiate an acceptable plan with creditors and to prepare adequate financial and non-financial information concerning the ramifications of any proposed plan for disclosure to creditors. See, e.g., In re McLean Indus., Inc., 87 B.R. at 833-34; In re Texaco Inc., 76 B.R. 322, 327 (Bankr. S.D. N.Y. 1987).

12. The decision to extend a debtor's exclusive period is committed to the sound discretion of the bankruptcy court, based upon the facts and circumstances of each particular case. See, e.g., First American Bank of New York v. Southwest Gloves and Safety Equip., Inc., 64 B.R. 963, 965 (D. Del. 1986).

13. A determination of whether "cause" exists to extend such time will depend on the facts and circumstances of the case. Factors a court considers in determining cause include:

- a. The size and complexity of the case;
- b. The necessity of sufficient time to negotiate and prepare adequate information;
- c. The existence of good faith progress toward reorganization;
- d. Whether the debtor is paying its debts as they come due;
- e. Whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- f. Whether the debtor has made progress in negotiating with creditors;
- g. The length of time the case has been pending;
- h. Whether the debtor is seeking the extension to pressure creditors; and
- i. Whether unresolved contingencies exist.

In re Dow Corning Corp., 208 B.R. 661, 664 – 665 (Bankr. E.D. Mich. 1997) (citing In re Express One Int’l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996)); In re McLean Indus., Inc., 87 B.R. 830 (Bankr. S.D.N.Y. 1988); In re Wisconsin Barge Line, Inc., 78 B.R. 946 (Bankr. E.D. Mo. 1987)).

14. The Debtors believe that cause exists because, among other things:
  - a. The Debtors’ cases are complex;
  - b. The ruling by the Utah District Court will help the transaction parties complete the final negotiations and documentation for their deal, by resolving a substantial uncertainty affecting the Debtor. The 90-day extension will provide the necessary time to negotiate and prepare adequate information to amend the Plan and revise the Disclosure Statement, including the definitive documents required for the transaction;
  - c. The Debtors have made good faith progress toward reorganization;
  - d. The Debtors are paying their debts as they come due;
  - e. The Debtors have and can demonstrate reasonable prospects for filing a viable amended plan that will pay creditors in full with interest;
  - f. The cases have been pending for less than eight months; and
  - g. The Debtors are not seeking an extension of the Exclusive Periods to pressure creditors or equity security holders.
  - h. The Utah District Court ruling will resolve a substantial unresolved contingency, regarding the amount (if any) of the Debtor’s liability to Novell.

15. An extension of the Exclusive Periods will allow the Plan to reflect the results of the just completed Utah District Court trial, which will constitute a final trial court ruling on the issue of Novell’s and SCO Group’s rights in the Unix and Unixware intellectual property. Moreover, as Novell previously argued in this case, at the least, the Utah District Court

ruling will in all events provide that Court's final ruling on the amount of Novell's claim against the estate, even if the entire judgment is under appeal.

16. This Court itself recognized the difficulties of progressing and seeking confirmation of a Plan before the conclusion of the Utah District Court proceedings. *See* Memorandum Opinion (D.E. No. 232), p. 11, fn. 7. In addition, Novell has also expressed its opinion that "SCO's plan must take into account the amount of Novell's claim and what cash it has that does not belong to Novell. Determination of the remaining issues in the District Court Action will clarify these important subjects, too." *See* Novell Stay Relief Motion (D.E. No. 89), p. 6, ¶13.

17. The Debtors believe that their Plan should reflect the results of the Utah District Court's recently concluded trial, and that filing an amended plan now would waste the estates' assets.

18. The trial concluded on May 2, 2008 and the Utah District Court indicated a ruling would be forthcoming soon. The Debtors anticipate that a ruling will be issued within 45 to 60 days. The Debtors, therefore, request a period of 30 to 45 days after that anticipated event, corresponding with a date 90 days after the current Exclusive Periods, to maintain their exclusivity under section 1121.

#### **Notice**

19. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; (ii) the creditors holding the 20 largest unsecured claims against the Debtors' estates (on a consolidated basis); and (iii) any party which has filed a request for notices with this Court prior to the date of this

Motion. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors request that the Court enter an order granting this motion and extending the Debtors' exclusivity periods as requested herein, and granting them whatever other and further relief the Court deems just and appropriate.

Dated: May 9, 2008

PACHULSKI STANG ZIEHL & JONES LLP

  
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