

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
The SCO Group, Inc., .
et al., .
Debtor(s) . Bankruptcy #07-11337 (KG)

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Wilmington, DE
December 5, 2007
10:00 a.m.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

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Proceedings recorded by electronic sound recording, transcript
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1 THE CLERK: Please rise.

2 THE COURT: Good morning, everyone. You may be
3 seated.

4 ALL: Good morning, Your Honor.

5 THE COURT: Thank you. Good morning, Mr. O'Neill.

6 MR. O'NEILL: Good morning, Your Honor, James O'Neill
7 appearing on behalf of the SCO Group. And with me is my
8 colleague Rachel Werkheiser.

9 THE COURT: Ms. Werkheiser, Good morning.

10 MS. WERKHEISER: Good morning.

11 MR. O'NEILL: Your Honor, for today's hearing, last
12 night we filed an amended agenda --

13 THE COURT: Yes, thank you.

14 MR. O'NEILL: -- and a few declarations.

15 THE COURT: Yes, I have it right here.

16 MR. O'NEILL: I do have an folder, Your Honor, which
17 I'd like to hand up which has some of the revised orders that
18 we're going to be going through today and copy of the amended
19 agenda.

20 THE COURT: You certainly may.

21 MR. O'NEILL: May I approach?

22 THE COURT: Yes. Thank you, Mr. O'Neill. Good
23 morning.

24 MR. O'NEILL: Thank you.

25 THE COURT: You're welcome.

1 MR. O'NEILL: The matters on today's agenda, Your
2 Honor, we've spoken a lot with the parties here in the
3 Courtroom today and worked to resolve all of our differences
4 with respect to the matters before the Court today. I'd like
5 to address them just by going down the amended agenda, if I
6 could.

7 THE COURT: Yes, why don't we do that.

8 MR. O'NEILL: Your Honor, #1 on the agenda is the
9 Debtor's Motion to Retain the Mesirow firm. The Court has
10 already acted on that and an order has been entered.

11 THE COURT: Yes.

12 MR. O'NEILL: Item #2, Your Honor, is the Debtor's
13 Motion -- the Cash Management Motion. And Your Honor, this had
14 been approved on an interim basis before subject to final
15 hearing. We've been working with the Office of the United
16 States Trustee on this matter and have agreed upon a final form
17 of order which is acceptable to the U.S. Trustee, and that's in
18 your folder.

19 THE COURT: Excellent. And I'm going to enter that
20 order.

21 MR. O'NEILL: Thank you very much, Your Honor.

22 THE COURT: In fact, I can enter all of these orders
23 at the conclusion rather than take time now.

24 MR. O'NEILL: That's fine, Your Honor. Your Honor,
25 Item #3 is the Debtor's application to employ the Tanner LC

1 firm as accountants. Again, Your Honor, the U.S. Trustee
2 raised a couple of information requests which have been
3 responded to. Tanner filed a supplemental declaration
4 yesterday --

5 THE COURT: Yes.

6 MR. O'NEILL: -- we do have a slightly revised form of
7 order. The only revision from the one filed with the motion is
8 to reference to supplemental declaration. And I believe with
9 that declaration that the retention can be approved.

10 THE COURT: Thank you very much. Mr. McMahan?

11 MR. O'NEILL: And I think that resolves the U.S.
12 Trustee's but I will leave it to Mr. McMahan.

13 THE COURT: Good morning, Mr. McMahan.

14 MR. MCMAHON: Your Honor, good morning, Joseph McMahan
15 for the United States Trustee. In a supplemental declaration,
16 Tanner notes that it is waiving a pre-petition claim of
17 approximately -- a little bit more than \$9,000.

18 THE COURT: Yes.

19 MR. MCMAHON: I just wanted to note that for the
20 record.

21 THE COURT: Thank you, Mr. McMahan. Thank you, sir.

22 MR. O'NEILL: That's item #3 on the agenda. Your
23 Honor, item #4 on the agenda is Mr. Petrofsky's Motion for an
24 Order Deeming Electronic Filing Appropriate. I believe that
25 Mr. Petrofsky is on the phone. From --

1 THE COURT: Yes, he is. I see that.

2 MR. O'NEILL: From reviewing the motion, Your Honor,
3 the Debtor doesn't have any objection to Mr. Petrofsky's
4 request that he be permitted to e-file pleadings. If that's
5 the extent of the relief requested, the Debtor has no objection
6 to that.

7 THE COURT: Mr. Petrofsky, good morning.

8 MR. PETROFSKY: Good morning, Your Honor. This is Al
9 Petrofsky appearing pro se.

10 THE COURT: Yes, sir. Would you like to be heard on
11 and perhaps provide just a little more explanation of the
12 relief you're seeking?

13 MR. PETROFSKY: Yes. Thank you. Well, any order that
14 enables me to register as (indiscern.) would be acceptable to
15 me. If the Debtor has been saying that they think the wording
16 of the proposed order too broad then I'd be happy to discuss
17 different wording with them.

18 THE COURT: Mr. O'Neill, were you concerned about the
19 breadth of the proposed order?

20 MR. O'NEILL: Let me just take a quick look at the
21 honor -- the order --

22 THE COURT: Yes, and I'm going to take another look,
23 too.

24 (Pause in proceedings)

25 MR. O'NEILL: Your Honor, the order as filed with Mr.

1 -- or as submitted with Mr. Petrofsky's motion is fine. It
2 merely would accord Mr. Petrofsky the ability to register for
3 ECF and to e-file documents.

4 THE COURT: Yes.

5 MR. O'NEILL: And so we have included Mr. Petrofsky's
6 order in the folder which you have before you --

7 THE COURT: Oh, thank you.

8 MR. O'NEILL: -- and again we have no objection to
9 entry of the order in this form. We just were a little unclear
10 from the language of the motion, but if electronic filing is
11 that which Mr. Petrofsky seeks, that's fine with us.

12 THE COURT: I'm going to enter the order, Mr.
13 Petrofsky.

14 MR. PETROFSKY: Thank you, Your Honor.

15 THE COURT: Thank you. And you understand, Mr.
16 Petrofsky, that you are limited to filing documents on your own
17 behalf and not for others?

18 MR. PETROFSKY: Yes, Your Honor.

19 THE COURT: Good. Okay, thank you.

20 MR. O'NEILL: Going forward on the agenda, Your Honor,
21 item #5 is a Debtor's Application to Employ the firm of Boies
22 Shiller and Flexner, LLP as special counsel. This matter has
23 been before Your Honor for some time. We had some discussion
24 at earlier hearings about it. We've been continuing to work
25 with the Office of the United States Trustee. We have agreed

1 upon a revised form of order for this retention, and the Boies
2 Shiller firm has also agreed that it will file a supplemental
3 declaration filling in some information requests from the
4 Office of the United States Trustee. That declaration we
5 anticipate will be filed later today, and then when the
6 declaration is filed and the U.S. Trustee has had a chance to
7 take a look at it, we will be submitting under Certification of
8 Counsel the form of order that we've agreed upon with respect
9 to this retention. And I believe that that will resolve the
10 concerns and objections raised by the Office of the United
11 States Trustee, but I will turn it over to Mr. McMahon to
12 confirm.

13 THE COURT: Thank you. Thank you, Mr. O'Neill. Mr.
14 McMahon.

15 MR. MCMAHON: Your Honor, good morning.

16 THE COURT: Good morning again.

17 MR. MCMAHON: We have agreed on a proposed form of
18 order and not to -- there are other changes in the form, but I
19 do want to note one for the record and that is that we have
20 agreed to I guess a resolution on the standard of review that's
21 going to be applied to the fees that are sought by Boies
22 Shiller with connection with the engagement; meaning that any
23 litigation recovery fees will be subject -- and also any
24 transactional recovery fees, using terms defined in the
25 engagement letter, that involve a transaction where either

1 Novell or IBM is a direct party will be subject to the standard
2 of review contained in Section 328(a), the improvidence
3 standard, Your Honor. With respect to any transactional
4 recovery fees where Novell and/or IBM is not a direct party
5 and/or any hourly fees that are referenced in the application,
6 Your Honor, for certain of the arbitration matters, the Gray
7 arbitration and the Souci arbitration --

8 THE COURT: Yes.

9 MR. MCMAHON: -- those matters will be billed on an
10 hourly basis. Again, the other half of the transactional
11 universe, the non-Novell, non-IBM and the hourly rate stuff
12 will be subject to reasonableness review under Section 330.
13 That is the one change I do want to note for the record. There
14 are others but -- and they'll be reflected in the form of
15 order.

16 THE COURT: Excellent.

17 MR. MCMAHON: Thank you.

18 THE COURT: Okay. Thank you very much, Mr. McMahon.

19 MR. O'NEILL: Your Honor, James O'Neill. And again,
20 we will be submitting that under -- that order under
21 Certification of Counsel. Item #6 on the agenda is the
22 Debtor's Motion to Approve the Employment at CFO Solutions to
23 furnish a chief financial officer. This matter has also been
24 before the Court --

25 THE COURT: Yes.

1 MR. O'NEILL: -- for some time as we continue to have
2 discussion with the Office of the United States Trustee. We
3 have concluded those discussions successfully. Yesterday,
4 Kent L. Thomas filed a declaration in support of approval of
5 this motion, and we have agreed upon a form of order, and that
6 form of order is in your folder.

7 THE COURT: Yes.

8 MR. O'NEILL: And I believe that that resolves any
9 concern and the objection raised by the United States Trustee.

10 THE COURT: Thank you. And the order is acceptable to
11 the Court.

12 MR. O'NEILL: Thank you. That's item #6. Item #7,
13 Your Honor, is the Debtor's Motion for Approval of Incipient
14 Controversy. Your Honor, this is an unusual motion, but as the
15 Court is aware from review, there was a transaction that
16 happened pre-petition --

17 THE COURT: Yes.

18 MR. O'NEILL: -- in part and the -- a patent owned by
19 the Debtor was spun off into a wholly owned subsidiary in order
20 to have a sale completed. The filing intervened, and there was
21 no consideration pre-petition for the exchange, and so in order
22 to cure this defect and make sure that the Debtor was fairly
23 compensated for this asset, we brought this motion on to
24 clarify that the proceeds from the sale -- the net proceeds
25 from the sale were going to be remitted up to the Debtor.

1 There were several parties that filed objections to the motions
2 and raised various issues. We have filed several supplemental
3 declarations which sought to fill in the gaps, and we believe
4 with the filing of those, we have filled in the gaps. There's
5 one additional piece that we're waiting on today which is going
6 to be a novation agreement which will clarify that a pre-
7 petition claims owed to Ocean Tomo, the broker, are going to be
8 paid by the subsidiary and not by the Debtor after the sale.
9 We're waiting for execution of that agreement, which we expect
10 to happen today. And similar with the Boies Shiller Motion to
11 Retain, we will be submitting this order under Certification of
12 Counsel after the novation agreement has been signed and the
13 U.S. Trustee has had a chance to take a look at it. But we are
14 agreed, and I believe that the objections have been resolved
15 with the filing of the declarations to provide the additional
16 information. I will note for the record we did hear from 363
17 Group who withdrew their objection, but the balance of the
18 objections I believe are resolved with the filing of the
19 declarations. And once we get the executed novation agreement,
20 we should be in a position to submit a consensual order to the
21 Court which will resolve this motion.

22 THE COURT: Excellent. Mr. Lewis, you've come a long
23 way.

24 MR. LEWIS: Thank you, Your Honor, Adam Lewis of
25 Morrison & Foerster, with Sean Greecher of Young Conaway --

1 THE COURT: Yes, sir.

2 MR. LEWIS: -- who comes along to make sure I don't do
3 anything bad. He's very good at that. I actually was here on
4 the East Coast already anyhow --

5 THE COURT: Okay.

6 MR. LEWIS: -- and given some of the developments, I
7 just felt it was best that we be here.

8 THE COURT: The Court appreciates it.

9 MR. LEWIS: Mr. McMahon -- I'm sorry, Mr. O'Neill
10 correctly states where we are. The Court will recall we filed
11 some objections, the gist of which was we didn't necessarily
12 oppose the sale, we just didn't know enough about it --

13 THE COURT: Exactly.

14 MR. LEWIS: -- and we wanted more information. We've
15 gotten a lot of that information in these declarations. I
16 don't know that we necessarily concur in everything that's
17 said. For example, we have questions about the Debtor's
18 explanation of solvency, but at least we know what the Debtor's
19 explanation is and we have that information in front of us.
20 This is not the biggest issue in the case, and we don't want to
21 stand in the way of a sale that now appears to be for a decent
22 price, and there doesn't appear to be anything unusual about it
23 that would concern us based upon what we've seen. So while we
24 again -- I don't necessarily concede or concur on all of the
25 facts in the declarations, this is not the occasion to go to

1 the mat over something. And so that's where we are. And the
2 additional information I believe Mr. O'Neill mentions is being
3 submitted is really in connection with some of the U.S.
4 Trustee's concerns. Ours are now satisfied.

5 THE COURT: Excellent.

6 MR. LEWIS: Thank you, Your Honor.

7 THE COURT: And the Court understands, Mr. Lewis, and
8 the record reflects that you're not waiving any rights to
9 challenge facts in the declarations that have been filed.

10 MR. LEWIS: Thank you, Your Honor. I appreciate that.

11 THE COURT: Certainly, Mr. Lewis. Thank you, sir.

12 MR. O'NEILL: And Your Honor unless the Court has any
13 questions, I believe that resolves the matters that we have.
14 As I mentioned, we will follow up. Today we expect the
15 additional Singer -- the -- Stewart Singer's declaration for
16 the Boies Shiller retention --

17 THE COURT: Right.

18 MR. O'NEILL: -- and the novation agreement to
19 finalize the Motion to Approve the Compromise, and we'll get
20 those two things done and file those two orders under
21 Certification of Counsel.

22 THE COURT: Thank you very much Mr. O'Neill, and I'll
23 be here and I'll be looking for them, and we'll take action
24 promptly.

25 MR. O'NEILL: Thank you, Your Honor, we certainly

1 appreciate it.

2 THE COURT: I appreciate very much counsel's efforts.
3 It was a lot of work, I know, to bring matters to a resolution
4 and the Court is grateful.

5 MR. MCMAHON: Thank you, Your Honor.

6 THE COURT: Thank you, counsel. We will stand in
7 recess.

8 MR. O'NEILL: Thank you, Your Honor.

9 (Court adjourned)

10

11 CERTIFICATION
12 I certify that the foregoing is a correct transcript from the
13 electronic sound recording of the proceedings in the above-
14 entitled matter.
15

16 *Lewis Parham*

12/12/07

17 _____
18 Signature of Transcriber

Date