

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

Hearing Date: February 5, 2008 at 10:00 a.m. prevailing Eastern time
Objection Deadline: January 29, 2008 at 4:00 p.m. prevailing Eastern time

MOTION BY DEBTORS UNDER SECTION 1121(D)
FOR EXTENSION OF EXCLUSIVITY DEADLINES

For cause shown, the above captioned Debtors¹ request the Court to extend the Debtors' exclusive period to file and seek approval of classes of claims and interests for a plan of reorganization for an additional 120 days through and including May 11, 2008, and July 11, 2008, respectively (collectively, the "Exclusive Periods"). 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.

¹ 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.

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 period in which only the Debtors may file a plan expires on January 12, 2008.

Relief Requested

5. The court may extend the exclusive period within which only a debtor may file a plan for "cause." 11 U.S.C. § 1121(d). By this motion, the Debtors seek to extend the section 1121(b) deadline to May 11, 2008 and to extend the exclusive period to solicit a plan through and including July 11, 2008. The Debtors submit that such an extension is warranted under section 1121(d) and existing case law.

6. Section 1121(d) of the Bankruptcy Code grants this Court authority to extend the Exclusive Periods "for cause" after notice and hearing. Although the term "cause" is not defined by the Bankruptcy Code, the legislative history indicates that it is to be viewed flexibly "in order to allow the debtor to reach an agreement." H.R. Rep. No. 95, 95th 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.").

7. To facilitate this legislative intent, a debtor should be given 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).

8. 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).

9. 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 Express One Int'l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (citing In re Grand Traverse Development Co., Ltd., 147 B.R. 418 (Bankr. W.D. Mich. 1992); 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)).

The Debtors' Exclusive Periods Should Be Extended

10. The Debtors previously expressed their intention and ability to file a plan of reorganization by the statutory 120-day deadline. But certain recent events have put into doubt their ability to do so. Specifically, efforts to arrange a comprehensive sale of the Debtors' Unix business, combined with an additional significant capital infusion and cross-licensing agreement for the Debtors' Me Inc. subsidiary were well advanced when such efforts recently came to a halt in mid-November.

11. In addition, the Debtors' intention to file a plan which would include disposition of the Unix business was challenged by Novell, Inc. in its objection to the Debtors' motion for approval of bid procedures for the sale of that part of the debtors' business. (D.E. 179). Novell argued that it is too soon to contemplate a sale of the Unix business because what assets the Debtors had to sell in the first place was a threshold issue that must be determined before any sale can be contemplated. Id. at ¶¶ 17, 22. Novell made a similar argument in its motion for relief from the stay. (D.E. 89, pp. 3, 6, 10 – 11, 14).

12. While the Debtors were of the view that careful drafting could solve the problem of Novell's rights in Unix, the Court, in its recent opinion in support of its order

granting Novell's lift stay motion (D.E. 232), expressed skepticism that clever drafting could accomplish the task. Id. at p. 11, n. 7.

13. As a result of the Court's granting a modification of the automatic stay to permit Novell to prosecute its counterclaim against The SCO Group, Inc. in the United States District Court for the District of Utah, there is likely soon to be a trial that will bring the issue of Novell's and The SCO Group's rights in the Unix and Unixware intellectual property into a position where a final ruling may be had. Moreover, as Novell argued, at the least, the amount of Novell's claim against the estate would be determined even if the entire judgment is under appeal.

14. Filing a plan now in the face of the Court's doubts about the efficacy of doing so would be a waste of precious estate assets. The Debtors have determined not to force the issue, but to ask the Court to give them more time, to allow the anticipated trial to narrow the issues in dispute with Novell before the Debtors are required to file their plan.

15. It appears from the District Court's trial calendar that there is no possibility for that court to try and then to rule upon the issues set for trial there before the end of January, 2008. Most likely, the trial could not be concluded until February. And it is assumed that the court will require a few weeks to prepare its decision. Accordingly, the Debtors estimate that it will not have a ruling on Novell's damages, nor an ability to appeal the August 10 summary judgment ruling, until mid-March, 2008. The Debtors, therefore, request a period of 60 days after that anticipated event, corresponding with a date 120 days after the current exclusivity bar date, to maintain its exclusivity under section 1121.

Notice

16. 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.

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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: January 2, 2008

PACHULSKI STANG ZIEHL & JONES LLP

Rachel J. Werkheiser

Laura Davis Jones (Bar No. 2436)
James E. O'Neill (Bar No. 4042)
Rachel Lowy Werkheiser (Bar No. 3753)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier No. 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
Email: ljones@pszjlaw.com
joneill@pszjlaw.com
rwerkheiser@pszjlaw.com

and

BERGER SINGERMAN, P.A.

Paul Steven Singerman
Arthur J. Spector
Grace E. Robson
200 South Biscayne Blvd., Suite 1000
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

and

350 E. Las Olas Boulevard, Suite 1000
Fort Lauderdale, FL 33301
Telephone: (954) 525-9900
Facsimile: (954) 523-2872
Email: singerman@bergersingerman.com
aspector@bergersingerman.com
grobson@bergersingerman.com

Co-Counsel for the Debtors and Debtors-in-Possession