

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
THE SCO GROUP, INC., *et al.*, .
 . Case No. 07-11337(KG)
 . (Jointly Administered)
 .
 . February 5, 2008
 . 10:00 a.m.
Debtors. . (Wilmington)
 .

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY COURT JUDGE

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 THE CLERK: Please rise.

2 THE COURT: Good morning everyone. Please be
3 seated.

4 UNIDENTIFIED SPEAKER: Good morning, Your Honor.

5 THE COURT: Good morning. Ms. Werkheiser, good
6 morning.

7 MS. WERKHEISER: Good morning, Your Honor. For the
8 record, Rachel Werkheiser from Pachulski, Stang, Ziehl &
9 Jones on behalf of the Debtors.

10 THE COURT: Yes.

11 MS. WERKHEISER: With me today, Your Honor, is Jamie
12 O'Neill from, from my office as well as - -

13 THE COURT: I recognize him.

14 MR. O'NEILL: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MS. WERKHEISER: And Ms. Robson from Berger
17 Singerman is joining us on the phone.

18 THE COURT: Yes.

19 MS. ROBSON: Good morning, Your Honor.

20 THE COURT: Good morning, Ms. Robson. How are you?

21 MS. ROBSON: I'm good, thank you.

22 THE COURT: Good. And I think, while we're doing
23 this, I believe we have Mr. Petrofsky also on the telephone.

24 MR. PETROFSKY: Yes, Your Honor. Good morning.

25 This is Al Petrofsky appearing pro se.

1 THE COURT: Yes. Good morning, sir. All right, Ms.
2 Werkheiser.

3 MS. WERKHEISER: If I may proceed with the agenda,
4 Your Honor?

5 THE COURT: Please.

6 MS. WERKHEISER: Thank you.

7 THE COURT: Thank you.

8 MS. WERKHEISER: The first matter on the agenda is
9 the Debtors' motion to approve expansion of the scope of
10 Tanner LC's retention to prepare Federal and State tax
11 returns for the Debtors. Your Honor previously approved
12 their retention to be accountants and auditors for the
13 Debtors' financial statements and in preparation of the
14 Debtors' public filings with the SEC. Your Honor, we did
15 receive an informal, some informal comments from the Office
16 of the United States Trustee with respect to Tanner's
17 expanded scope engagement letter, and Tanner has agreed to
18 the changes requested by the Office of the United States
19 Trustee. And I do have a black line and a clean proposed
20 order if I may approach.

21 THE COURT: Please. Thank you, Ms. Werkheiser.
22 Good morning Mr. McMahon.

23 MR. McMAHON: Your Honor, good morning. Good to see
24 you.

25 THE COURT: Good to see you, sir. Thank you. Thank

1 you. All right.

2 MR. PETROFSKY: Hello?

3 THE COURT: Hello. Yes, I'm sorry. This is Judge
4 Gross. I am reviewing the proposed order on the Tanner
5 retention.

6 MR. PETROFSKY: I'm sorry. I having... (microphone
7 not recording) over here. I'm going to hang up and try to
8 call Court Call back on a different phone.

9 THE COURT: It may be that, we were, we were silent
10 here in the courtroom while I was reading something. Are you
11 still having difficulty hearing?

12 MR. PETROFSKY: Okay. We'll go ahead.

13 THE COURT: Okay. Does anyone wish to comment?
14 I've reviewed the proposed order, and it certainly is
15 acceptable to the Court. Any further comments or - -

16 MR. McMAHON: Your Honor, Joseph McMahon. No
17 objection to the order.

18 THE COURT: Excellent. Okay. Then I'm going to
19 enter the order.

20 MS. WERKHEISER: Thank you, Your Honor.

21 THE COURT: Okay.

22 MS. WERKHEISER: Your Honor, that brings us to the
23 second matter on the agenda, which is the Debtors' first
24 exclusivity extension request motion.

25 THE COURT: Yes.

1 MS. WERKHEISER: Requesting an extension of 120 days
2 both for the time to file the plan and the, the corresponding
3 solicitation exclusivity period, which would bring us to May
4 11th, '08 to file a plan, and July 11th to solicit that plan
5 exclusively. The Debtors received one response from Mr.
6 Petrofsky, who's joining us by the telephone. And if I may
7 present the motion first, and then respond to Mr. Petrofsky's
8 objection thereafter.

9 THE COURT: Yes, please.

10 MS. WERKHEISER: The Debtors believe that they have
11 established cause to extend the exclusivity time based on the
12 size and complexity of the case. This is the Debtors' first
13 extension. And as Your Honor is aware from other pleadings
14 filed before the Court, the Novell litigation is, is going
15 forward, and I've been informed that the trial has been
16 scheduled on that matter for late April. I believe it's
17 either April 28th or April 29th. And I believe that's
18 scheduled as a 4 day bench trial. And then I don't know how
19 the judge is going to rule. If he's going to rule from the
20 bench, or if he's going to issue an opinion. So that's,
21 that's out there, Your Honor, as - -

22 THE COURT: Absolutely.

23 MS. WERKHEISER: - - a matter that, that we would
24 like to either have some kind of resolution to, or at least
25 be able to address in any plan. The Debtors also believe

1 that they're making good faith progress towards finding a
2 consensual plan, or at least a plan to present they are,
3 they're working on a deal right now that hopefully we'll be
4 able to present to the Court soon. As well as you know that
5 previously the, the Debtors have looked into a sale of part
6 of their enterprise to York Capital. Although that deal did
7 fall through, but we are making progress towards reaching a
8 deal and being able to file a plan. The Debtors are paying
9 their administrative expenses as they become due.

10 THE COURT: Yes.

11 MS. WERKHEISER: And we are working diligently with
12 our constituents and our creditors to, to work towards a
13 plan. Mr. Petrofsky's objection surrounds the filing of the
14 MOR's, or the monthly operating reports that are required by
15 the Office of the United States Trustee. And Mr. Petrofsky's
16 concerns the Debtors are investigating and, and taking very
17 seriously. If there are mistakes in our monthly operating
18 reports, then the Debtors are going to work diligently to fix
19 those, those problems. And as far as the December monthly
20 operating reports, they were filed yesterday per an agreement
21 with the Office of the United States Trustee. So they
22 weren't, there was an extension in place between the, the,
23 the United States Trustee's Office and the Debtors, so that
24 the Debtors can concentrate on filing their year-end SEC
25 filings. The 10K was due at the end of January. So our

1 financial team was working on that. So the Debtors believe
2 that they have established cause to extend exclusivity. And
3 as I said, if Mr. Petrofsky's concerns about the monthly
4 operating reports are investigated, and the Debtors realize
5 they made a mistake, then the Debtors will file amended
6 monthly operating reports, and work diligently to make sure
7 that those mistakes don't continue to happen, if there are,
8 in fact, mistakes. We've, Mr. Petrofsky sent an email this
9 morning about the December monthly operating reports, and a
10 concern that he had therein, however we haven't received a
11 response from our client as to, before I came over, over to
12 court this morning, Your Honor. But we will investigate them
13 and take them very seriously, because it is an obligation of
14 the Debtors, and the Debtors intend to meet that obligation.
15 In a timely and an efficient manner. And if Your Honor has
16 any questions.

17 THE COURT: I do not. Mr. Petrofsky, would you like
18 to be heard further on your objection? Or does your
19 objection speak for itself?

20 MR. PETROFSKY: I would like to go over a few
21 points, if I could.

22 THE COURT: Please.

23 MR. PETROFSKY: First of all, it's the Debtors
24 burden to show probable success of the organization. And
25 what they concentrate on in the motion and in the argument

1 this morning is showing a low probability of success if they
2 file a plan now. That's not. . . . They need to show that
3 there is a probability of success in May or July. And to
4 make that determination, we need to know that there's going
5 to be something left in May or July. And the way to do that
6 is we need to see how things are going, and we need to have
7 accurate monthly reports. Now I appreciate that they, they
8 acknowledge that there, they at least acknowledge that there
9 could be problems with these reports, and that they are
10 endeavoring to fix them. But they refused to continue this
11 hearing until those fixes had been made. Now, this, I mean
12 the error I pointed out in the objection was a \$400 thousand
13 error right in the bottom line of net profit and loss. Now
14 that's not a small matter. . . . And I just don't think it
15 makes sense to, to give a four month extension when the
16 latest accurate report we have is now three months old. And
17 I think it makes more sense to give a shorter extension, or
18 continue this hearing until accurate reports have been filed.

19 THE COURT: All right. Thank you, Mr. Petrofsky.
20 Anything further from anyone? Well let me say this. I'm
21 going to grant the motion, as submitted, and approve the
22 dates. It is a complex case. There is no question that the,
23 the Novell litigation is of major concern, and it's
24 resolution has a tremendous impact on the case. And now we
25 know that the trial is not scheduled until April, and you

1 know, even that's somewhat late. But we'll deal with that at
2 a later date, of course. And I am certainly satisfied that
3 this, this Debtor has been acting responsibly, and to the
4 best of its ability on the monthly operating reports. As far
5 as the probability of success, the fact of the matter is none
6 of us really will know for certain what the probability of
7 success of a successful reorganization is until we know the
8 results of the Novell litigation for one, and even then, we
9 all recognize that there may be an appeal, and so, you know,
10 it may be some time. And I'm also satisfied on the, based on
11 the Debtors' representations that it is continuing to, to
12 make a diligent effort to make some kind of a business
13 transaction which may somehow enhance its ability to file a
14 successful plan of reorganization. So based upon all of
15 those factors, as well as all of the factors of the cases
16 discussed under §1121 of the Code, the Court will overrule
17 the objection, and will grant the motion.

18 MS. WERKHEISER: Thank you. May I approach, Your
19 Honor?

20 THE COURT: You certainly may.

21 MS. WERKHEISER: Thank you.

22 THE COURT: Thank you, Ms. Werkheiser. It is also,
23 I think, you know, significant to me that I haven't heard
24 anything from the United States Trustee's Office expressing
25 significant concerns about the monthly operating reports,

1 and, and the reporting by the Debtor. And Mr. McMahon, did
2 you have anything that you wanted to report on that?

3 MR. McMAHON: Your Honor, Joseph McMahon for the
4 United States Trustee. I don't think that our office has a
5 specific issue to raise today with respect to the accuracy of
6 the monthly operating reports. Obviously, Your Honor, if
7 upon further examination, or in the future, we were to
8 discover an issue that warrants the attention of the Court,
9 we will be sure to bring it here.

10 THE COURT: I know that --

11 MR. McMAHON: Thank you.

12 THE COURT: I'm sure that you would. And obviously
13 the Court places great confidence in the United States
14 Trustee's Office to raise those sorts of issues and concerns.

15 MR. McMAHON: Thank you very much, Your Honor.

16 MS. WERKHEISER: As, as I said, Your Honor, we are
17 taking Mr. Petrofsky's, as well as any comments from the
18 United States Trustee, very seriously. And we are going to
19 work with our clients to, to root out any problems that there
20 may be, and to fix them if there are, in fact, problems.

21 THE COURT: The Court appreciates the Debtors'
22 diligence and concern.

23 MS. WERKHEISER: Thank you, Your Honor.

24 THE COURT: And with that, if there's nothing
25 further, we will adjourn and stand in recess until the next

1 hearing.

2 MS. WERKHEISER: Thank you, Your Honor.

3 THE COURT: Thank you very much counsel. Good to
4 see you all. Good day now.

5 (Whereupon at 10:14 a.m. the hearing in this matter was
6 concluded for this date.)

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18 I, Jennifer Ryan Enslin, approved transcriber for
19 the United States Courts, certify that the foregoing is a
20 correct transcript from the electronic sound recording of the
21 proceedings in the above entitled matter.

22

23 /s/Jennifer Ryan Enslin
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02/11/08