

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:) Case No. 07-11337(KG)
) Chapter 11
THE SCO GROUP, INC.,)
et al.,) Courtroom No. 3
) 824 Market Street
Debtors.) Wilmington, Delaware 19801
)
) April 2, 2008
) 2:01 P.M.

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

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1 THE COURT: Good afternoon, everyone. Please be
2 seated.

3 MULTIPLE SPEAKERS: Good afternoon, Your Honor.

4 THE COURT: It's a pleasure to see you. Ms.
5 Werkheiser, hello.

6 MS. WERKHEISER: Good afternoon, Your Honor. For the
7 record, Rachel Werkheiser from Pachulski Stang Ziehl and Jones
8 on behalf of the debtors.

9 With me today, Your Honor, is Arthur Spector and
10 Grace Robson from Berger Singerman.

11 THE COURT: Welcome back.

12 MS. WERKHEISER: And Ryan Tibbitts, who's in-house
13 counsel with the debtors.

14 THE COURT: Mr. Tibbitts, good afternoon and welcome.

15 MS. WERKHEISER: Your Honor, if we can go through the
16 agenda today, I'll turn the podium over to Ms. Robson.

17 THE COURT: Yes, that sounds fine.

18 MS. WERKHEISER: Thank you, Your Honor.

19 THE COURT: Thank you very much.

20 MS. ROBSON: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 MS. ROBSON: The first several matters on the agenda
23 are withdrawn matters. The first one is the motion of the U.S.
24 Trustee for an order authorizing the filing of certain parts of
25 objection to the bonus motion under seal. There are three

1 related documents.

2 Based upon a resolution to be announced shortly after
3 my presentation on these matters, we're going -- that motion is
4 to be withdrawn by the U.S. Trustee.

5 The next matter is the debtors' motion for a
6 determination that incentive bonuses for the quarter ending
7 October 31st, 2007 were made in the ordinary course, and for
8 continuing authority to continue that bonus program. That
9 motion also is to be withdrawn based upon the resolution to be
10 announced by the U.S. Trustee at the end of my presentation.

11 The third matter is the debtors' motion to present
12 evidence relating to the bonus motion under seal. That motion
13 also is to be withdrawn based upon the resolution reached with
14 the U.S. Trustee.

15 So, I will turn it over to Mr. McMahon who can -- who
16 has indicated he's going to read the terms of that resolution
17 into the record.

18 THE COURT: Thank you. Mr. McMahon?

19 MR. McMAHON: Your Honor, good afternoon. Our
20 resolution of those three items, Your Honor, is as follows:

21 The first point: Information acceptable to the U.S.
22 Trustee regarding the bonus payments for the fourth quarter of
23 2007 through the second quarter of 2008 shall be included in
24 the debtors' proposed disclosure statement. The information
25 shall include the following:

1 First, background information regarding the incentive
2 payments, the debtors, directors, officers and employees
3 involved in setting the performance metrics, and how the
4 incentive plan operates. Information similar to that which was
5 included in the first day wage motion.

6 Next, detail regarding payments to officers on an
7 individual basis and non-officers on an aggregate basis.
8 Meaning the total amount of the payments and the number of non-
9 officers covered by the plan.

10 Third, the performance metrics related to the
11 incentive payments for the fourth quarter of 2007 and the first
12 quarter of 2008, including the date on which the payments were
13 initially set, whether the metrics were altered after they were
14 initially set, and if so, why. And projected budgeted payments
15 for the second quarter of 2008 and the performance metrics for
16 that quarter.

17 And then the final component, this information, Your
18 Honor, that's going to be part of the information, the
19 disclosure statement, is the procedural history relating to the
20 bonus motion and the U.S. Trustee's objection. That's all
21 going to be part of the disclosure statement. That's one deal
22 point, Your Honor.

23 Next, the debtors will refrain from paying the second
24 quarter 2008 bonus payment to any insiders, which includes
25 officers, pending the effective date of the plan. Or, in the

1 event the plan is not confirmed or withdrawn, a subsequent
2 order of the Court, via a motion and notice to the U.S.
3 Trustee.

4 The Court will not enter an order on the bonus motion
5 presently pending before the Bankruptcy Court. The respective
6 rights of the debtors, the U.S. Trustee and any other party in
7 interest with respect to the bonus payments for the fourth
8 quarter of 2007, and the first two quarters of 2008, other than
9 the second quarter of 2008 bonus payments to the insiders,
10 which is addressed as part of our resolution, are fully
11 reserved.

12 The debtors' pending bonus motion and motion to seal
13 the proceedings in connection with the bonus motion shall be
14 withdrawn without prejudice to the debtors' rights to renew
15 same at a later date and the U.S. Trustee's rights to oppose
16 same.

17 The U.S. Trustee shall be authorized to file an
18 unredacted version of her objection to the bonus motion with
19 the Court. And our -- in our objection, Your Honor, that was
20 proposed to be filed under seal, we had put in there certain
21 information regarding the metrics that are to be part of the
22 disclosure statement. So, there's no need to further seal that
23 information.

24 THE COURT: Okay.

25 MR. McMAHON: The U.S. Trustee's pending objections

1 relating to the disclosure statement plan process, which Mr.
2 Spector is going to be addressing with the Court in a moment,
3 are not affected by this resolution. And our proposal, Your
4 Honor, was conditioned upon us receiving a representation from
5 the debtors at first -- the first quarter 2008 bonuses payable
6 on account of the personal objective component for the debtors'
7 insiders will not vary substantially from the amounts that were
8 paid on account of that bonus component for the fourth quarter
9 of 2007. Our office has received that information, Your Honor.

10 And then second, the amount of the second quarter
11 2008 bonuses to each individual, and in the aggregate, will not
12 vary substantially from the bonus payments made for the fourth
13 quarter of 2007.

14 Those are the deal terms, Your Honor. The debtors
15 have provided us with the representation that we have
16 requested, it was a condition of these deal terms. And,
17 therefore, we are prepared to resolve those three items on
18 these terms.

19 THE COURT: Thank you, Mr. McMahon.

20 MR. McMAHON: Thank you, Your Honor.

21 MS. ROBSON: Your Honor --

22 THE COURT: Yes?

23 MS. ROBSON: -- if you had any questions about the
24 pending references, I'd be happy to answer any questions you
25 may have.

1 THE COURT: Well, I think there's some information
2 that's going to be provided to me hereafter, but I don't have
3 any questions with respect to the -- the representations and
4 the agreement on the record.

5 MS. ROBSON: Okay. Thank you, Your Honor.

6 THE COURT: Thank you.

7 MS. ROBSON: I'll turn it over to Mr. Spector.

8 THE COURT: Thank you. Good afternoon, Mr. Spector.

9 MR. SPECTOR: Good afternoon, Your Honor. I wish I
10 were here under different circumstances and we were furthering
11 the goal towards confirmation of a plan. But, as you know,
12 because the agenda points it out quite clearly, we're here on a
13 status conference. And the reason is, and as I've explained to
14 counsel for Novell, and through him, I believe, counsel for IBM
15 and also the U.S. Trustee, we are not furthering the disclosure
16 statement process that's before the Court today, or the plan
17 that's before the Court today. We have a status report.

18 THE COURT: Okay.

19 MR. SPECTOR: The reason we did not get the
20 definitive documents in in time is not because we hadn't
21 prepared them. It was that the deal was changing after --
22 while we were drafting them. Both sides, the buyer and the
23 seller, came to an agreement informally while we were drafting
24 the documents we had, that they'd rather restructure the deal
25 in a totally different way.

1 THE COURT: Okay.

2 MR. SPECTOR: And we're working now with a new MOU
3 and with -- and once that's -- and new definitive documents
4 will be prepared. And we promise -- we promise we won't file
5 it in pieces anymore.

6 THE COURT: Okay.

7 MR. SPECTOR: Okay. We won't file the MOU until we
8 have the definitive documents, and we won't file the disclosure
9 statement and the plan that incorporates all that until we have
10 them all done this time.

11 We, as Your Honor probably knows, sometimes have to
12 dance to other people's tunes.

13 THE COURT: I understand.

14 MR. SPECTOR: And so things get thrown in,
15 everything's a rush. And then you see what happens on the back
16 end a lot of times. So, I am making the commitment now so I
17 can tell people I have made this commitment.

18 THE COURT: Okay.

19 MR. SPECTOR: So, the -- in terms of status, I just
20 want to -- you know, you've got to be very careful when you
21 talk about plans under construction.

22 THE COURT: Understood.

23 MR. SPECTOR: As I said --

24 THE COURT: And you'll notice I'm not going to ask
25 you a lot of questions --

1 MR. SPECTOR: Okay.

2 THE COURT: -- about it.

3 MR. SPECTOR: And I'm prepared to just say something
4 very general about that.

5 THE COURT: Yes.

6 MR. SPECTOR: The deal that you saw in paper that's
7 before you today is a disclosure statement and a plan that
8 discusses an -- a stock sale with 95 percent of the money in
9 financing, as the worthy objectors had pointed out, uh -- at --

10 THE COURT: Yes.

11 MR. SPECTOR: There are some problems. And so the
12 deal that's changed, we think, has fixed it. Well, we don't
13 have any deal, but when we get the deal that we think we're
14 going to get, it will be a much better deal in that respect
15 because it's going to be an asset purchase and no lending. So,
16 that's what we have on the table right now. We are circulating
17 drafts of the MOU.

18 I want to say that when we do get the disclosure
19 statement prepared, we will have fixed some of the objections
20 that were raised by the objectors to their credit. I do not
21 dispute a lot of the -- the validity of a lot of their points.
22 And I will incorporate it. I learn from these things. And we
23 hope that we won't have these objections when it comes back
24 before the Court because they'll be corrected.

25 And I also point this out in the following context:

1 Whatever the deal is in different structure, it essentially
2 will be creditors get paid on confirmation with interest,
3 contract interest as it may be, and they will be unimpaired.
4 Now, if we didn't properly unimpair certain of them, we will be
5 sure to do so the next time.

6 Which gets me to the recently stated terms. The only
7 people who should care about these metrics and the other things
8 will be the stockholders and perhaps Mr. McMahon or the U.S.
9 Trustee because creditors will be getting cash on the barrel at
10 the point of confirmation, and why do they care?

11 So, when it comes to the -- a lot of the other terms
12 that come up, and the objections raised, if -- if -- we're
13 hoping that at that point, we would see that the worthy
14 objectors would sit on their objections and not share them
15 because they should be taken care of with cash or a reservation
16 of cash that would solve all of those problems.

17 The ones who are in the bubble in this case are the
18 stockholders. And if stockholders have problems, then we -- we
19 would have to deal with those. That's really all I feel
20 comfortable outlining about the not yet finalized or even close
21 to finalized new plan.

22 Obviously for these reasons, we're not going forward
23 with this plan sponsor protections. They may change in scope
24 and design entirely because of the new structure. We're not
25 going forward with the scheduling order or a request for a

1 scheduling order because we have these other predicates that
2 have to be satisfied first. Nevertheless, we are hopeful that
3 we can stick to the deadlines that we have for the exclusivity,
4 which I believe is May 11th. Have a plan in by then. I'm
5 hoping that if -- if our discussions go as well as they have,
6 we'll be able to meet those deadlines and get it in.

7 The only loose end here would be the due diligence
8 deadline. We don't want -- I don't want -- I don't want to
9 come back and have loose ends. I don't want to say, well, it's
10 subject to due diligence now when we come here for the
11 disclosure hearing. So, I might have to say can we have
12 another month so we don't have that contingency overlooking us
13 -- overhanging us when we come to the disclosure hearing. On --
14 on scheduling, that's my only comment.

15 If Your Honor has any questions, I'd be happy to
16 field them. Otherwise I'd be happy to sit down and let the
17 other folk join.

18 THE COURT: Mr. Spector, I'm going to withhold any
19 questions because I think -- because of the sensitive nature of
20 what you're doing. And I'll hear from the other parties.

21 MR. SPECTOR: Thank you.

22 MR. LEVIN: Good afternoon, Your Honor. Richard
23 Levin, Cravath, Swaine and Moore for IBM.

24 THE COURT: It's good to see you again, Mr. Levin.

25 MR. LEVIN: As well you, Your Honor. I commend Mr.

1 Spector for much of what he said. And I rise only to let it
2 not be a surprise, if it happens, the position we may be taking
3 a month from now, come May 11th.

4 The first I heard of any request for more time for
5 due diligence was as Mr. Spector was speaking here just a
6 moment ago. And my immediate reaction to that, which I simply
7 want to put on the record without formally taking a position is
8 that the prior deal that is being withdrawn had a due diligence
9 deadline of today. Nothing Mr. Spector has said indicated that
10 the changing of the terms of how the transaction is going to go
11 has anything to do with additional due diligence.

12 There is yet another month or five weeks before
13 exclusivity expires when the debtor has to file a plan to stay
14 within exclusivity. If they need additional time for due
15 diligence, five weeks is certainly plenty of time since given
16 how much they've already had. And may -- and we may well
17 object to any extension for due diligence that should have been
18 completed by today.

19 THE COURT: Thank you, Mr. Levin.

20 MR. LEVIN: Thank you, Your Honor.

21 THE COURT: I think I understood Mr. Spector largely
22 to be saying he may be back. Certainly I don't think the
23 debtor is asking for the extension at this point.

24 MR. SPECTOR: No, sir.

25 MR. LEVIN: And all I would say, Your Honor, is if

1 he's back --

2 THE COURT: If they do.

3 MR. LEVIN: -- I may be back.

4 THE COURT: Good. Thank you, Mr. Levin. Mr. Lewis,
5 good to see you again.

6 MR. LEWIS: Thank you, Your Honor. And how could I
7 miss the party if they're all going to be back?

8 THE COURT: That's right.

9 MR. LEWIS: I would just add my short remarks that I
10 think all remains to be seen, and we would obviously reserve
11 our right to object to any extensions or other proceedings as
12 they may come up. But there's really nothing further to do
13 today other than to hope that, as Mr. Spector has said, we
14 don't have to go through another fire drill for no reason in
15 the future. If there's going to be another plan, we hope it's
16 a real plan, whatever it may be, its merits, from our point of
17 view.

18 THE COURT: Thank you, Mr. Lewis.

19 MR. LEWIS: Thank you, Your Honor.

20 THE COURT: Thank you very much. Mr. McMahon?

21 MR. McMAHON: Your Honor, good afternoon. Joseph
22 McMahon for the United States Trustee.

23 Our office is certainly going to take a look at the
24 revised papers when they come in, Your Honor. But I guess a
25 couple of cautionary notes, if I may.

1 First, the issue raised in connection with the York
2 Capital deal, and echoed again in the papers that were filed
3 before Your Honor today, was the extent to which this
4 intellectual property which the debtor -- debtors do not own
5 was either being sold, as in the case of the York Capital deal,
6 or made part of a business plan going forward for these
7 debtors.

8 I sincerely hope that whatever it is we see in the
9 third chapter of these cases, Your Honor, addresses that
10 critical issue insofar as providing some level of clarity as to
11 what it is precisely that is changing hands in connection with
12 the transaction. And I'm sure that Novell will be closely
13 attune to that issue.

14 The second point I have to make, Your Honor, is that
15 we will review the papers when they come in. But we're
16 sincerely concerned about the state of this case. It came in
17 as essentially, Your Honor, a development company. It had
18 operating losses for each and every quarter. My understanding
19 was prior to the petition date, from its formation, which the
20 exception of the quarters in which it struck the deals with
21 Novell and IBM, that are the subject of, I guess, pending
22 litigation.

23 I don't think that this case can take a fourth
24 chapter. And to the extent that, you know, we have to take a
25 look at the issue of appointing an independent fiduciary to

1 provide some clarity, we very well may move in that direction.
2 And I just want the Court to be aware that we're taking a look
3 at that issue.

4 THE COURT: Thank you, Mr. McMahon. And I know we're
5 all going to be interested in seeing the disclosure statement
6 and plan. And I think other than everyone reserving rights,
7 there's not really much more to say and it would be foolish to
8 say much more at this point.

9 MR. SPECTOR: Right. And that's why I rose. Because
10 it seems to be the tradition to rise to reserve rights if any
11 motion comes -- reserve the right to respond.

12 THE COURT: Absolutely.

13 (Laughter)

14 THE COURT: And I do reserve the right to decide.

15 (Laughter)

16 THE COURT: So, we'll all be -- we'll all be busy.
17 Thank you.

18 I know there's a lot of work to be done. And as I
19 say, obviously everyone is interested I think in a successful
20 result, hopefully, and in seeing the -- the product that's
21 being worked on so hard, that I know that everyone was working
22 on hard.

23 Anything further?

24 MR. SPECTOR: No, sir.

25 THE COURT: I think everyone and we will stand in

1 recess then. Good day, all.

2 MULTIPLE SPEAKERS: Thank you, Your Honor.

3

4 (Proceedings Adjourn at 2:20 P.M.)

5

6

7 C E R T I F I C A T I O N

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9

10 I, Karen Hartmann, certify that the foregoing is a
11 correct transcript to the best of my ability, from the
12 electronic sound recording of the proceedings in the above-
13 entitled matter.

14

15 /s/ Karen Hartmann

Date: April 7, 2008

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0
0711337KG 1:5
1
100 1:37
1000 1:31
2:24,37
10006 2:8
10019 2:19
11 1:6
11TH 12:4 13:3
1313 2:13
16TH 1:23
17TH 2:24
18938 1:44
19801 1:10
198990391 2:25
198990951 2:14
198998705 1:25
2
2 1:12
200 2:36
2007 4:7,23 5:11
6:8 7:9,13
2008 1:12 4:23
5:12,15,24 6:8,9
7:5,11
2158621115 1:45
2158626639 1:46
2:01 1:13
2:20 17:3,6
3
3 1:8
31ST 4:7
33131 2:38
33301 1:32
350 1:30
355 1:37
35TH 2:7
4
425 2:29
435 1:43
5
520 1:37

8
824 1:9
825 2:18
84042 1:38
8705 1:24
9
919 1:23
941052482 2:30
95 10:8
951 2:12
A
ABILITY 17:13
ABLE 12:6
ABOVE 17:14
ACCEPTABLE 4:21
ACCOUNT 7:6,8
ADAM 2:28
ADD 14:9
ADDRESSED 6:10
ADDRESSES 15:9
ADDRESSING 7:2
ADJOURN 17:3,6
AFFECTED 7:3
AFTERNOON-
3:1,3,6,14,20,21
4:19 8:8,9 12:22
14:21
AGENDA 3:16,22
8:12
AGGREGATE 5:7
7:11
AGREEMENT 8:4,23
AL 1:8
ALAN 2:40
ALTERED 5:13
AMOUNT 5:8 7:10
AMOUNTS 7:7
ANDERSON 2:10
ANNOUNCED 4:2,10
ANYMORE 9:5
APPEARANCES 1:19
2:1,32
APPOINTING 15:25
APRIL 1:12
ARTHUR 1:28 3:9

ASSET 10:15
ATTUNE 15:13
AUTHORITY 4:8
AUTHORIZED 6:17
AUTHORIZING 3:24
AVENUE 2:18
AWARE 16:2
B
BACK 3:11 9:15
10:23 12:9 13:22
14:1,3,7
BACKGROUND 5:1
BANKRUPTCY-
1:1,17 6:5
BARREL 11:9
BASED 4:2,9,13
BASIS 5:7
BERGER 1:27 2:34
3:10
BISCAYNE 2:36
BONUS 3:25
4:8,12,22 5:20,24
6:4,7,9,12,13,18
7:8,12
BONUSES 4:6
7:5,11
BOTH 8:22
BOULEVARD 1:30
2:36
BRANDYWINE 2:23
BUBBLE 11:17
BUDGETED 5:14
BUILDING 2:23
BUSINESS 15:6
BUSY 16:16
BUYER 8:22
C
CALIFORNIA 2:30
CAN 3:15 4:15
9:17 12:3,11
15:23
CAPITAL 15:2,5
CARE 11:7,10,15
CAREFUL 9:20
CASE 1:5 11:17
15:5,16,23
CASES 15:9
CASH 11:9,15,16
CAUTIONARY 14:25
CERTAIN 3:24
6:20 11:4
CERTAINLY-
13:15,22 14:23
CERTIFY 17:12
CHANGE 11:23
CHANGED 10:12
CHANGING 8:21
13:10 15:11
CHAPTER 1:6
15:9,24
CIRCLE 1:43
CIRCULATING-
10:16
CIRCUMSTANCES-
8:10
CLARITY 15:10
16:1
CLOSE 11:20
CLOSELY 15:12
COME 11:12
12:9,10,13 13:3
14:12,24 15:15
COMES 10:23
11:11 16:11
COMFORTABLE-
11:20
COMMEND 12:25
COMMENT 12:14
COMMITMENT-
9:16,17
COMMITTEE 2:6
COMPANY 15:17
COMPLETED 13:18
COMPONENT 5:17
7:6,8
CONAWAY 2:21
CONCERNED 15:16
CONDITION 7:16
CONDITIONED 7:4
CONFERENCE 8:13
CONFIRMATION-
8:11 11:2,10
CONFIRMED 6:1
CONNECTION 6:13
15:1,11
CONSTRUCTION-
9:21
CONTEXT 10:25
CONTINGENCY-12:12
CONTINUE 4:8
CONTINUED 2:2
CONTINUING 4:8
CONTRACT 11:3
CORRECTED 10:24
CORROON 2:10
COUNSEL 1:36
3:13 8:14
COUPLE 14:25
COURSE 4:7
3:1,4,11,14,17,19
,21
C
COVERED 5:9
CRAVATH 2:16
12:23
CREDIT 10:20
CREDITORS 11:2,9
CRITICAL 15:10
CROW 2:6
D
DANCE 9:12
DANIEL 2:35
DATE 5:12,25
6:15 15:19 17:17
DAY 5:5 17:1
DEADLINE 12:8
13:9
DEADLINES 12:3,6
DEAL 5:21
7:14,16 8:21,24
10:6,12,13,14
11:1,19 13:8
15:2,5
DEALS 15:20
DEBTOR 2:34
13:13,23 15:4
DEBTORS 1:10,21
3:8,13 5:2,23 6:6
7:5,14 15:4,7
DEBTORS'-
4:5,11,24 6:12,14

- 7:6
DECIDE 16:14
DEFINITIVE 8:20
9:3,8
DELAWARE-
1:2,10,25 2:14,25
DESIGN 11:24
DETERMINATION-
4:6
DEVELOPMENT-
15:17
DIDN'T 11:4
DIFFERENT-
8:10,25 11:1
DILIGENCE-
12:7,10
13:5,8,11,15,17
DIRECTION 16:1
DIRECTORS 5:2
DISCLOSURE 4:24
5:19,21 6:22 7:1
8:15 9:8 10:7,18
12:11,13 16:5
DISCUSSES 10:8
DISCUSSIONS 12:5
DISPUTE 10:21
DISTRICT 1:2
DOCUMENTS 4:1
8:20,24 9:3,8
DON'T 8:2 10:12
12:8,9,12 13:22
14:14 15:23
DRAFTING 8:22,23
DRAFTS 10:17
DRILL 14:14
DUE 12:7,10
13:5,8,11,14,17
- E
- EACH** 7:11 15:18
EAST 1:30
ECHOED 15:2
ECRO 1:40
EFFECTIVE 5:25
EIGHTH 2:18
ELECTRONIC 1:50
17:14
EMAIL 1:47
EMPLOYEES 5:2
- ENDING** 4:6
ENDS 12:9
ENTER 6:4
ENTIRELY 11:24
ENTITLED 17:15
ESQ-
2:6,11,17,22,28,3
5
ESSENTIALLY 11:1
15:17
ET 1:8
EVERYONE 3:1
16:6,19,21,25
EVERYTHING'S-
9:15
EVIDENCE 4:12
EXCEPTION 15:20
EXCLUSIVITY 12:3
13:13,14
EXECUTIVE 2:6
EXPIRES 13:13
EXPLAINED 8:13
EXTENSION-
13:17,23
EXTENSIONS 14:11
EXTENT 15:3,24
- F
- FACSIMILE** 1:46
FEEL
11:19
FIDUCIARY 15:25
FIELD 12:16
FILE 6:17
9:4,7,8 13:13
FILED 6:20 15:2
FILING 3:24
FINAL 5:17
FINALIZED-
11:20,21
FINANCING 10:9
FINE 3:17
FIRE 14:14
FIRST 3:22,23
4:21 5:1,5,11 6:8
7:5 12:2 13:4
15:1
FIVE 13:12,15
FIXED 10:12,19
FLOOR 1:23
- 2:7,24
FLORIDA 1:32
2:38
FOERSTER 2:27
FOLK 12:17
FOLLOWING 4:25
10:25
FOLLOWS 4:20
FOOLISH 16:7
FOREGOING 17:12
FORMALLY 13:7
FORMATION 15:19
FORT 1:32
FORWARD 11:22,25
15:6
FOURTH 4:22 5:11
6:7 7:8,12 15:23
FRANCISCO 2:30
FULLY 6:10
FURTHER 6:22
14:12 16:23
FURTHERING-
8:10,15
FUTURE 14:15
- G
- GENERAL** 1:36
10:4
GET 8:19 9:14
10:13,14,18 11:2
12:6
GETS 11:6
GIVEN 13:15
GO 3:15 12:5
13:10 14:14
GOAL 8:11
GOING 4:3,16
5:18,21 7:2 8:2
9:24 10:14,15
11:22,25 12:18
13:10 14:7,15,23
15:6 16:5
GOOD-
3:1,3,6,14,20,21
4:19 8:8,9
12:22,24
14:4,5,21 17:1
GOT 9:20
GRACE 1:29 3:10
- GREECHER** 2:22
GROSS 1:16
GROUP 1:7,34
GUESS 14:24
15:21
- H
- HADN'T** 8:20
HANDS 15:11
HAPPY 7:24
12:15,16
HARD 16:21,22
HARTMANN-
17:12,17
HE'S 4:16 14:1
HEAR 12:20
HEARD 13:4
HEARING 1:15
12:11,13
HELLO 3:5
HERCULES 2:12
HEREAFTER 8:2
HISTORY 5:19
HONOR-
3:3,6,9,15,18,20
4:19,20 5:18,22
6:19
7:4,9,14,20,21
8:5,9 9:11
12:15,22,25
13:20,25
14:6,19,21,24
15:3,9,14,17 17:2
HONORABLE 1:16
HOPE 1:44 10:23
14:13,15 15:8
HOPEFUL 12:2
HOPEFULLY 16:20
HOPING 11:13
12:5
- I
- I'D** 7:24
12:15,16
I'LL 3:16 8:7
12:20
I'M 9:24 10:3
12:4,18 15:12
I'VE 8:13
- IBM** 2:10 8:14
12:23 15:21
IMMEDIATE 13:6
INC 1:7,34
INCENTIVE 4:6
5:1,4,11
INCORPORATE-
10:22
INCORPORATES 9:9
INDICATED 4:16
13:9
INFORMALLY 8:23
INHOUSE 3:12
INITIALLY-
5:13,14
INSIDERS 5:24
6:9 7:7
INSOFAR 15:10
INTELLECTUAL-
15:4 **INTEREST**
6:7
11:2,3
IPO 2:7
ISSUE-
15:1,10,13,25
16:3
IT'S 3:4 10:15
12:9,24 14:15
ITEMS 4:20 7:17
- J
- JEAN** 2:22
JOHN 2:6
JOIN 12:17
JONES 1:21 3:7
JOSEPH 14:21
JUDGE 1:17
- K
- KAREN** 17:12,17
KEVIN 1:16
KNOWS 9:11
- L
- LAMPERT** 2:35
LARGELY 13:21
LAS 1:30

LATER 6:15
LAUDERDALE 1:32
LAUGHTER-
 16:13,15
LAURIE 2:11
LEARN 10:22
LENDING 10:15
LEVEL 15:10
LEVIN 2:17
 12:22,23,24,25
 13:19,20,25
 14:3,4
LEWIS 2:28
 14:4,6,9,18,19
LIBERTY 2:7
LINDON 1:38
LIT 2:7
LITIGATION 15:22
LLP-
 2:5,10,16,21,27
LOOK 14:23 15:25
 16:2
LOOSE 12:7,9
LOSSES 15:18
LOT 9:16,25
 10:21 11:11 16:18
LOWY 1:22

M

MAKE 15:14
MAKING 9:16
MARKET 1:9,23
 2:13,29
MATTERS 3:22,23
 4:3
MCMAHON-
 4:15,18,19 6:25
 7:19,20 11:8
 14:20,21,22 16:4
MEET 12:6
MERITS 14:16
METRICS-
 5:3,10,13,15 6:21
 11:7
MIAMI 2:38
MISS 14:7
MONEY 10:8
MONTH 12:12
 13:3,12

MOORE 2:16 12:23
MORRISON 2:27
MOTION 3:23,25
 4:3,5,9,11,12
 5:5,20
 6:2,4,12,13,18
 16:11
MOU 9:2,7 10:17
MOVE 16:1
MUCH 3:19 10:14
 13:1,16 14:20
 16:7,8
MULTIPLE 3:3
 17:2

N

NEVERTHELESS-
 12:2
NEW 1:44 2:8,19
 9:2,3 11:21,24
NICOLE 1:40
NON 5:8
NONOFFICERS 5:7
NORTH 1:23
NOTES 14:25
NOTICE 6:2 9:24
NOVELL 2:21 8:14
 15:12,21

O

OBJECT 13:17
 14:11
OBJECTION 3:25
 5:20 6:18,19
OBJECTIONS 6:25
 10:19,23 11:12,14
OBJECTIVE 7:6
OBJECTORS-
 10:9,20 11:14
OCTOBER 4:7
OFFICE 1:24 7:9
 14:23
OFFICERS-
 5:2,6,9,25
OLAS 1:30
OMNIBUS 1:15
ONE 2:7 3:23
 5:21
ONES 11:17

OPERATES 5:4
OPERATING 15:18
OPPOSE 6:15
ORDER 3:24 6:2,4
 11:25 12:1
OTHERWISE 12:16
OUTLINING 11:20
OVERHANGING-
 12:13
OVERLOOKING-
 12:12
OWN 15:4

P

PACHULSKI 1:21
 3:7
PAID 7:8 11:2
PAPERS 14:24
 15:2,15
PARTIES 12:20
PARTS 3:24
PARTY 6:6 14:7
PAYABLE 7:5
PAYING 5:23
PAYMENT 5:24
PAYMENTS 4:22
 5:2,6,8,11,12,14
 6:7,9 7:12
PENDING 5:25
 6:5,12,25 7:24
 15:21
PENNSYLVANIA-
 1:44
PEOPLE 9:17 11:7
PEOPLE'S 9:12
PERCENT 10:8
PERFORMANCE-
 5:3,10,15
PERHAPS 11:8
PERSONAL 7:6
PETITION 15:19
PETROFSKY 2:40
PIECES 9:5
PLAINTIFFS 2:5
PLAN 5:4,9,25
 6:1 7:1 8:11,16
 9:9 10:7 11:21,23
 12:4 13:13
 14:15,16 15:6

16:6
PLANS 9:21
PLAZA 2:7,12,18
PLEASURE 3:4
PLENTY 13:15
PM 1:13 17:3,6
PO 2:12
PODIUM 3:16
POINTED 10:9
POINTS 8:12
 10:21
POSITION 13:2,7
POST 1:24
POTTER 2:10
PRECISELY 15:11
PREDICATES 12:1
PREJUDICE 6:14
PREPARED 7:17
 8:21 9:4 10:3,19
PRESENT 4:11
PRESENTATION-
 4:3,10
PRIOR 13:8 15:19
PRO 2:40
PROBLEMS 10:11
 11:16,18
PROCEDURAL 5:19
PROCEEDINGS 1:50
 6:13 14:11
 17:3,6,14
PRODUCED 1:51
PRODUCT 16:20
PROGRAM 4:8
PROJECTED 5:14
PROMISE 9:4
PROPERLY 11:4
PROPERTY 15:4
PROPOSAL 7:3
PROPOSED 4:24
 6:20
PROTECTIONS-
 11:23
PROVIDE 16:1
PROVIDED 7:15
 8:2
PROVIDING 15:10
PURCHASE 10:15

Q

QUARTER-
 4:6,22,23
 5:11,12,15,16,24
 6:8,9 7:5,8,10,13
 15:18
QUARTERS 6:8
 15:20

R

RACHEL 1:22 3:7
RAISED 10:20
 11:12 15:1
RATHER 8:24
RE 1:5
REACHED 4:13
REACTION 13:6
 14:14
REASONS 11:22
RECEIVED 7:9
RECEIVING 7:4
RECENTLY 11:6
RECORDED 1:50
RECORDING 1:50
 17:14
REFERENCES 7:24
REFRAIN 5:23
REMAINS 14:10
REMARKS 14:9
RENEW 6:14
REPORT 8:17
REPRESENTATION-
 7:4,15
REPRESENTATIONS-
 8:3
REQUEST 11:25
 13:4
REQUESTED 7:16
RESERVATION-
 11:15
RESERVE 14:10
 16:10,11,14
RESERVING 16:6
RESOLUTION-
 4:2,9,13,16,20
 6:10 7:3
RESOLVE 7:17
RESPECT 6:7 8:3
 10:14
RESPECTIVE 6:5
RESPOND 16:11

RESTRUCTURE 8:24
RESULT 16:20
REVISED 14:24
RICHARD 2:17
12:22
RIGHTS 6:6,14,15
16:6,10
RISE 13:1 16:10
RIVERVIEW 1:43
ROBSON 1:29
3:10,16,20,22
7:21,23 8:5,7
ROSE 16:9
RUSH 9:15
RYAN 1:35 3:12

S
SALE 10:8
SAN 2:30
SATISFIED 12:2
SAW 10:6
SCHAEFER 1:40
SCHAGER 2:5
SCHEDULING 11:25
12:1,14
SCO 1:7,34
SCOPE 11:23
SEAL 3:25 4:12
6:12,20,22
SEATED 3:2
SECOND 4:23
5:15,23 6:9 7:10
15:14
SECRETARY 1:36
SEE 3:4 9:15
11:13 12:24 14:5
15:8
SEEING 16:5,20
SEEN 14:10
SELBER 2:11
SELLER 8:23
SENSITIVE 12:19
SERVICE 1:42,51
SET 5:13,14
SETTING 5:3
SEVERAL 3:22
SHALL 4:23,25
6:13,17
SHARE 11:14
SHORTLY 4:2

SIDES 8:22
SILVERSTEIN 2:11
SIMILAR 5:4
SIMPLY 13:6
SINCERELY-
15:8,16
SINGERMAN 1:27
2:34 3:10
SIT 11:14 12:16
SOLD 15:5
SOLVE 11:16
SOUND 1:50 17:14
SOUNDS 3:17
SOUTH 2:36
SPEAKERS 3:3
17:2
SPECTOR 1:28 3:9
7:2 8:7,8,9,19
9:2,7,14,19,30
10:1,3,6,11, 12:18,21
13:1,5,9,21,24
14:13 16:9,24
SPONSOR 11:23
STAMELL 2:5
STAND 16:25
STANG 1:21 3:7
STARGATT 2:21
STATE 15:16
STATEMENT 4:24
5:19,21 6:22 7:1
8:16 9:9 10:7,19
16:5
STATUS 8:13,17
9:19
STAY 13:13
STICK 12:3
STOCK 10:8
STOCKHOLDERS-
11:8,18
STREET 1:9,23
2:13,24,29
STRUCK 15:20
STRUCTURE-
11:1,24
SUBSEQUENT 6:1
SUBSTANTIALLY-
7:7,12
SUCCESSFUL 16:19
SUITE 1:31,37
2:37

SURPRISE 13:2
SWAINE 2:16
12:23

T
TABLE 10:16
TAKING 13:2,7
16:2
TAYLOR 2:21
TELEPHONE 1:45
TELEPHONIC 2:32
TERMS 4:16
7:14,16,18 9:19
11:6,11 13:10
THAT'S-
5:18,20,21
8:2,16,17 9:3
10:6,12,16 11:19
12:14 14:8
16:9,20
THERE'S 6:22 8:1
14:12,15 16:7,18
THEREFORE 7:17
THESE 4:3
7:16,18 10:22,23
11:7,22 12:1
15:6,9
THEY'D 8:24
THEY'LL 10:24
THEY'RE 14:7
THEY'VE 13:16
THIRD 4:11 5:10
15:9
THREE 3:25 4:20
7:17
THROWN 9:14
TIBBITTS 1:35
3:12,14
TIME 8:20 9:10
11:5 13:4,14,15
TIMES 9:16
TODAY 3:9,16
8:16,17 10:7
13:9,18 14:13
15:3
TOTAL 5:8
TOWARDS 8:11
TRADITION 16:10
TRANSACTION-

13:10 15:12
TRANSCRIPT-
1:15,50 17:13
TRANSCRIPTION-
1:42,51
TRANSCRIPTS 1:42
17:18
TRUSTEE 3:24
4:4,10,14,22
6:3,6,17 8:15
11:9 14:22
TRUSTEE'S 5:20
6:15,25
TUNES 9:12
TURN 3:16 4:15
8:7
TWO 6:8

U
UNDERSTOOD 9:22
13:21
UNIMPAIR 11:4
UNIMPAIRED 11:3
UNITED 1:1,17
14:22
UNREDACTED 6:18
UTAH 1:38

V
VALIDITY 10:21
VARY 7:7,12
VERSION 6:18
VIA 6:2
VIEW 14:17

W
WAGE 5:5
WE'LL 12:6 16:16
WE'RE 4:3 8:12
9:2 10:13
11:12,22,24 15:15
16:2,4
WEEKS 13:12,15
WELCOME 3:11,14
WERKHEISER 1:22
3:5,6,7,12,15,18
WEST 2:24
WHO'S 3:12
WILL 4:15 5:23

6:4 7:7,11 9:4
10:14,19,22
11:2,3,4,8,9
15:12,15 16:25
WILMINGTON
1:10,25 2:14,25
WISH 8:9
WITHDRAWN 3:23
4:4,9,13 6:1,14 13:8
WITHHOLD 12:18
WON'T 9:4,7,8
10:23
WORK 16:18
WORKED 16:21
WORKING 9:2
16:21
WORLDWIDE 2:18
WORTHY 10:9
11:13

Y
YORK 2:8,19
15:1,5
YOU'LL 9:24
YOU'RE 12:20
YOU'VE 9:20
YOUNG 2:21