UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
THE SCO GROUP, INC., *et al.*,	.	Case No. 07-11337(KG)
	.	(Jointly Administered)
Debtors.	.	
	.	June 17, 2008 (2:03 p.m.)
	.	(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.

THE CLERK: All rise.

THE COURT: Good afternoon, everyone. Thank you, please be seated. Mr. O'Neill.

MR. O'NEILL: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. O'NEILL: James O'Neill and Rachel Werkheiser appearing from the Pachulski firm on behalf of the debtors and also appearing with our co-counsel Arthur Spector, Dan Lampert, and Grace Robson in the matter.

THE COURT: It's good to have everyone back.

MR. O'NEILL: And the Court will also recall our client representatives, Darryl McBride and Ryan Tibbets (both phonetical), appearing today.

THE COURT: Good afternoon.

MR. O'NEILL: Your Honor, going down the agenda for today, I'm going to go a little bit our of order. Number 1 is continued. Number 3 on the agenda is our quarterly fee hearing.

THE COURT: Yes, I'm prepared to approve those.

MR. O'NEILL: Thank you, Your Honor, we do have a form of order, and I can hand it up the Court would like the order?

THE COURT: That would be fine, that would be helpful.

MR. O'NEILL: It has been circulated, and I don't

believe there's any additional comments.

THE COURT: Excellent.

MR. O'NEILL: If I could hand that up to you now, Your Honor.

THE COURT: Thank you, thank you, Mr. O'Neill. Okay, fine.

MR. O'NEILL: Thank you very much, Your Honor. I'm going to turn the podium over to Mr. Spector who's going to handle number 2, our exclusivity extension request.

THE COURT: Yes, thank you.

MR. O'NEILL: Thank you.

THE COURT: Good afternoon.

MR. SPECTOR: Good afternoon, Your Honor. It's a pleasure to be back.

THE COURT: Good to have you back.

MR. SPECTOR: Just for the record, I don't know if Mr. O'Neill mentioned that we have another participant by telephone.

THE COURT: We have a few on the telephone -

MR. SPECTOR: Oh, okay.

THE COURT: Mr. Feltman, Mr. Singer, Mr. Robinson, and Mr. Petrofsky.

MR. SPECTOR: Thank you.

MR. FELTMAN (TELEPHONIC): And, Your Honor, this is Jim Feltman on behalf of Mesirow.

THE COURT: Yes.

MR. FELTMAN (TELEPHONIC): If the issues, Your Honor, that pertain to Mesirow were addressed by the Court and if there's no other reason for me to continue, I would like to be excused.

THE COURT: You certainly may. Anyone else who is on the phone strictly for the fee applications may also be excused.

MR. FELTMAN (TELEPHONIC): Thank you, Your Honor.

MR. SPECTOR: I think that might include Mr. Robinson as well.

THE COURT: Perhaps Mr. Robinson.

MR. ROBINSON (TELEPHONIC): Thank you, this is Mr. Robinson.

THE COURT: You're welcome to remain on the phone or to go do something more useful.

MR. ROBINSON (TELEPHONIC): If you don't mind, I think I'll take this as a leave of absence.

THE COURT: Very well.

MR. ROBINSON (TELEPHONIC): All right, thank you.

THE COURT: Thank you.

MR. SPECTOR: Thank you, Your Honor. I'm glad I got that resolved.

THE COURT: Yes, thank you for bringing that to my attention.

MR. SPECTOR: "Resolution of the balance of the District Court action is paramount to the prospects of these Chapter 11 cases." That's quotes, Your Honor, that's not the debtors' words, those are the Novell's words, page 8 of its relief from stay motion, docket entry number 89. "Debtors simply cannot file a confirmable plan of reorganization until they know what liability they have to Novell." That, Your Honor, too, is a quote. That's a quote from Your Honor in the order - the opinion, I should say, granting limited relief from the automatic stay, page 11.

THE COURT: Yes.

MR. SPECTOR: We're here today, Your Honor, on a motion of the debtors for a continuance or an extension of the deadlines to file and to file exclusivity - pardon me, a deadline of the exclusivity for filing a plan and the 60 days after that for solicitation of ballots. And, as Your Honor and Novell has pointed out - both have pointed out in the past, an important benchmark in this case will be the ruling from the Utah District Court as to the issue of how much this debtor, SCO, the main debtor, owes, if anything, to Novell. That's the bogey. But there are other elements for a motion for an extension of exclusivity. One is the complexity of the case, and I will admit that this Court has seen far more complex cases than this little bitty SCO case, but this is a unique case, maybe the term complex is too narrow a term for

these elements. It is a unique case. I don't think the Court has seen many cases like this. The complexity is derived from the uncertainties that this company has. It has suffered a devastating litigation blow at the beginning of the case which certainly, in the popular press and probably in the minds of management, put into question the continued viability of the company. Faced with that devastating litigation result, we have now not much different than what you see in the mass tort cases at the company litigation, raises the stakes and makes this case more unique than the routine Chapter 11 case. Because of the uncertainties that come with this litigation, this case has complexities to do a deal to get the company out of bankruptcy is more complex than in the usual case. One of the other elements for establishing cause for an extension is that this is not an ulterior plan to beat down the opposition by creditors. There is a case, a famous case I recall, called Lake in the Woods. It was a District Court opinion by the Eastern District of Michigan, a place I'm familiar with, by a District Judge who denied exclusivity extensions because it was oppressive in the facts of that case. I don't think this case qualifies for that kind of consideration. I think the facts will show that we're not trying to beat up Novell or IBM or any of the other creditors. Another issue is an element that's good faith progress towards a reorganization.

Novell in its objection, by the way, the only objection, took issue with that, and I can't fault them for spinning it the way they spin it. It looks like a series of false starts, but what we're doing here, Your Honor, is we're trying to create a reorganization in a very difficult environment, not just the environment of the financial markets where we need large millions of dollars to exit if we go with that route, but also because we have parties that are involved that have, you know, difficulties they have to get their arms around, the uncertainties we're talking about, and what - you cannot fault the Board for trying its best to do not just any deal that comes around. You only know the deals that come before the Court.

THE COURT: Exactly.

MR. SPECTOR: You don't know what deals have been turned down and what deals we're trying still - or not still, but we have tried to make come to fruition. What we have today, however, is we have a hundred million dollar deal from someone of the caliber of Steve Norris and his friends that's still viable, still talked about, not before you yet, not out for a vote yet, but you have to admit that from where we were when we filed this case September 14th, adrift with the company's future uncertain, we now have progress in the sense of something coming up with a deal that could pay everybody in full. No prejudice to creditors. Aside from the

historical financial information that the Court has in the form of the MORs and that's only through April, the May one isn't due until June 20th, and the June one, which we think will have material improvements, won't be due till July 20th. We think we have succeeded in bettering our projections, the company has. The April projections - the April results were better than projected, and if we could - if we were permitted to, and we're not because the company is publicly traded and we can't talk about future financial matters on an open record, but we think we can show that the prospects are greater than originally anticipated and that the likelihood of any prejudice coming about by this rather short extension is almost nil. The length of the case: When we filed this motion, it was only eight months old, and we've already had two major events, the aborted York deal, which would have led to a plan if we could have concluded that, and a much more lucrative deal with the SNCP group, and we have not in any way abandoned that, and we are still working towards that, and we get to the major issue about unresolved contingencies and prospects for a viable plan. Novell makes a lot of the fact that, Well, we never said we needed this resolution before. Testimony, if the Court will entertain testimony, will explain in detail why we do have an expectation that the unresolved contingencies have now suddenly, in the last month or so, intruded. The Court and Novell, were of that opinion

originally, and we worked around it. We worked a deal that if we had other reasons - remember, we started out, it was an equity deal, and when we came to Court, the deal was suddenly changing for our better to be an asset sale, to take that deal and put it together took some time to unwind the idea of an equity sale and an asset sale created some time pressure. They also had a due diligence period, and they were in the due diligence period and the evidence will show when certain questions arose about the business model that they were going into, and because of those questions, the due diligence period was churning and we had till May 11th to file a plan. Well, May 11th came and certain things had changed between when we were in court on April 2nd and the deadline of May 11th, and Mr. McBride, if he's required to, will testify about the nature of those changes, but as an - not as an offer of proof but as an opening statement, I'll submit that the changes are as follows: From April 2nd through April 27th, we all knew there was going to be a trial in Utah over the amount of Novell's damages, which they had asserted was $40 million or thereabouts. The debtor, probably the investors that were looking to buy, and basically the marketplace had one expectation only that whatever Novell was going to ask for, it was likely to receive at trial, given the history that they've experienced in the courtroom till now. So, the bogey that they're trying to solve around was a $40 million

bogey. Suddenly, on April 27th, two days before the trial in Utah, Novell lets out that really the most they're really seeking is about half of that, 19 million or so. I mean, that's a big number. That's more than the debtor has, there's no question about that, but to acquiring companies, that changes the metrics of how they're going to do their deal. Second thing happens, the trial occurs, four-day trial. Surprisingly, things came out from the viewpoint of the debtor, better than anticipated. No, we don't have a ruling, and maybe we're taking a risk saying this, but in the viewpoint of the debtor, supported by observers, the trial went well for the debtor. The third thing that happened was on May 2nd the Judge said he's going - with undue delay, he's going to give us a ruling, which was interpreted to be just guesswork, you know, and there's some reason for the guesswork, but, you know, by the end of May, maybe the middle of June. Then we said, Well, okay, if it comes out favorably, we may want to change the deal materially, both sides may want to change the deal materially. Let's see, and what is it that business people hate the most? Uncertainty. They were willing to do a little bit of game playing to get the plan that we had proposed out when they dealt with uncertainty and expected a $40 million bogey. Now all of a sudden, that was in play, seriously in play. So, the Judge says he's going to give us a ruling without undue delay; why

rush this? Just wait a few weeks, see what it is, and we can solve that. That was the impetus, at that point, all discussions from May 2nd through May 11th kind of like, it was stymied at that point. There was no point, and so that's when we decided we had to file a motion for an extension, and it's tied to the Judge's ruling, obviously now. Finally, we're on your page and it's because of business reasons. So that's where we are, and if we get a ruling, we would go back to the table with the same people, SNCP Partners, and say, Okay, now we know the parameters of this, and there's other issues that that ruling could presage clarification on, and if we get into the granularity of it, we'll have Mr. McBride testify about that, and then we can say, Okay, let's negotiate the final terms of this deal now, and then document it. Remember, I promised you, and I will not go back on it. I will not file a plan unless I've got definitive documents this time, and that can't be done in the 10 days that Novell in its response suggests if the Court were willing to grant us our relief, give us only 10 days from the date of the ruling or on the outset - on the outside, August 11th. So, if you drop as impractical in the extreme the suggestion of 10 days past the ruling date, then really what they're saying is, Okay, Judge, if you're not going to deny the motion, grant it. So, because we asked for August 11th and they're suggesting August 11th, and frankly, August 11th if we get a

ruling soon, will work, but we don't want to promise you that we won't be back August 3rd when the Judge ruled on August 2nd and now we have to digest it. So, you know, that's a reality. We anticipate it and I said I'd tell you why we though maybe a month or six weeks. When the Judge issued his ruling on the summary judgments in August, last year, there were thousands of documents, pages. It was an enormous record. He heard arguments for weeks, weeks of arguments, and he had a tremendous amount of work he had to do, and he got that done with, I think, it was a 138-page opinion or something in six months. Six months is a long time, but not given the enormity of the work he did. This was a four-day trial. He's the trier of fact. It was significantly shorter, and he volunteered this time to say he'll get it done in undue delay. I think it was a fair assumption that we'd have a ruling somewhere by the middle of June, which is where we are now, and with that in mind, we fixed a middle of August date, roughly to the anniversary day of the month. It was a guesstimate, but as I say, it all does depend on the date of the ruling. So, Your Honor, I think we can show cause under the elements for an extension, and if the Court wants to examine this more carefully of course, we have witnesses who can testify as to the details thereof. Thank you.

THE COURT: Thank you very much. Would anyone else

like to be heard? Mr. McMahon or Mr. Lewis? Mr. Lewis, welcome back to court.

MR. LEWIS: Thank you, Your Honor. It really is a pleasure to be back here. It's true that when we made our stay relief motion we said we thought a ruling from the District Court was important. At that point the debtor was trying to sell assets and it was unclear what assets it owned or didn't own, and the Court understood that, and we understood that, and we all knew too that the size of the claim might be important. That was the state of the record at that time. The debtor then made its first motion for an extension of exclusivity. This motion was dated January 2nd, not long after the Court ruled, and in this motion, at paragraph (14) the debtor said, Filing a plan now is 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, not to formulate a plan, but to allow the anticipated trial to narrow the issues and dispute with Novell before the debtors are required to file their plan. Sensible. Now the debtors are saying, paragraph (17) of the current motion, 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 estate's assets.

As Yogi would say, Deja vu, all over again. But what happened in the meantime? The debtor filed a plan. Did exactly what it said in its original motion it didn't plan to do until there was a trial. It filed a plan. The plan was a hundred million dollar plan. It didn't matter whether our claim was 20 million or 40 million. It would have covered either. That's what they said. The problem with the plan was not that it didn't cover the alternatives, the problem with the plan was something that I disagree with counsel about, whether SNCP was real. The Court will remember our concerns about the disclosure statement. Who are these newly formed people? What's the deal? How reliable is the financing commitment from them? What is their source of money? There are a lot of issues like that. That's why it got withdrawn, and when the debtor withdrew the plan in this Court at the last moment, the debtor said nothing about needing to have the trial finished. The debtor said, Oh, well, in the middle of getting ready for this plan, the debtor and SNCP or the plan sponsor decided to change the structure and we're working diligently on that now. But of course, due diligence had been going on all along. So, what we've heard today is a lot of new reasons why the old reasons weren't really reasons at all, and I'm concerned we're going to hear the same thing again and again and again. Yes, in the perfect of all possible worlds, we would have had the

trial results, but the debtors already abandoned that theory. It's not said anything really in its motion, in making the - in proposing the prior plan, in withdrawing the prior plan, why it can't proceed with whatever it is it plans to do, whatever structuring that it had to do. It was just talking about structuring and new documents, you may recall, if you reread counsel's remarks from that transcript of the hearing, I think it was on April 1st. So, what we see as a case in which the debtor tries to portray a series of rushes resolving this case, as feeling its way along. That's not really what's happened at all. The debtor has come into court hoping to get this case ended in a way that was satisfactory to it. Those hopes were dashed. I don't know that we're going to see anything more convincing the next time around. Maybe we will. I certainly hope so. But I think it's time to put a short leash on this debtor. Ruling or no ruling, we all hope the District Court in Utah will rule sooner than later. I have no idea personally whether what Mr. Spector says about what happened at trial is true or not. We've heard optimistic accounts from the debtor of other things in the past, as the Court knows, that turned out to be totally unfounded, but I wasn't there, and I'm not prepared to argue that point, nor am I prepared to examine Mr. McBride on that point because what's he going to tell me? He's either going to have to testify about what his lawyers

told him essentially or he's going to have to invoke attorney/client privilege. I can't imagine a bigger waste of our time this morning than arguing over what the prospects are for the Utah court litigation and whether it's really more promising than the debtor had hoped, or that somehow Novell's prospects have decreased. The dollar figures are what they are. I don't plan to argue those either, but I just don't see the point this morning of trying to inquire into what is a completely speculative piece of information about what the Court might or might not do now that it's got the matter under submission. I think the really important point here is, we've heard a sequence of stories, where this case is going, how it's going to get there, never fulfilled. In the meantime, we've spent scads of money on fees, the debtors' fees, the debtors' professionals' fees, the debtors' advisors' fees, my fees, which isn't necessarily a bad thing but it is for Novell, I suppose. The fees of other people, Mr. McMahon's time. This debtor - Yes, the case is less than a year old, but a year's a long time, and there are, as the Court knows, a lot of cases that say, pending major litigation is not a reason to extend exclusivity or debate for an extension of exclusivity, and I think that would apply here too, and the debtor has shown it can propose a plan, apparently, whatever other weaknesses the plan might have had. That does take into account the possible outcomes, and

if the debtor had wanted to do something much more carefully tailored it should not have opposed stay relief in the first place. We would have had a trial sooner. We might have had a result sooner. We're living with the consequences of a series of strategic choices the debtor made, and I think it's time now to say to the debtor, Sure, you can have some more time, but this is it, and maybe 10 days is too soon after a decision, maybe 15 days, maybe 20 days, maybe 30 days, but it can't be that complicated. They've had all this time to talk about how to structure this deal, and in fact, they were restructuring it as we appeared in court on April 1st. They don't need another 30 or 45 days after a ruling by the District Court to know what they're - they could have wrapped the prior plan around with the status of this case today. The problem with the prior plan was it was completely unsubstantiated as a deal. So I ask the Court to tell the debtor to - if the Court grants this extension, to say to the debtor, this is the last extension I'm granting, and I'm going to ask you to file a plan within 30 days after we get a ruling from the District Court regardless of whether that comes before or after this extension expires. I want a plan on file by August 1st or whatever it's going to be, and I want us to go from there because we don't even know if the District Court's going to rule in a way that's plain to everybody about what it means. You know, it may be a clear

win for somebody. It may be a clear loss for somebody. It may not be either, and as a consequence, we may be back here saying - and hearing again, well, we need to figure this out, we need to figure that out, but the case just keeps going on and on and on and the money keeps getting used, and in the meantime a cloud remains over a lot of these York businesses, and we ought really know where we're going. Thank you, Your Honor. I appreciate the time.

THE COURT: Mr. Lewis, if I may just ask one quick question?

MR. LEWIS: Yes, please.

THE COURT: Is there any prejudice that you would point to if the extension is granted? Prejudice to Novell?

MR. LEWIS: Your Honor, if we extended to August 1st, I think the answer is, it's not a very long extension anymore, but I think there is prejudice in the sense that if the Court doesn't make that the final extension, you are just in effect inviting the debtor to buying more time whenever it comes to this Court and tells this Court, Well, there's this uncertainty, there's that uncertainty, we've got major litigation going. So I don't think I can say, you know, the next - what is it, 40 days from now, 43 days from now is going to sink the ship, but there is an effect on the ability of my client and SUCI (phonetical), my other client, and on other parties engaged in this business to do their business,

and I think it's time that everybody moved on. Thank you.

THE COURT: Thank you, Mr. Lewis. Mr. McMahon. Good afternoon.

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

THE COURT: Yes.

MR. McMAHON: With respect to this motion, Your Honor, we didn't file papers, but I would appreciate the Court taking our comments into account.

THE COURT: Yes, sir.

MR. McMAHON: We just take a practical view of exclusivity. Picking up on the Court's last question with respect to prejudice. Certainly, the law's informative. Mr. Spector recited some factors for the Court to consider. Your Honor's question regarding prejudice is another thing to look at, but on a very practical, broad-based view, Your Honor. Exclusivity is about providing a breathing spell for the debtor to negotiate with key constituents in the case. It's a privilege. It's not a right and, you know, in that vein, Your Honor, I think that the question we have to ask is taking a look at what's occurred from the petition date when the debtors filed these cases to today, is exclusivity doing what it's intended to do? Just as a practical matter, and our office has concerns. We actually do not believe that exclusivity is really providing a benefit to the creditor

constituency at this juncture. And let me clear as to the reasons why.

THE COURT: Okay.

MR. McMAHON: Part of that is just simply how this case is set up, and the parties have correctly identified the reasons why we're at where we're at on a certain level. First, you have a litigation case at its core. We have the practical reality that our office was not able to perform an official committee of unsecured creditors due to insufficient interest. That remains the case today. So, I think practically what you have going on here, Your Honor, is the debtor is, I guess, without a - I would call a fiduciary to negotiate the terms of a plan with. That's not to say that it should be doing its duty in terms of coming forward with a proposal that is confirmable for the Court, but there are some, I guess, just realities about the way this case is laid out such that really what you're talking about is the primary negotiation, if you will, Your Honor, is going on in this very courtroom, effectively. There's the Utah element, and the parties have already talked about that extensively, but I have to agree on behalf of my client with Novell that the process of us getting from point A to point B starts with the debtors coming forward, and soon, with a binding proposal. We can argue about whether or not we're even at stage in the last go around, so that we can get this process moving in

some positive directions. And I don't think that, you know, exclusivity in and of itself is going to provide any benefit insofar as encouraging the debtor to do that at this stage. I just think it's, you know, we've been up to the plate two times in this case already. We've been told about the fact that Stephen Norris is, you know, still out there. We have his proposed asset sale. We may get to it at some point. I think that at the core of what Novell is asking for is a deadline for the filing of a disclosure statement and plan that hopefully is confirmable, and the reality is that in terms of Your Honor's question regarding prejudice, I would have to agree with the - I guess the general observations that Novell's counsel made regarding costs, regarding time in Chapter 11. This is a duty of a debtor in possession to come forward with this document. It's not something it can delay. It's required to do so at the earliest possible moment in a Chapter 11 case. Now, I appreciate the fact that the debtor has, you know, tried, I guess on two occasions, to bring something before this Court, but the rather, like I say, quick dispatch from which this Court, I guess, we moved on from those two proposals suggests that, yes, I mean, we are at a point in this case where we need to get it moving in some direction. This case does not have to stop in its tracks for Utah to proceed. In fact, I agree with Novell that the last go around that we had disproves that statement

as a general matter, and we have to get from point A to point B, and that process starts with the debtor coming forward with a confirmable proposal, and if it's incapable of doing so, Your Honor, then perhaps another party in interest in the cases should have an opportunity to do so. It's a very simple way of looking at things from our view. Is exclusivity doing what it's intended to do in these cases? And, there's no negotiation going on here insofar as the way Your Honor having experience in mediation matters understands negotiations to occur. The occur outside this building, outside of this courtroom. This case is progressing, I think, basically in the confines of this courtroom from the standpoint of the actual negotiation, if you will, of what's going on with the progress of the case. So, with that observation, Your Honor, I would just reserve the right to be heard at the conclusion of the evidence.

THE COURT: Thank you, Mr. McMahon.

MR. SPECTOR: Your Honor, I'm constrained to object to the remarks of the United States Trustee. I don't frequently do that, and I ask that they be stricken. This is not a situation, we had a few comments to make. This was a broadside attack. It was an objection never put in writing. We had no expectation that we would be having to respond to the U.S. Trustee's broadside, not a specific argument on a particular point, but an attack on the debtor from beginning

to end of this case. We object to that. We have no ability to respond to those types of arguments without any advance writings. The reason why there has to be a deadline and we've always granted the U.S. Trustee extensions when he's asked for it. This was unexpected, and we do take offense at that. Getting to the merits -

THE COURT: Let me just say -

MR. SPECTOR: Sure.

THE COURT: I accept Mr. McMahon's arguments. As far as I'm concerned, he represents an important, you know, constituency as far as the integrity of the process is concerned, and they're his arguments. I don't think - they're factual matters that the Court can take into consideration, and I do so.

MR. SPECTOR: Fine. I had to say that for the record, Your Honor.

THE COURT: I understand.

MR. SPECTOR: You notice I didn't stop him or object when he started to speak.

THE COURT: Understood, and I appreciate that.

MR. SPECTOR: There are a couple of factual things that were stated that have responses, and some of them are the factual allegations are incorrect.

THE COURT: Well, let me just ask you this -

MR. SPECTOR: Sure.

THE COURT: - because as I understand the situation, and the situation is that the litigation has a major impact upon the negotiations with potential buyers, and those negotiations then have a direct and significant impact upon the plan that you'll file, and there's no question, regardless of how people's positions may or may not have changed in this case, my position remains the same, and that is, there has to be a conclusion to the litigation before the debtor's in a position to finalize, to make the best business deal it can, which in turn will hopefully result in a confirmable plan.

MR. SPECTOR: Exactly, Your Honor.

THE COURT: And to the extent that exclusivity is removed from the debtor, that would only further interfere with the debtors' ability to negotiate the plan, with the deal and thus the plan.

MR. SPECTOR: I'd like to share some more insight. Number one, we didn't just withdraw the plan, we just didn't proceed on it that day. It's a nomenclature thing, perhaps, but before the Chapter 11 was filed, the debtor was in negotiations with another party with his horrendous ruling, and they just couldn't get past it. The only option then was the Chapter 11. At that point the debtor didn't look like it was in a position to be sold to anybody or nobody was going to touch it with the situation it had, and we went into an

11, and we don't file 11s in my firm unless there's some expectation of getting out of an 11 as an operating company or even as a 363 sale, but not just buying time converting. We had a concept of a standalone plan. We still have a concept of a standalone plan and based on the numbers we're getting in the business end of the deal, it's more likely now then it was when we started. Yet the duty of the Board of Directors, the management of the company, is not just to get a plan and get out of Chapter 11, but to get a plan that's the best plan possible for its constituents, and that's where I come back to Mr. McMahon's point. The creditors in this case are not the only constituents. We have not resolved that the equity holders are out of the money in this case. But for the litigation claims, they're very much in the money. Not only that, if the litigation claims go not just in the defensive posture that we win, that we don't owe them any money, it almost automatically means we're very flush because we started the lawsuits. We're the plaintiff, and if we get the ruling that we think we deserve from the Tenth Circuit, the ball's in the other court now. Now, all of a sudden we're looking for hundreds of millions of dollars, perhaps, from the other side of the table, and so we don't perceive that our sole role here is to take care of the two and a half to three million dollars of creditors. We've got equity holders who bought stock in this company over the

years and have an expectation of a return. So, what's the best deal for stockholders and creditors? We've said right along, we think that in order to keep stockholders in the game we have to pay the creditors. I mean, there's a no - Maybe that's why there's no committee. We could come up with a plan, and we think we could get it confirmed with a standalone proposal. If Novell has a claim that's, let's say, $10 million, maybe it will take us five years to pay it off. There are prospects, which I'm not going to tell the Court about, that give us reason to believe we could pay it off. If it comes in, you know, $40 million, maybe not, pretty sure not. That's why those things matter. There are other things that will come out of that ruling that might help us clarify just what our rights are, not just the dollar amount. Those things are important to know because anybody whose going to invest in our business, if we go with that route, is going to need to know the assurance of that. It's a lot more complex than, Oh, gee, those stumblebums couldn't come up with a plan with York and they haven't shown us the details of the deal with Norris. Well, one of the reasons why we stymied on the deals with Norris is because the world changed when the number went roughly half. The trial took place and the Judge says, We're going to get certainty fairly soon. That's the reason why things have turned around. Your Honor, August 1st, I think, is probably - We asked for August

11th. I don't know - We asked for August 11th. We still stand with the August 11th date, however, if Your Honor is inclined to give us a deadline based upon the ruling, we'd be happy to accept that as well.

THE COURT: Thank you. Mr. Lewis.

MR. LEWIS: Thank you, Your Honor. I think we've just heard that the debtor has a plan to deal with this situation no matter what because the debtor has said, Well, we have a duty to our shareholders because no matter what happens in the District Court, if we win on appeal, even if we lose there, there are going to be hundreds of millions of dollars for them. So the question is, What is it that we're waiting for here? What exactly is it that we have to know? The debtor proposed a plan that took the uncertainties of the outcome into effect, into account. Yes, if we have a ruling at the trial, at least something more specific to focus on, but there are going to be appeals no matter what happens, and everybody's going to have uncertainty until that's all over, and I don't think we're hearing and I don't think the Court would entertain the notion that the debtor could wait with a plan until appeals are resolved because as we all know that will be sometime down the road, even in the Eighth Circuit, and so, we're really talking about where we are right now, and we know what the range of possibilities are right now. Even the debtor knows what the range of possibilities are

even if we're just talking about damages. If you take the debtor at what it says about what happened at trial, the damages ranged from somewhere around $20 million for Novell to hundreds of millions of dollars for the debtor. We know that. We don't need to wait for a ruling for that. And so, my concern here is, we don't really know when we're going to get a ruling, and frankly, while a ruling, I'm sure, would clarify some things, it might also not clarify some things, and in any case we know that it's not going to resolve things because there will be appeals. Whoever wins and whoever loses and maybe it will be some of both, I don't know. There may be appeals, there may be cross-appeals. That's all going to be in the future. Whatever plan the debtor proposes is going to have to deal with that, those uncertainties anyhow. And so, we know - we've heard that the deal with Stephen Norris Partners is still there. We're still talking about presumably a hundred million dollars. That's more than enough to cover whatever there might be here in terms of damages, as the debtor said, in its prior plan, and so - and the debtor and the Court both seem to be of the view that a termination of exclusivity will harm negotiations. I honestly have a different point of view. First of all, we're just talking about terminating exclusivity here, we're not talking about converting this case to a Chapter 7 or dismissing it. And if the parties are under some pressure to

negotiate seriously and to absorb certain uncertainties that if we were just an - Remember, we're not in an ordinary business setting here. These aren't two parties at arm's length who only have to worry about themselves. Some uncertainties are inherent in the process of formulation of a plan because there are deadlines, and there are other people you have to answer to and to negotiate with if you choose to, although there haven't been any such negotiations that I'm aware of, and I think if the debtor and whoever it's negotiating with, if it's Stephen Norris - and I want to emphasize the deal was - the change with Stephen Norris didn't happen when Novell reduced its damage claim to $19 or $20 million. That happened before the April 1st hearing before this Court when the debtor came in and said the deal had already changed, was being restructured, but the numbers haven't changed. Nothing's changed in that regard. And they were already negotiating documents, we were told, and everybody knew at that time the trial was coming up. So, I ask the Court to rethink the notion that somehow terminating exclusivity or putting a solid outside deadline on it and tying an earlier deadline to a ruling in the District Court, if we really have to wait for such a ruling, if that really is going to hurt anything here or if it won't really in fact improve the prospects of negotiation of a real plan with parties who, while they would like in a perfect world of

arm's length negotiation - you know, the way they talk about a market value appraisal, buyers and sellers at arm's length with no pressure to sell, no pressure to buy, that's not what Chapter 11's about. There is a pressure to sell and a pressure to buy. It's part of the point. It's part of the point of terminating exclusivity. If stymying negotiations were a reason not to terminate exclusivity, you would never terminate it. There would never be a reason to because it would almost invariably stymy investigations except in the worst cases where creditors have lost confidence in the debtor or there's been dishonesty or some other reason that we're not even close to here, but in most Chapter 11 cases, that's not so. So I ask the Court to reconsider what that means and to impose on this debtor some real deadlines that it has to live with, and deadlines sooner than later, and let's see just how fast they can produce a plan if they're really asked to do it, accepting that it won't be their perfect plan, but that's not the objective of the Code. Thank you, Your Honor, I appreciate the time.

THE COURT: Absolutely, Mr. Lewis. I appreciate your comments. Mr. McMahon, did you have something further to add? Not so much on the propriety of our objection or not, just on the merits.

MR. McMAHON: Your Honor, nothing really to add other than to, I guess, to thank the Court for hearing us and

to reaffirm the fact that under § 307 of the Bankruptcy Code, we have the right to be heard with or without papers.

THE COURT: Thank you, Mr. McMahon. Well, here's where I'm coming out on this: I did not lift the automatic stay for the litigation in Utah to proceed to punish the debtor. I lifted that automatic stay because I thought that having the Court ruling, the District Court's ruling on a pivotal piece of the case, of the bankruptcy case was essential to formulating a plan and to formulating, perhaps, a transaction, and at the moment, with that uncertainty, not knowing whether Novell will recover or whether in fact the debtor will recover, it's beyond me how - Could the debtor formulate a plan? Certainly. They did once, they could do it again, but it wouldn't necessarily be beneficial to the debtors' estate to do so, and I think that is a concern, and I do think that the uncertainty of the litigation and awaiting the result of that litigation does create cause to extend exclusivity here. So I'm going to grant the motion, and I'm not going to limit it to this one extension because, in my judgment, that ties the Court's hands as well as the parties' hands, and I think that the Court ought to be able to consider developments in a case as the case continues, and what appears in August may be very different than what appears today. Clearly, the hurdle in extending exclusivity over time will rise, will grow higher, but that isn't the

same as saying this is it. You know, I just always remember one of the lessons in law school was never say this is your last argument, and I don't like to tell parties, this is your last extension because sitting here today I don't know how things will appear in August. So, I'm going to grant the motion. I'll grant the extension to August 11 on the basis that I do find cause, and I think under the circumstances I am in a position to enter the order as submitted.

MR. SPECTOR: Thank you, Your Honor.

THE COURT: And it is without prejudice but clearly, and the debtor knows this, capable counsel knows this, that it becomes more difficult as time goes along to continue to grant extensions for exclusivity, and that may or may not be the case in August.

MR. SPECTOR: Thank you, Your Honor.

THE COURT: So I will enter this order, and obviously, I'm sure, that the parties will keep me apprised of any developments in the Utah litigation.

MR. SPECTOR: Yes, sir.

THE COURT: And I know judges mean well to get cases decided quickly, but other matters arise and sometimes what appears to be something that can be done a little more quickly is more complex than the judge realizes until he starts to go back and rethink it and review the record.

MR. SPECTOR: Certainly understand that.

THE COURT: So with that, unless there's something further, we will stand in recess.

MR. LEWIS: Nothing further, Your Honor.

THE COURT: Thank you everyone and good day.

ALL: Thank you, Your Honor.

(Whereupon at 2:51 p.m., the hearing in this matter was concluded for this date.)

I, Elaine M. Ryan, approved transcriber for the United States Courts, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Elaine M. Ryan June 23, 2008

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