IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: The SCO GROUP, INC., et al., Debtors.	Chapter 11 Case No. 07-11337 (KG) (Jointly Administered) **Hearing Date: June 12, 2009 at 2:00 p.m. (ET)** **Objection Deadline: June 1, 2009 at 4:00 p.m. (ET)**

MOTION OF INTERNATIONAL BUSINESS MACHINES CORPORATION FOR AN ORDER CONVERTING THE DEBTORS' CHAPTER 11 BANKRUPTCY CASES TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE

International Business Machines Corporation ("IBM"), a creditor and equity security holder in these Chapter 11 cases, by its undersigned counsel, submits this motion for an order converting these Chapter 11 cases of the debtors and debtors in possession, The SCO Group, Inc. ("SCO Group") and SCO Operations, Inc. ("Operations", and, collectively with SCO Group, "SCO" or the "Debtors"), to cases under Chapter 7.

PRELIMINARY STATEMENT

1. In the more than 19 months since the Debtors filed these Chapter 11 cases, they have squandered cash and have operated at a loss (even excluding reorganization items). They freely admit that they are not likely to have the liquidity to sustain their operations for much longer. The Debtors have failed in every attempt to sell or reorganize the business. They have failed to provide evidence of any viable business and have succeeded only in depleting the limited assets available to satisfy creditors. There is neither a viable business to reorganize nor an advantage to liquidating under Chapter 11. To conserve whatever value may still remain in the Debtors' assets, these cases should be converted to cases under Chapter 7.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. § 1112(b).

BACKGROUND

A. The Debtors' Litigation against IBM and Novell

3. In early 2003, SCO attempted to profit from the increasing popularity of the Linux operating system by, among other things, embarking on a far-reaching publicity campaign to create the false and unsubstantiated impression that SCO had rights to the Linux operating system that it does not have and by bringing baseless legal claims against IBM, Novell, Inc. ("Novell") and others.

4. SCO sued both IBM and Novell in separate actions in Utah, where SCO has its principal place of business (such cases respectively, the "IBM Case" and the "Novell Case"). In response, IBM and Novell asserted several counterclaims against SCO. The parties have been litigating separate cases in Utah for more than five years in the United States District Court for the District of Utah (the "Utah Court").

5. SCO's cases against IBM and Novell concern a host of complex intellectual property and other issues relating to SCO's UNIX business, including: who owns the copyrights to the UNIX operating system; whether SCO has the right to control hundreds of millions of lines of computer source code created and owned by IBM; whether SCO has the right to foreclose the use by others of the publicly-available Linux operating system; and whether IBM has a perpetual and irrevocable license relating to UNIX.

6. In a series of decisions, the Utah Court called into question SCO's statements about its claims and rights and, at least in the IBM Case, materially limited SCO's case. More importantly, the Utah court granted partial summary judgment in the Novell Case, rejecting two keystones of SCO's litigation campaign. The court ruled that Novell, not SCO, owns the core UNIX copyrights and that Novell has the right, which it has exercised on IBM's behalf, to waive SCO's purported claims against IBM (the "Novell Summary Judgment Ruling"). Although the filing of these Chapter 11 cases automatically stayed further proceedings in that litigation, this Court modified the stay to permit Novell to pursue the Novell Case except with respect to determination of the imposition of a constructive trust, an issue over which this Court retained jurisdiction. (See Memorandum Opinion (filed herein November 27, 2007); Order Granting Novell's Motion for Relief From the Automatic Stay to Proceed with the Lawsuit (filed herein November 27, 2007).) [Docket Nos. 232 and 233] On November 20, 2008, the Utah Court entered a Final Judgment against SCO in the Novell Case, and on November 25, 2008, SCO filed a notice of appeal.

7. While the Utah Court has not yet ruled on IBM's summary judgment motions (which concern all of SCO's claims), the Utah Court has stated that the Novell Summary Judgment Ruling "significantly impacts" the IBM Case. The parties disagree as to the full effect of the Novell decision on the IBM Case, but SCO concedes that the ruling forecloses six of SCO's nine claims against IBM.

8. The Utah litigations and their cost, coupled with SCO's declining revenues, led SCO to file these Chapter 11 cases on September 14, 2007 (the "Petition Date").

B. The Debtors' Business & Operations During the Chapter 11 Cases

9. Since the Petition Date, the Debtors have been operating their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 cases.

10. The Debtors have lost money almost continuously since the filing of their Chapter 11 cases. The Debtors have had a cumulative negative cash flow of $3,644,300 since the start of 2008, for an average monthly negative cash flow of $260,307 over that period, and a cumulative net operating loss of $11,296,087 since the start of 2008, for an average monthly operating loss of $804,863 over the period.[1] Even excluding reorganization items, the cumulative net operating loss of the Debtors since the Petition Date is $8,417,789. The Debtors have not generated sufficient cash flow to rehabilitate or adequately fund a feasible plan of reorganization. The Debtors have provided no evidence that indicates that this trend will reverse.

11. In addition, the Debtors' business has shriveled during the Chapter 11 cases.[2] As of September 10, 2007, the Debtors and their foreign subsidiaries and affiliates had a total of 123 full and part-time equivalent employees. (McBride Decl. at ¶ 6.) As of January 6, 2009, they had 66. (Second Disclosure Stmt. at 3.) As of September 10, 2007, the Debtors had resources, employees or contractors in 12 non-U.S. locations: the United Kingdom, Germany, France, Israel, Italy, China, Korea, Netherlands, Eastern Europe, India, Japan, Australia and Taiwan. (McBride Decl. at ¶ 26.) As of January 6, 2009, they had 9 non-U.S. locations. (See

[1] For this history generally, see e.g., Debtor-in-Possession Monthly Operating Reports of SCO Operations, Inc. Docket Nos. 358, 427, 450, 482, 506, 517, 551, 569, 585, 686, 687, 692, 721 and 737.

[2] For this history generally, see *Declaration of Darl C. McBride, Chief Executive Officer of the Debtors, in Support of First Day Motions* (the "McBride Decl.") [Docket No. 31] and *Disclosure Statement in Connection With the Debtors' Amended Joint Plan of Reorganization* (filed January 8, 2009) (the "Second Disclosure Statement") [Docket No. 655].

Second Disclosure Stmt. at 8.) In the years ending October 31, 2004, 2005 and 2006, the Debtors incurred research and development expenses of $10,661,000, $8,337,000 and $8,045,000, respectively. (McBride Decl. at ¶ 31.) In the two fiscal years since the Petition Date, the amounts had continued shrinking to $6,077,000 and $3,684,000. (First Disclosure Stmt. (cited infra) at 9; Second Disclosure Stmt. at 9.). In addition, "revenues from the Debtors' ongoing customer base have been diminishing over the past several years", and "revenue projections for the traditional UnixWare and OpenServer products are estimated to decline at [a] 20% rate ...". (Second Disclosure Stmt. at 40.) Finally, the Debtors have expressed little confidence that their businesses can remain viable as a going concern.

C. Proceedings in The Debtors' Chapter 11 Cases

12. In the past 19 months, while the Debtors have continued to lose millions of dollars, they have filed and withdrawn two sale motions and two plans and have requested four extensions of exclusivity, each with the promise that a confirmable plan was just around the corner.

(i) The Two Sale Motions and the Two Plans

(a) The Emergency Sale Motion to York

13. On October 23, 2007, little over a month after the Petition Date, with barely any supporting information, the Debtors filed an *Emergency Motion of the Debtors for an Order (A) Approving Asset Purchase Agreement, (B) Establishing Sale and Bidding Procedures and (C) Approving the Form and Manner of the Notice of Sale* (the "Emergency Sale Motion") [Docket No. 149] to sell substantially all their assets to York Capital Management ("York"). The Emergency Sale Motion attached only a nonbinding term sheet. Neither the Emergency Sale Motion nor the attached term sheet listed just what property the Debtors would sell, which contracts it would assign or which litigation rights it would transfer. For its non-binding

commitment, York requested bidder protections, including a cash break-up fee of $780,000 and expense reimbursements in an amount up to $300,000. IBM, Novell and the United States Trustee all filed objections to the Emergency Sale Motion [Docket Nos. 180, 179 and 202].

14. On November 16, 2007, just minutes before the hearing on the Emergency Sale Motion, the Debtors filed the asset purchase agreement contemplated by the Emergency Sale Motion. The asset purchase agreement, however, was not signed by either York or the Debtors, nor did it include any of the schedules or exhibits identifying the assets to be sold or the sale terms. The Court denied the Emergency Sale Motion, finding that proceeding with an asset sale without adequate disclosure of what assets the Debtors intended to sell and without any binding sale documents would "substantively prejudice" the parties in interest and even the Debtors. (See Transcript of Nov. 16, 2007 Hearing at 38:1-39:15 (filed Nov. 26, 2007).) [Docket No. 231] Although the Court gave the Debtors time to complete and execute the definitive sale documents and prepare a revised Emergency Sale Motion, the Debtors withdrew the Emergency Sale Motion just days later on November 20, 2007 [Docket No. 225].

(b) The SNCP Expense Motion and Plan

15. On February 14, 2008, the Debtors filed the *Debtors' Motion to Approve Settlement Compensation or Sale Compensation and Expense Reimbursement to Plan Sponsor* Stephen Norris Capital Partners, LLC ("SNCP") (the "SNCP Expense Motion") [Docket No. 346], attaching a Memorandum of Understanding executed with SNCP that provided Plan Sponsor protections (including an administrative expense claim for expense reimbursement of up to $500,000) and an outline of a plan. The SNCP Expense Motion accurately labeled the request to grant the Plan Sponsor protections administrative expense priority "extraordinary" and without precedent. Neither a plan nor a disclosure statement were provided before or with the

SNCP Expense Motion, only a promise that the "Debtors will file forms of the Definitive Documents (including those to be executed at the Effective Date of the Plan), at least 5 business days before the hearing on approval of the Disclosure Statement". (SNCP Expense Motion at Prelim. Stmt.). About two weeks later, on February 29, 2008, the Debtors filed the *Debtors' Joint Plan of Reorganization* (the "First Plan of Reorganization") [Docket No. 368] and the *Disclosure Statement in Connection With the Debtors' Joint Plan of Reorganization* (the "First Disclosure Statement") [Docket No. 369], but never filed any "Definitive Documents".

16. IBM, Novell and the United States Trustee all filed objections to the SNCP Expense Motion [Docket Nos. 407, 410 and 418]. IBM and Novell also filed objections to the approval of the First Disclosure Statement [Docket Nos. 408 and 412].

17. At the hearing on the First Disclosure Statement on April 2, 2008, the Debtors explained that they and SNCP had decided to restructure and renegotiate the terms of the proposed plan and, as a result, "we're not going forward with this plan sponsor protections". (Transcript of April 2, 2008 Hearing at 11:22-23 (filed April 10, 2008).) [Docket No. 437] In addition, in the face of the objections, the Debtors withdrew the First Plan of Reorganization and the First Disclosure Statement at the hearing and, referring to the plan, the disclosure statement and related definitive documentation, the Debtors promised the Court, "we won't file it in pieces anymore". (Transcript of April 2, 2008 Hearing at 9:4-5.)

18. Two later motions to extend exclusivity referred to the Debtors' continuing progress with SNCP (See Second Extension Motion and Third Extension Motion cited infra.), until eventually the Debtors finally conceded that the SNCP transaction had failed. (Second Disclosure Stmt. at 20.)

(c) The Stand Alone Plan And Second Sale Motion

19. On January 8, 2009, the Debtors filed the *Debtors' Amended Joint Plan of Reorganization* (the "Second Plan of Reorganization") [Docket No. 654] and the Second Disclosure Statement and scheduled the hearing on approval for February 25, 2009. IBM and Novell both objected to the approval of the Second Disclosure Statement [Docket Nos. 703 and 704].

20. In addition, on February 4, 2009, the Debtors filed the *Debtors' Motion for an Order (I) (A) Establishing Sale and Bid Procedures, (B) Approving Form of Asset Purchase Agreement, and (C) Approving the Form and Manner of Notice of Sale; and (II) Approving (A) Sale of Certain Assets Free and Clear of Interests and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases* (the "Second Sale Motion") [Docket No. 695]. IBM and Novell both filed objections to the Second Sale Motion on February 18, 2009 [Docket Nos. 702 and 706], and the Debtors withdrew the Second Sale Motion on March 12, 2009 [Docket No. 717].

21. The Debtors continued the hearing on the Second Disclosure Statement to March 30, 2009, but the Debtors were still not ready to proceed, so the Court held a status conference hearing instead to allow the Debtors to update the Court on the status of the Second Plan of Reorganization. At the hearing, the Debtors advised the Court that they would not proceed with either the Second Plan of Reorganization or the Second Sale Motion.

(ii) The Unfulfilled Promises In The Four Exclusivity Extension Motions

(a) The First Exclusivity Extension Motion

22. On January 2, 2008, the Debtors filed the first *Motion by Debtors Under Section 1121(D) for Extensions of Exclusivity Deadlines* (the "First Extension Motion") [Docket

No. 289]. The Debtors reminded the Court that the "Debtors had previously expressed their intention and ability to file a plan by the statutory 120-day deadline" (First Extension Motion at ¶ 10.), but acknowledged that they could not do so. The First Extension Motion requested an extension of the exclusivity period to file a plan for an additional 120 days to May 11, 2008, primarily to allow the Debtors to wait until judgment had been reached in the Utah Court as to the amount of Novell's claim in the Novell Case "even if the entire judgment is under appeal". (Id. at ¶ 13.) The Court granted the First Extension Motion [Docket No. 329].

(b) The Second Exclusivity Extension Motion

23. On May 9, 2008, the Debtors filed the *Second Motion by Debtors Under Section 1121(D) for Extension of Exclusivity Deadlines* (the "Second Extension Motion") [Docket No. 470] requesting an extension of exclusivity to August 11, 2008, arguing that such an extension will allow the First Plan of Reorganization to reflect the results of the trial which concluded on May 2, 2008 in the Utah Court as to the amount of Novell's claim in the Novell Case. Over Novell's response to the Second Extension Motion [Docket No. 491], the Court granted the Second Extension Motion [Docket No. 502].

(c) The Third Exclusivity Extension Motion

24. On August 11, 2008, the Debtors filed the *Third Motion by Debtors Under Section 1121(d) for Extension of Exclusivity Deadlines* (the "Third Extension Motion") [Docket No. 525] requesting an extension of exclusivity to a date 45 days after a final judgment was entered in the Novell Case, arguing again that such an extension would allow an amended plan to reflect the results of the trial which concluded on May 2, 2008 in the Utah Court as to the amount of Novell's claim in the Novell Case. The Third Extension Motion offered the enticement that "based on feedback from prospective interested parties, the Debtors believe that the entry of a

final judgment (and the commencement of the appellate process) in the Novell [Case] will greatly facilitate the Debtors' ability to sell, finance or recapitalize as a necessary basis for a plan of reorganization" and "Once the appeal process [in the Novell Case] is commenced, customers and potential investors can make reasonable assumptions as to how long it will take to get a resolution on appeal and investment decisions can be structured to take that process into account". (Third Extension Motion at ¶ 10.) Over Novell's and the United States Trustee's objections, the Court granted the Third Extension Motion extending exclusivity to December 31, 2008 [Docket No. 562].

(d) The Fourth Exclusivity Extension Motion

25. On December 30, 2008, the Debtors filed the *Fourth Motion by Debtors Under Section 1121(d) for Extension of Exclusivity Deadlines* (the "Fourth Extension Motion") [Docket No. 649] requesting an extension of the exclusivity period to file a plan for an additional 16 days, offering the hope of a real Plan: "Debtors simply need a few extra days to finalize the drafting process and to insure that all comments and edits are complete prior to actually filing and serving the documents". (Fourth Extension Motion at ¶ 14.) Though the hearing on the Fourth Extension Motion was originally scheduled for January 29, 2009, after two continuances, the hearing was not held until March 30, 2009. The Court denied the Fourth Extension Motion at the hearing, and exclusivity was terminated. (See Order Denying Fourth Extension Motion.) [Docket No. 745]

ARGUMENT

A. Section 1112(b) Requires Conversion Upon Substantial or Continuing Loss and Absence Of A Reasonable Likelihood of Rehabilitation

26. Section 1112(b)(1) of the Bankruptcy Code provides:

> Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in

> interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that established that the requested conversion or dismissal is not in the best interest of creditors and the estate, the court ***shall*** convert a case under this Chapter to a case under Chapter 7 or dismiss a case under this Chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

11 U.S.C. § 1112(b)(1) (emphasis supplied). Thus, where "cause" is shown, the Court shall convert a Chapter 11 case to a Chapter 7 case upon the request of a party in interest absent "unusual circumstances".

27. The 2005 amendments to section 1112(b) reduced the bankruptcy courts' discretion to convert or dismiss a Chapter 11 case by changing "may" to "shall". If cause for conversion or dismissal exists, discretion is limited to those instances in which the court makes specific findings that unusual circumstances "establish that the requested conversion or dismissal is not in the best interests of the creditors and the estate". In re Broad Creek Edgewater, LP, 371 B.R. 752, 759 (Bankr. D.S.C. 2007) (involuntary Chapter 7 debtor could not convert its case to one under Chapter 11 because cause existed for conversion or dismissal of the proposed Chapter 11 case); see also In re Gateway Access Solutions, Inc., 374 B.R. 556, 560 (Bankr. M.D. Pa. 2007) (noting the statutory language change "from permissive to mandatory" and finding cause existed to convert the debtor's cases where the estate was diminishing rapidly at the expense of creditors as extensive administrative costs from professional fees were accumulating while the case lingered in Chapter 11). Therefore, upon a showing of cause, the Court must convert the Debtors' Chapter 11 cases to Chapter 7 cases "absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate". 11 U.S.C. § 1112(b)(1).

28. Section 1112(b)(4) lists non-exclusive grounds for conversion, including "substantial or continuing loss to or diminution of the estate and the absence of a reasonable

likelihood of rehabilitation". 11 U.S.C. § 1112(b)(4)(A). See In re AdBrite Corp., 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003) (cause existed to convert the Chapter 11 cases in part because of the debtor's negative postpetition cash flow and inability to pay current expenses); In re 3868-70 White Plains Road, Inc., 28 B.R. 515, 519 (Bankr. S.D.N.Y. 1983) (cause existed to convert where the debtor's assets were fully collateralized and it had negative cash flow and an inability to pay current expenses).

29. The first prong of § 1112(b)(4)(A) requires a showing of a "substantial or continuing loss to or diminution of the estate". As noted in Collier, "If the estate has sustained a substantial loss following the commencement of the case, or the debtor is operating with a sustained negative cash flow after the commencement of the case, these facts are sufficient to justify a finding of 'substantial or continuing loss to ... the estate'". See 7 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy, ¶1112.04[5][a] at 1112-34 (15th ed. rev'd 2008).

30. The second prong of § 1112(b)(4)(A) requires an "absence of a reasonable likelihood of rehabilitation". As noted in Collier, "the standard under section 1112(b)(4)(A) is not the technical one of whether the debtor can confirm a plan, but, rather, whether the debtor's business prospects justify continuance of the reorganization effort". See Collier, ¶1112.04[5][a] at 1112-36 (15th ed. rev'd 2008). See also Quarles v. United States Trustee, 194 B.R. 94, 97 (W.D. Va. 1996) (no likelihood of rehabilitation where debtor was losing money and only hope of reorganization depended on speculative outcomes in pending litigation); In re Great Am. Pyramid J.V., 144 B.R. 780, 792 (Bankr. W.D. Tenn. 1992) ("A reorganization plan under chapter 11 must be more than a nebulous speculative venture and must have a realistic chance of success which would lead to rehabilitation, and if outside financing is needed, it must be *clearly* in sight".) (emphasis in original); In re Imperial Heights Apartments, Ltd., 18 B.R. 858, 863-864

(Bankr. S.D. Ohio 1982) (no "reasonable likelihood of rehabilitation" where debtor's only asset was a potential lawsuit).

31. "Rehabilitation" as used in section 1112(b)(4)(A) is not synonymous with "reorganization". Instead, "Rehabilitation signifies that the debtor will be reestablished on a sound financial basis, which implies establishing a cash flow from which current obligations can be met". In re Rundlett, 136 B.R. 376, 380 (Bankr. S.D.N.Y. 1992) (granting creditors' motion to convert Chapter 11 case to Chapter 7 where debtor's use of estate property resulted in continuing loss or diminution of the estate, there was not a reasonable likelihood of rehabilitation and the debtor would be unable to effectuate a plan) (citing In re Kanterman, 88 B.R. 26, 29 (S.D.N.Y. 1988)) (affirming conversion of Chapter 11 case to Chapter 7 upon creditors' showing continuing diminution to the estate and absence of reasonable likelihood of rehabilitation).

32. A debtor "should not continue in control of its business beyond a point at which reorganization no longer remains realistic," if creditor recoveries are eroding. In re AdBrite Corp., 290 B.R. at 215; In re Johnston, 149 B.R. 158, 161 (B.A.P. 9th Cir. 1992) (granting motion to convert debtor's Chapter 11 case to Chapter 7 where the debtor lacked the ability to effectuate plan of reorganization because it had no income and further delay would prejudice creditors by eroding their position).

B. The Debtors Have Suffered Substantial and Continuing Losses and Have No Reasonable Prospect of Rehabilitation

33. In the present case, the Debtors have negative cash flow and have operated at a net loss during the entire course of these Chapter 11 cases. Even excluding reorganization items, the cumulative net operating loss of the Debtors since the Petition Date is $8,417,789.

34. The Debtors' premise that favorable outcomes in the IBM Case and the Novell Case will cure their financial ills is pure speculation at the expense of the creditors and has no relation to whether the Debtors have a potentially successful business.

35. There is no profitable core around which to structure a plan of reorganization. The Debtors' projections indicate that revenue for the Debtors' traditional core businesses "are estimated to decline at [a] 20% rate...". (Second Disclosure Stmt. at 40.) The Debtors freely admit that they are not likely to have the liquidity to sustain their operations for a prolonged period of time. The Debtors' operations simply cannot fund a workable plan of reorganization that takes into account realistic inputs and outlays. Thus, the Debtors can offer no plan other than to ask creditors to put their faith blindly behind some new speculative business, entailing significant risk without any reasonable likelihood of rehabilitation.

36. The Debtors have repeatedly proclaimed the existence of "prospective interested parties", potential investors and continuous negotiations with prospective purchasers but have yet to produce a deal. If one were to believe the Debtors' description of the expressions of interest, legions of potential investors should have descended upon the Debtors as soon as the Debtors filed their appeal in the Novell Case:

> And then let's talk about the factor called reasonable prospects for rehabilitation or reorganization. Well, you've seen some prospects that you didn't think much about and I don't blame you. They -- they didn't pan out. The York deal, the -- the SNCP deal in its first iteration, we're not going to forward with either one of those. But, what -- what you see is the tip of iceberg. You don't see all the other deals that we didn't get to bring to the Court and the other deals that are out there now just waiting like ships in the harbor waiting to -- to come in to port when the appeal is filed. If he were to testify, Mr. McBride would testify about some different types of deals out there. There are merger prospects. There are loans, strict -- just loans, financial deals. (Transcript of September 16, 2008 Hearing at 14:2-16 (filed September 26, 2008).) [Docket No. 567]

However, the Debtors have not been overwhelmed with prospective purchasers since the filing of their appeal in the Novell Case.

37. These Chapter 11 cases are no longer in the embryonic stage. The Debtors have had more than a reasonable opportunity to achieve rehabilitation. They have been unable to do so. Instead, for almost 20 months, during the Debtors' campaign of clumsy and underdeveloped sale motions and plans, which have all been withdrawn or dropped outright, the value of assets available to pay creditors has eroded.

38. The Debtors admitted in the Second Disclosure Statement that "[i]f the [Second Plan of Reorganization] is not confirmed, the only viable alternatives are dismissal of the Chapter 11 [c]ases or conversion to Chapter 7 of the Bankruptcy Code". (Second Disclosure Stmt. at 45). The Second Plan of Reorganization will not be confirmed. The conclusion is inescapable that dismissal or conversion are the only viable alternatives.

39. Liquidation of the Debtors' assets is the only reasonable course for this case to take, and it can be done more cheaply and efficiently by a Chapter 7 trustee than by the Debtor and Chapter 11 professionals. For all these reasons, IBM respectfully requests that the Court convert these Chapter 11 cases to Chapter 7 cases.

NOTICE

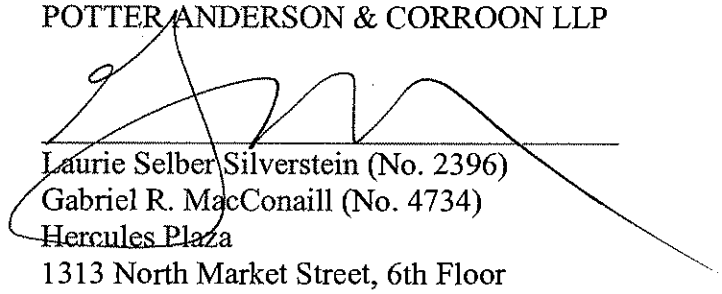
40. Notice of this motion has been provided to the following parties or, in lieu thereof, to their counsel, if known: (a) the Debtors, (b) the Office of the United States Trustee for the District of Delaware; (c) the creditors holding the 20 largest unsecured claims against the Debtors' estates (on a consolidated basis); (d) all creditors and all equity security holders of SCO Group and (e) all parties who have filed a request for notice under Bankruptcy Rule 2002. In light of the nature of the relief requested herein, IBM respectfully submits that no further notice of this motion is required.

CONCLUSION

For the reasons set forth above, IBM respectfully requests that the Court enter an order in the form attached as Exhibit "A" converting these Chapter 11 cases to Chapter 7 cases and granting such other relief as is just and proper.

Dated: May 11, 2009

POTTER ANDERSON & CORROON LLP

By: 

Laurie Selber Silverstein (No. 2396)
Gabriel R. MacConaill (No. 4734)
Hercules Plaza
1313 North Market Street, 6th Floor
Wilmington, Delaware 19801
Phone: (302) 984-6000
Fax: (302) 658-1192

- and -

CRAVATH, SWAINE & MOORE LLP
Richard Levin
David R. Marriott
Worldwide Plaza, 825 Eighth Avenue
New York, New York 10019
Phone: (212) 474-1000
Fax: (212) 474-3700

Of Counsel:

INTERNATIONAL BUSINESS MACHINES CORPORATION
Alec S. Berman
1133 Westchester Avenue
White Plains, New York 10604
(914) 642-3000

Attorneys for Creditor International Business Machines Corporation

Pac#915571