

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 07-11337 (KG)

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In Re

The SCO GROUP, INC., et al.,

Debtors.

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U.S. Bankruptcy Court
824 North Market Street
Wilmington, Delaware

October 23, 2009

10:00 a.m.

B E F O R E:

HON. KEVIN GROSS

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: JENNIFER PASIERB

VERITEXT REPORTING COMPANY

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MOTION of the Chapter 11 Trustee to Approve the
Further Expansion of the Scope of Retention of Tanner
LC to Audit the Debtors' 401(k) Plan for the Year
Ended December 31, 2008 In Accordance with ERISA Rules
and Regulations for the Debtors Nunc Pro Tunc to
September 14 2009

Chapter 11 Trustee's Application for Authority to
Retain and Employ Ocean Park Advisors LLC as financial
Advisor and Investment Banker Nunc Pro Tunc to
September 15, 2009

Status Report: Preliminary report from Edward N.
Cahn, Chapter 11 Trustee for the Debtors' estates.

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A P P E A R A N C E S :

ALAN P. PETROFSKY

Pro Se

(Telephonic appearance)

BLANK ROME LLP

Attorneys for Chapter 11 Trustee

1201 N. Market Street, Suite 800

Wilmington, Delaware 19801

BY: BONNIE GLANTZ FATELL, ESQ.

-and-

EDWARD N. CAHN, Chapter 11 Trustee

YOUNG CONAWAY STARGATT & TAYLOR

Attorneys for Novell

Brandywine Building

1000 West Street

Wilmington, Delaware 19801

BY: JUSTIN RUCKI, ESQ.

1 P R O C E E D I N G S

2 THE CLERK: Please rise.

3 THE COURT: Good morning, everyone. Thank
4 you, and please be seated.

5 MR. CAHN: Good morning, your Honor.

6 THE COURT: Ms. Fatell, it's a pleasure to
7 see you.

8 MS. FATELL: Good morning, your Honor, it's
9 a pleasure to see you, thank you.

10 Bonnie Fatell from Blank Rome on behalf of
11 the Chapter 11 Trustee for The SCO Group, and I wanted
12 to introduce Edward Cahn who is the Chapter 11
13 Trustee.

14 THE COURT: Mr. Cahn, it's a pleasure to
15 meet you, and welcome.

16 MR. CAHN: Good morning, Judge Gross.

17 THE COURT: I should say Judge Cahn,
18 forgive me.

19 MS. FATELL: I think you should say --
20 actually, I think --

21 THE COURT: Do you like "mister"?

22 MS. FATELL: Isn't the rule "mister,"
23 because you're the judge?

24 MR. CAHN: In an adversary proceeding --

25 THE COURT: Yeah.

1 MR. CAHN: -- you should probably not
2 address me as Judge Cahn.

3 THE COURT: That's right.

4 And I also want to recognize Mr. Rucki, a
5 former law clerk in this court, and he's appearing in
6 my courtroom for the first time as an attorney.

7 MR. RUCKI: Thank you, your Honor.

8 THE COURT: Pleasure to have you here,
9 Mr. Rucki.

10 MS. FATELL: Your Honor, on the agenda
11 today, we have two uncontested matters. We did file
12 C.N.O.s; I don't know if your Honor has had an
13 opportunity to --

14 THE COURT: I had --

15 MS. FATELL: -- review those.

16 THE COURT: I did review them, and I just
17 realized I neglected to sign the orders, but I'm going
18 to do that right now.

19 MS. FATELL: Terrific, thank you, your
20 Honor.

21 THE COURT: Yes.

22 MS. FATELL: We really didn't have anything
23 contested. We did think it would be helpful to give
24 the court a brief status conference, since we have not
25 been before your Honor since the appointment of the

1 Chapter 11 Trustee.

2 THE COURT: I greatly appreciate that,
3 yes.

4 MS. FATELL: Terrific.

5 Your Honor, Mr. Cahn was appointed as the
6 trustee pursuant to the Court's order on August 25th,
7 2009, coincided, interestingly, with a decision by the
8 10th Circuit, which the trustee will address.

9 We immediately met with all of the senior
10 management with the company, we visited the New Jersey
11 office, which is where the majority of the engineers
12 are, took control of the accounts and immediately
13 became familiar with the business operations, as well
14 as the litigation.

15 We found, upon getting involved in this
16 case, that in fact the company was severely
17 financially challenged, and so we thought it important
18 to bring in financial advisors to see where we could
19 cut some costs and try and stabilize the business. We
20 brought in Ocean Park Advisors, and they have been
21 terrific and they hit the ground running and they have
22 put together a restructuring plan, talked through with
23 us a lot of the different strategies and approaches as
24 to how to right this ship and move the company
25 forward.

1 We have implemented an initial
2 restructuring plan, which unfortunately has involved
3 some layoffs, both in Linden, as well as in New Jersey
4 where the engineers are. It included Mr. MacBride,
5 who's the president and CEO.

6 We're implementing other cost reductions
7 and we believe that we've made some significant
8 progress in that direction.

9 THE COURT: Excellent.

10 MS. FATELL: We're also working to raise
11 some money for debtor financing. I don't think we
12 call it a dip since the debtor is not in possession,
13 but essentially that's what we're doing, and we hope
14 to have a motion before the Court fairly soon.
15 Hopefully, the Court would entertain an emergency
16 motion for interim financing, as the Court would on a
17 first-day hearing, but we'll cross that bridge when we
18 get to it.

19 THE COURT: When you're ready, I certainly
20 will make that time available.

21 MS. FATELL: Thank you. Appreciate it,
22 your Honor.

23 We're also looking into asset
24 dispositions. There were some things in the works
25 when we became engaged and we're pursuing those, OPA

1 is actively looking at those, and we're looking at
2 both transactions involving the operating aspect of
3 the company as a whole, as well as if there are any
4 smaller transactions that might occur to raise some
5 money for the estate.

6 THE COURT: Good.

7 MS. FATELL: Our expectation, your Honor,
8 is that we will be selling off the assets and we will
9 be retaining the litigation. Hopefully there will be
10 value for equity as a result of that.

11 And the last point I just wanted to alert
12 the Court, yesterday we filed their motion to approve
13 the settlement with Auto Zone. There had been
14 litigation pending against Auto Zone; we will be
15 filing a settlement itself under seal, and so I can't
16 really go into any detail, but I did just want to
17 alert the Court that we have resolved that
18 litigation.

19 THE COURT: Thank you. I look forward to
20 seeing those papers.

21 MS. FATELL: Thank you. And, your Honor,
22 I'd like to have the trustee, if he may, address the
23 Court and advise as to preliminarily where he is.

24 THE COURT: Yes, thank you very much.

25 You know, one of my concerns is, when I

1 appointed or entered the order for a Chapter 11
2 Trustee, I specifically indicated that I thought it
3 might be a good idea to have a former judge, or at
4 least someone who is very, very much involved in
5 litigation to be able to analyze and evaluate the
6 litigations, and I'm pleased that the office of the
7 United States Trustee did so.

8 MR. CAHN: Your Honor, if it pleases, my
9 name is Edward Cahn. What -- when you issued your
10 order intimating that someone with IP experience might
11 be appropriate, the acting U.S. Trustee sought from
12 the parties in the case recommendations.

13 One of the attorneys recommended me and she
14 interviewed me. I think she found it interesting that
15 Judge Farnham had appointed me as a Special Master in
16 the postage by e-mail cases, and that my assignment
17 was to conduct all discovery issues, hold a Markman
18 hearing, make recommendations in regard to all summary
19 judgement motions, conduct a pretrial conference, and
20 conduct settlement conferences.

21 I held a four-day hearing in the courthouse
22 down the way there, wrote a extensive report to Judge
23 Farnham in regard to 50 claim terms, and also about 15
24 or 20 summary judgement motions, after which we had a
25 settlement conference and the case settled.

1 THE COURT: Wonderful.

2 MR. CAHN: I also acted as special
3 discovery master for Judge Sleet in an early RIM case,
4 not the big one, but an early one where a firm had
5 reverse engineered the Blackberry, and there was
6 some -- that was an easy one to resolve.

7 And a third Special Master assignment from
8 the district court involved source code that was used
9 in a program to enable banks to keep track of their
10 transactions, and we got that matter resolved as
11 well.

12 In addition to that work for the court
13 here, I conduct Markman hearings, both internally at
14 Blank Rome, and for other law firms. Practice
15 Markmans.

16 THE COURT: Yes.

17 MR. CAHN: And, finally, I act as
18 consultant while cases are in trial on IP cases. The
19 lawyers send me the daily transcript and then we have
20 postmortems in the evening over where I think they
21 could have done better in their presentations.

22 THE COURT: It's nice to know that there's
23 a life after the bench.

24 MR. CAHN: Yes, I was on the bench for 24
25 years.

1 THE COURT: Yes.

2 MR. CAHN: And that's long enough.

3 If you're interested in what I've done as
4 the trustee so far, I can run through that in a couple
5 of minutes.

6 THE COURT: I would be delighted to hear
7 that.

8 MR. CAHN: Okay.

9 THE COURT: Thank you, Mr. Cahn.

10 MR. CAHN: I've read the 10th Circuit
11 opinion four times, and I call to your attention the
12 fact that the petition for en banc rehearing has been
13 denied with no judge voting to even have it heard.

14 THE COURT: Okay.

15 MR. CAHN: I've read your opinion in regard
16 to the appointment of a trustee, and I've read the
17 transcript of that hearing. I've met personally with
18 SCO management, SCO management and its lead lawyer
19 Stuart Singer, to review the claims against IBM and
20 Novell in detail.

21 I met with IBM's lead lawyers, R. Levine
22 and Dave Marriott to review their client's defenses; I
23 met with Novell's lawyers to discuss their client's
24 defenses.

25 I've reviewed the transcripts of oral

1 argument in the IBM case; I've reviewed the parties's
2 briefs in the IBM case; I've reviewed the presentation
3 books in the IBM case; I've reviewed the expert
4 reports on both sides.

5 I've reviewed confidential SCO data; I've
6 reviewed Novell's anti-assignment argument; I
7 considered Novell's no-damage argument; I've reviewed
8 the arbitration proceeding in Switzerland which you
9 stayed; and I've conferred with SCO's legal team in
10 regard to issues in that case.

11 I am continuing, with the aid of the
12 financial consultants and my lawyers, to develop
13 strategies to maximize the assets of the debtor for
14 both the creditors and equity.

15 In my view, the Debtors' claims against
16 Novell and IBM should be pursued aggressively. I
17 acknowledge I have much more analysis to do, including
18 another meeting with IBM's lawyers.

19 And this juncture, I remain confident that
20 the Debtors' claims against IBM and Novell, especially
21 in light of the 10th Circuit opinion, are
22 meritorious.

23 I inquire, Judge Gross, whether you would
24 like written reports from me, or oral reports?

25 THE COURT: I think that it would be well

1 to have written reports.

2 MR. CAHN: Then you shall have written
3 reports.

4 THE COURT: Yes.

5 MR. CAHN: That concludes my remarks.

6 Do you have any questions, your Honor?

7 THE COURT: You know, I don't. I am -- as
8 I say, I am particularly pleased to have someone with
9 your expertise involved in analyzing the merits of the
10 cases. And I take great solace in the fact that based
11 upon your, at least -- your thorough but not as yet
12 final review of the litigations that you find that
13 they do have merit and should proceed, and proceed
14 aggressively.

15 I know that the counsel representing SCO in
16 the litigations is of an extremely high expertise.

17 MR. CAHN: So are the defense counsel.

18 THE COURT: Yes. And I don't -- I
19 certainly am not kidding myself. I know that the
20 litigation will be difficult. I would hope that at
21 some point everyone would sit down, perhaps, and try
22 to discuss a resolution of those cases, and --

23 MR. CAHN: That thought has crossed our
24 mind.

25 THE COURT: Yes. So to the extent it would

1 be helpful were I to suggest a mediator in the
2 litigations, although those litigations themselves are
3 not before me, so, I suppose, just thinking out loud,
4 I'm not really in a strong position to suggest or
5 order mediation.

6 MR. CAHN: Since I left the med -- since I
7 left the bench, your Honor, I've done over a thousand
8 mediations.

9 THE COURT: Oh, goodness.

10 MR. CAHN: So I think I can bring some
11 value to how we do this in the most effective way.

12 THE COURT: Excellent, excellent, because
13 obviously, as I've heard today and it's not a
14 surprise, there are financial difficulties here, which
15 makes -- and this is expensive litigation, obviously,
16 by its very nature, so to the extent that there could
17 be discussions of ways to revolve the litigations,
18 that would be helpful, as with the Auto Zone case,
19 which I'll be very interested to review.

20 MR. CAHN: That concludes my remarks, your
21 Honor.

22 THE COURT: All right. Thank you very
23 much. It was a pleasure to meet you, and to have you
24 in court here today.

25 MR. CAHN: The pleasure is all mine, sir.

1 THE COURT: And I've signed the C.N. -- the
2 orders on the certificate.

3 MS. FATELL: Thanks, your Honor.
4 Appreciate it. With respect to written reports, is
5 there -- we don't really have a timeline.

6 THE COURT: No.

7 MS. FATELL: Just occasionally you want to
8 hear from us?

9 THE COURT: I think that's right. If
10 something of significance happens, you know, I don't
11 need weekly or even monthly reports, but -- and they
12 can be, if necessary, filed under seal, there may be
13 sensitive information involved, or at least submit
14 them under seal with a motion for sealing and I'll
15 review them and consider the propriety of maintaining
16 the confidentiality; but no, I'm not looking for Mr.
17 Cahn or your firm to give me periodic reports, but
18 just so that I know something significant occurs, that
19 I'll know what happened.

20 MS. FATELL: That would be fine, your
21 Honor, thank you.

22 THE COURT: You're very welcome.

23 MS. FATELL: Thank you very much.

24 That concludes our hearing.

25 THE COURT: All right, everyone, I wish you

1 all a good day.

2 MS. FATELL: Thanks. You too.

3 THE COURT: Thank you.

4 MR. CAHN: Same to you, your Honor.

5 (Proceedings concluded at 10:17 a.m.)

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

I, Mindy Levy, certify that the foregoing transcript
is a true and accurate record of the proceedings.

Mindy Levy

Veritext LLC

200 Old Country Road

Suite 580

Mineola, New York 11501

Date: November 9, 2009