

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re : Chapter 11
:
THE SCO GROUP, INC., *et al.*, :
:
Debtors. : Case Number 07-11337 (KG)
: (Jointly Administered)

**OBJECTION OF THE UNITED STATES TRUSTEE TO THE DEBTORS’ MOTION
FOR APPROVAL OF EMPLOYMENT OF CFO SOLUTIONS TO FURNISH CHIEF
FINANCIAL OFFICER TO THE DEBTORS
(DOCKET ENTRY # 139)**

In support of her objection to the Debtors’ motion for approval of the employment of CFO Solutions (“CFOS”) to furnish the Chief Financial Officer to the Debtors (the “Motion”), Kelly Beaudin Stapleton, United States Trustee for Region 3 (“U.S. Trustee”), by and through her counsel, avers:

INTRODUCTION

1. Under (i) (an) applicable order(s) of the United States District Court for the District of Delaware issued pursuant to 28 U.S.C. § 157(a) and (ii) 28 U.S.C. § 157(b)(2)(A), this Court has jurisdiction to hear and determine the Motion.

2. Under 28 U.S.C. § 586, the U.S. Trustee has an overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.), 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has “public interest standing” under 11 U.S.C. § 307 which goes beyond mere pecuniary interest); Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.), 898 F.2d 498, 500 (6th

Cir. 1990) (describing the U.S. Trustee as a “watchdog”).

3. Under 11 U.S.C. § 307, the U.S. Trustee has standing to be heard on the Motion and the issues raised in this objection.

GROUND/BASES FOR RELIEF

4. The U.S. Trustee objects to the Motion on the grounds identified below.

5. In evaluating requests by debtors in possession to temporarily employ officers pursuant to 11 U.S.C. § 363, this Court has generally followed a “crisis management protocol” that was the outgrowth of litigation initiated by the U.S. Trustee several years ago. A copy of the protocol is attached as **Exhibit A**.

6. Prior to filing this objection, the U.S. Trustee approached the Debtors and sought the Debtors’ agreement that certain provisions of the crisis management protocol would apply to the proposed engagement. Those provisions are as follows:

- (a.) *“One hat”* – The protocol requires that the firm providing the temporary employee (the “Furnishing Firm”) agree that it will only serve in that one capacity in the case(s) at issue. Ex. A ¶ 1(A).
- (b.) *No service as director* – The protocol requires that the Furnishing Firm agree that its personnel will not serve as directors during the case(s) at issue. Ex. A ¶¶ 1(D), 1(E)(3) n.3.
- (c.) *Initial/continuing disclosure of connections* – The protocol provides that the Furnishing Firm will disclose connections with parties in interest and update that disclosure periodically. Ex. A ¶¶ 1(E, F).

- (d.) *Quarterly review of compensation/reimbursement paid* – The protocol requires quarterly review of compensation/reimbursement paid to the Furnishing Firm, with an opportunity for parties in interest to object. Ex. A ¶ 2(C).
- (e.) *Indemnity for officers, but no indemnity for firm* – The protocol provides that, to the extent that personnel provided by the Furnishing Firm will serve as officers, such personnel will receive indemnity consistent with that provided to other officers under corporate bylaws. The protocol also expressly requires that the Furnishing Firm will not be indemnified. Ex. A ¶ 3.

7. The U.S. Trustee understands that the Debtors are presently not willing to agree to any of the aforementioned provisions. The U.S. Trustee believes that this Court has the inherent authority to condition its approval of the employment of temporary executive personnel by a chapter 11 debtor in possession on the Debtors' conformity with accepted practice within this District. Accordingly, the U.S. Trustee objects to the Motion to the extent the Debtors and/or CFOS are not willing to comply with the crisis management protocol.

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CONCLUSION

WHEREFORE the UST requests that this Court issue an order denying the Motion or granting other relief consistent with this objection.

Respectfully submitted,

**KELLY BEAUDIN STAPLETON
UNITED STATES TRUSTEE**

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Date: November 13, 2007