IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	**Chapter 11**
The SCO GROUP, INC., et al.,	**Case No. 07-11337 (KG)** **(Jointly Administered)**
Debtors.	**Hearing: April 2, 2008 at 2:00 p.m.** **Related Docket No.: 346**

OBJECTION OF PETROFSKY TO DEBTORS' MOTION (#346) TO APPROVE SETTLEMENT COMPENSATION OR SALE COMPENSATION AND EXPENSE REIMBURSEMENT TO PLAN SPONSOR

1. I, Alan P. Petrofsky, an equity security holder of Debtor The SCO Group, Inc. (**"SCO"**), hereby object to the *Debtors' Motion to Approve Settlement Compensation or Sale Compensation and Expense Reimbursement To Plan Sponsor* (the **"Motion"**).

2. ***I reserve the right to amend or supplement this objection up until the objection deadline.*** I am filing this initial objection now, more than a month before the deadline, in order that the Debtors will have sufficient opportunity to resolve the issue raised herein. They can do so by: (a) rescheduling the hearing from April 2 to April 20 or later; *or* (b) completing all the disclosures by March 8 rather than March 26; *or* (c) making smaller changes to both dates, as long as all the disclosures are filed at least 25 days before the hearing (one such possibility would be completing all disclosures by March 24 and then hearing the matters at the already-scheduled omnibus hearing on April 18).

3. In support of my objection, I state as follows:

I. THE DEFINITIVE DOCUMENTS MUST BE INCLUDED IN THE DISCLOSURE STATEMENT AND FILED 25 DAYS BEFORE THE HEARING

4. The Motion describes what appears to be a promising plan of reorganization. Unfortunately, the Debtors are not proposing an adequate review schedule.

5. The Motion candidly states that the "Debtors concede that the Plan Sponsor Protections seek extraordinary relief from the Court" (Motion at p. 5, ¶9) and that the "Debtors acknowledge the lack of precedent for the Settlement Compensation and Sale Compensation components of the Plan Sponsor Protections" (Motion at p. 9, ¶21). Despite this, the Debtors propose not to reveal the details of the extraordinary relief that they are requesting until the day that objections are due.

6. This is the schedule set forth in the Debtors' motion:

February 14: Filing of the Motion and the Memorandum of Understanding (**"MOU"**).

February 29: Filing of the *Debtors' Joint Plan of Reorganization* (the **"Plan"**) but not "the definitive agreements contemplated thereby (the **'Definitive Documents'**)". (Motion at p. 1)

February 29: Filing of the *Disclosure Statement in Connection with Debtors' Joint Plan of Reorganization* (the **"Disclosure Statement"**), also sans Definitive Documents. (*Id.*)

March 26, 4:00 P.M.: Deadline for objections to the Motion and for objections to approval of the Disclosure Statement. (*Id.*)

March 26 (unspecified hour): Filing of the Definitive Documents. (*Id.*)

April 2: Hearing on the Motion and on approval of the Disclosure Statement. (*Id.*)

7. The debtors are proposing to file the Disclosure Statement 33 days before the hearing, in compliance with the requirement that it be filed at least 25 days before the hearing (F. R. Bankr. P. 3017). However, it is clear that this Disclosure Statement will be inadequate for evaluating the Plan, because it will not include any of the Definitive Documents. The Debtors are proposing to file the Definitive Documents separately, and to do so a mere five business days before the hearing, which is zero days before objections are due.

8. The Disclosure Statement must include "adequate information" to enable the parties "to make an informed judgment about the plan" (11 U.S.C. 1125(a)(1)). An informed judgment about the Plan cannot be made in the absence of the definitive agreements that are the very foundation of the Plan. Similarly, no informed decision to grant the Motion can be made, if the Definitive Documents are not filed sufficiently in advance of the objection deadline for the parties to be able to review them and prepare objections.

9. The Debtors must include the Definitive Documents in the Disclosure Statement, and must file the Disclosure Statement at least 25 days before the hearing.

II. THE FIRM FINANCING COMMITMENT ALSO MUST BE INCLUDED IN THE DISCLOSURE STATEMENT AND FILED 25 DAYS BEFORE THE HEARING

10. A crucial question that must be addressed in the Disclosure Statement, and which must be answered before deciding the Motion, is whether the party identified in the MOU, "Stephen Norris Capital Partners, LLC, a Delaware limited liability company" (MOU at p. 1) (**"SNCP"**), actually has the wherewithal to provide $5 million upon the Plan's effectiveness date and another $95 million if and when Novell,

Inc., International Business Machines Corp., and Red Hat, Inc. obtain judgments against SCO. According to the Plan envisioned in the Motion and MOU, SNCP would be taking on a contingent future obligation to provide $95 million to fund the payment of those judgments or the posting of supersedeas bonds to enable appealing the judgments (see MOU at p. 9 and Motion at p. 3, ¶6(e)). If this obligation came due, could SNCP pay it?

11. In the less likely scenario in which the Debtors obtain a favorable resolution of their litigation before the effectiveness date of the Plan, SNCP would receive a windfall at the expense of the equity security holders, without SNCP having ever put up a dime (see MOU at p. 10 and Motion at p. 5, ¶8). This extraordinary provision may be sensible if SNCP is actually risking $100 million. However, it is clearly inequitable if SNCP does not in fact have any money, and is therefore not putting anything at risk.

12. The Debtors have not provided any documentation that SNCP has any assets or any operating history. In fact, it appears that SNCP was just formed sometime this month.[1]

13. In a press release on the day the Motion was filed, SCO identified other entities as sources of funds: a partnership named "Stephen Norris & Co. Capital

[1]The signature page of the MOU states that the party that "ha[s] entered into this MOU" is "STEVE NORRIS CAPITAL PARTNERS, LLC". The signatory's title, however, is given as "SNCP Chairman", and "SNCP" is defined on page 1 of the MOU as "Stephen Norris Capital Partners, LLC, a Delaware limited liability company". I can find no record of a Delaware LLC under either the "Steve" or "Stephen" spellings. See *Declaration of Alan P. Petrofsky* filed herewith (**"Decl."**) at **Ex. A**. An inquiry to Debtors' counsel on February 15 has not yet elicited a precise identification of the entity at issue (see *Id.* at **Ex. B**). A Delaware LLC is not a legal person until the certificate of formation has been filed (see 6 Del. C. 18-201). Presumably, such a certificate was filed on or shortly before February 13, but it has not yet been entered into the online records of the Division of Corporations.

There is a Florida LLC named "Stephen Norris Capital Partners, LLC", but it also lacks any substantial history that could be used to establish creditworthiness. Its Articles of Organization were filed on July 31, 2007 by Managing Member Stephen L. Norris. See *Id.* at **Ex. C**.

Partners, L.P." and unnamed "partners from the Middle East":

> The SCO Group, Inc., traded over the counter in the (Pink Sheets: SCOXQ), a leading provider of UNIX® software technology and mobile services, today announced that Stephen Norris Capital Partners ("SNCP") and its partners from the Middle East have agreed to provide up to $100 million to finance a plan of reorganization for The SCO Group Inc. ("SCO"). . . .
>
> Stephen Norris & Co. Capital Partners, L.P. is a private equity investment partnership formed to (i) "co-invest" alongside well established and successful private equity and leveraged buyout firms, (ii) take advantage of the business experience and relationships of its Investment Committee, including Steve Norris' long-standing relationships and substantial private equity experience.
>
> ("The SCO Group Announces Reorganization Plan to Include $100 Million Financing by Stephen Norris Capital Partners", February 14, 2008, Decl. at **Ex. D**)

14. Perhaps this limited partnership will be the source of funds for the LLC. However, as recently as January 2007, this entity also did not have any history to speak of, according to its titular partner:

> In late 2005 in New York, GMG and I formed Stephen Norris & Co. Capital Partners, L.P. (the "Partnership"). Since its inception, the Partnership has conducted limited or no business operations, including any co-investment transactions.
>
> ("Affidavit of Stephen Norris in Support of Defendants' Motion to Dismiss", dated January 4, 2007, dkt #9-4 at ¶7, *GMG Capital Investments v. Robbins et al.*, No. 2:06-cv-876, D. Utah, Decl. at **Ex. E**).

15. The only document mentioned in the MOU that may address the question of SNCP's ability to pay is the "copy of a firm financing commitment" (the **"Firm Financing Commitment"**[2]):

[2]It is not entirely clear whether or not the Firm Financing Commitment is included in the category of Definitive Documents as that term is defined in the Motion. Therefore, I am explicitly addressing both the Definitive Documents and the Firm Financing Commitment.

> SNCP has a financing commitment sufficient to provide the Equity Financing and the Debt Financing. SNCP will provide the Debtor with a copy of a firm financing commitment sufficient to provide the Equity Financing and the Debt Financing at least five (5) business days prior to the commencement of the Bankruptcy Court hearing on the approval of the Disclosure Statement relating to the Proposed Plan of Reorganization.
>
> (MOU at p. 3)

16. Apparently, this document will identify entities other than SNCP who will be obligated to provide funds to SNCP. If so, the Disclosure Statement will also need to include sufficient information to establish that if and when SNCP were required to produce up to $100 million to the Debtors, SNCP could and would promptly obtain the funds from these other entities and deliver them to the Debtors.

17. The Firm Financing Commitment is crucial for evaluating both the Motion and the Plan, and therefore it must be included in the Disclosure Statement and filed at least 25 days prior to the hearing.

III. CONCLUSION

18. The Motion, as currently scheduled, seeks extraordinary relief on extraordinarily short notice. I respectfully request that the Court deny the Motion if the Definitive Documents, including the Firm Financing Commitment, have not all been filed at least 25 days prior to the hearing.

Dated the Twenty-second day of February, 2008,

/s/ Alan P. Petrofsky

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