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 Nos.: 369 and 370**

OBJECTION OF PETROFSKY TO (#369:) DISCLOSURE STATEMENT IN CONNECTION WITH DEBTORS' JOINT PLAN OF REORGANIZATION

1. I, Alan P. Petrofsky, an equity security holder of Debtor The SCO Group, Inc. (**"SCO"**), hereby object to the approval of the *Disclosure Statement in Connection with Debtors' Joint Plan of Reorganization* (docket No. 369, the **"Incomplete Disclosure Statement"**).

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

I. INTRODUCTION

3. The Debtors filed the Incomplete Disclosure Statement on February 29, 2008, and noticed a hearing to be held on April 2 to consider its approval. Although styled on the cover page as a disclosure statement, the body of the document actually purported to be only portions of a disclosure statement, which were strewn with promises – now broken – that the actual complete disclosure statement that the debtors wished to be approved would be on file "not later than March 21, 2008" (Incomplete Disclosure Statement at §VI(C)(ix), "Feasibility", p. 50-51).

4. The Incomplete Disclosure Statement, as filed on February 29 and "mailed with the notice of the hearing" (Rule 3017(a)), comes nowhere near providing adequate information, and its approval should be summarily denied.

5. The approval of any subsequently completed disclosure statement must also be denied, on account of the Debtors' flagrant disregard for the 25-day notice requirement of Rule 3017(a). In the face of my early and repeated efforts to encourage the Debtors to comply with the rules and schedule an appropriate date for the hearing, and despite the lack of any emergency, the Debtors have chosen to completely disregard the other parties' right to receive adequate notice.

6. This is not the first time in this case that the Debtors have prematurely and loudly announced their salvation. The Debtors need to be told to stop announcing deals that don't exist, and to stop sending out hearing notices before they have anything ready to be heard.

II. INADEQUACY OF THE INCOMPLETE DISCLOSURE STATEMENT AS FILED

A. Absence of any evidence that funding is in place to fulfill the Plan's commitments

7. The Incomplete Disclosure Statement says:

> To address this requirement [11 USC 1129(a)(11)], a disclosure statement for a plan of reorganization typically includes information (including relevant financial information) about the debtor's future business operations .... This is not a typical case and does not warrant that type of information.
>
> ...

> What is relevant is whether the funding is in place to fulfill the Plan's commitments ... With regard to this, documentation establishing the availability of the funds will be provided with the definitive documents to be filed not later than March 21, 2008.
>
> (Incomplete Disclosure Statement at §VI(C)(ix), "Feasibility", p. 50-51)

8. No such "documentation establishing the availability of the funds" was filed by March 21, nor even by March 25, and there is no evidence that "the funding is in place to fulfill the Plan's commitments".

9. There is not even any Memorandum of Understanding (MOU) on file that has been executed by a legal entity that might possibly be able to produce the funding. The MOU attached to the plan purports to have been executed on February 13 by "Stephen Norris Capital Partners, LLC, a Delaware limited liability company" (MOU at p. 1). On February 15, and again on February 22 and on March 2, I brought the apparent nonexistence of this entity to the Debtors's attention (see Ex. 1, dkt #359, and Ex. 3). On March 6, the Debtors at last acknowledged in an email message that the entity that they had intended to identify in the MOU was a Florida LLC (Ex. 4).

10. The MOU is currently the only document that even purports to bind "SNCP" to anything. Even if the remainder of the disclosure statement were filed, including all of the Definitive Documents, those documents would not be executed until the plan was confirmed. Between now and any confirmation, the MOU will remain the only document that even purports to bind SNCP in any way – and during that time period, the Debtors are requesting that an order be entered approving a possible distribution of millions of dollars from the estate to SNCP (see my objection in dkt #359).

11. Assuming that there really is some entity that was willing to execute the MOU, then this identification problem could and should have been easily remedied, by: (a) having that entity execute an amended MOU that identified the entity; and

(b) filing the amended MOU. The Debtors ignored my requests on March 2 and March 6 that they take these steps (see Ex. 3 and Ex. 5).

12. In addition to failing to identify an existent LLC as the party to the MOU, the Debtors also appear to have erred in claiming that a similarly-named partnership was involved in the LLC's creation:

> 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. Steven Norris Capital Partners, LLC ("SNCP") is the investment vehicle formed by Stephen Norris & Co. Capital Partners, L.P. for the purposes of this transaction.
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> (Incomplete Disclosure Statement at §(V)(B), p. 18)

13. No state is mentioned in connection with "Stephen Norris & Co. Capital Partners, L.P." ("SNACCPLP"). There is no limited partnership by that name registered in Florida, but there is one in Delaware, which leads me to conclude that this reference is to that Delaware limited partnership. However, as was indicated in the objection I filed on February 22, the partners of SNACCPLP have presumably been estranged since one of them sued the other in 2006 (see Ex. 6).

14. Also, SNACCPLP failed to pay its annual tax assessments, and it thereby allowed its status to lapse to "CEASED GOOD STANDING" back in June 2006 (see Ex. 7). Thus, it is unlikely that the Florida LLC, formed in July 2007 (see Ex. 7), was truly "formed by Stephen Norris & Co. Capital Partners, L.P. for the purposes of this transaction." (Incomplete Disclosure Statement at §(V)(B), p. 18).

15. In short, not only is there no evidence that any funding for the Plan is in place, but there is also no evidence that the Debtors exerted any diligence in investigating the alleged source of the funding.

B. Absence of the material information that was to be provided in the Definitive Documents

16. The Incomplete Disclosure Statement says:

> The above descriptions of certain ***material provisions*** of the Trust Agreement, the Stockholders' Agreement, the Stock Option Agreement, and the Warrant Agreement are ***intended to be summary in nature*** and are ***qualified in their entirety*** by reference to the complete provisions of the Trust Agreement, the Stockholders' Agreement, the Stock Option Agreement, and the Warrant Agreement.
>
> (Incomplete Disclosure Statement at p. 28, emphasis added)

and:

> The above descriptions of the rights, preferences, powers, and protections of the Series A Preferred Stock is [sic] ***intended to be summary in nature*** and is ***qualified in its entirety*** by reference to the complete provisions of the Company's Amended and Restated Certificate of Incorporation, the Statement of Rights and Preferences for the Series A Preferred Stock, the Company's Amended and Restated Bylaws, the Stock Purchase Agreement, and the Registration Rights Agreement.
>
> (Incomplete Disclosure Statement at p. 33, emphasis added)

17. None of these documents have been filed. Although there are several false statements in the Incomplete Disclosure Statement like "A copy of the Loan Agreement is attached as Exhibit 6" (Incomplete Disclosure Statement at §(V)(E)(i), p. 28), what one actually finds in the exhibits section are just pages that say "Exhibit 6 – Loan Agreement – (To be filed with Court on or before March 21, 2008)".

18. Thus, all of the Debtors' summary descriptions of these "material provisions" are "qualified in their entirety" by nonexistent exhibits.

III. RULE 3017(A) NOTICE REQUIREMENTS AND THE NATURE OF POST-NOTICE AMENDMENTS TO A DISCLOSURE STATEMENT

19. Rule 3017(a) requires that a disclosure statement "shall be mailed with the notice of the hearing" on the statement's approval, and this notice must be mailed at least 25 days before the hearing:

> Except as provided in Rule 3017.1, after a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 25 days' notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission, and any party in interest who requests in writing a copy of the statement or plan.
>
> (Rule 3017(a) of the Federal Rules of Bankruptcy Procedure)

20. The Debtors' position appears to be that because they filed and served a document styled as a "disclosure statement" at least 25 days before the hearing, they have therefore complied with Rule 3017(a), and they are free to file the missing parts at any time up until the hearing date.

21. I will not argue that Rule 3017(a) is so strict as to give the Court only two options on the hearing date: (a) approve the disclosure statement exactly as it was filed and served at least 25 days earlier; or (b) not approve any disclosure statement.

22. However, this is not an instance of a plan proponent filing a disclosure statement that it believes to be adequate and then amending it later with: (a) minor changes; (b) changes responsive to objections; or (c) changes to reflect unforeseen events.

23. This is, rather, an instance in which the disclosure statement mailed with the hearing notice was clearly inadequate and internally inconsistent, containing false assertions that various material documents were attached. The Debtors were fully aware that: (a) the statement would not be amended to reach an adequate state

until much less than 25 days before the hearing; and (b) the parties would thereby be deprived of adequate time to prepare objections. Moreover, the Debtors had no reason to insist on a hearing date that would arrive so soon after the completion of the disclosure statement.

24. On February 22, a week before the Incomplete Disclosure Statement and the hearing notice were even filed, I pointed out to the Debtors that the schedule they were proposing was unacceptable (see dkt #359).

25. The only deadline set in the MOU is an April 28 deadline for the hearing on a disclosure statement and on a motion to approve the MOU (see MOU at p. 14). This deadline could have easily been satisfied with a hearing on April 18, a date on which the Court had already reserved time to hear matters in this case. I repeatedly requested, both before and after the Incomplete Disclosure Statement was filed, that the Debtors' switch to the April 18 date, but they consistently refused to do so (see dkt #359 (February 22), Ex. 3 (March 2), and Ex. 5 (March 6)).

26. It is particularly egregious that the Debtors never filed the "documentation establishing the availability of the funds" (Incomplete Disclosure Statement at §VI(C)(ix), p. 50-51), which is crucial for evaluating both the plan and the sponsor protections motion (see my objection in dkt #359). The Definitive Documents apparently have still not been drafted, but the financing commitment was supposedly *already in place* way back on February 13:

> SNCP *has* a financing commitment sufficient to provide the Equity Financing and the Debt Financing.
>
> (MOU at p. 3, emphasis added)

I repeatedly requested this documentation, on February 22 and on March 2, but it was never filed. (See dkt #359 and Ex. 5)

IV. ESTIMATE OF AGGREGATE CLAIMS IS OFF BY MORE THAN $50 MILLION

27. The Debtors wrote:

> "Based upon the Debtors' schedules filed with the Bankruptcy Court (See Docket Nos. 130 and 132), the Debtors estimate that aggregate claims against the Debtors will total approximately $3,134,133.00, exclusive of: (i) intercompany claims; and (ii) claims filed as of February 11, 2008 against the Debtors aggregating $64,809.67."
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> (Incomplete Disclosure Statement §(IV)(F), p. 17)

28. This $3.1 million estimate has already proven to be off by at least one order of magnitude. If any disclosure statement is ever approved, it should include a better estimate for this figure, in light of the $59.7 million claim that was filed on March 7 by Claire Eff, et al., the lead plaintiffs in the consolidated class-action case that arose from the initial public stock offering in March 2000 by Debtor SCO Operations, Inc. (which was then named Caldera Systems, Inc., and only later became a wholly-owned subsidiary of Debtor The SCO Group, Inc.). See Claim #22, which is on file with Epiq Bankruptcy Solutions, LLC (the claims agent for this case, per the order filed on September 18, 2007 in docket #29).

V. THE DEBTORS' PATTERN OF FAILING TO GIVE ADEQUATE NOTICE

29. The Debtors' approach here to providing notice to the other parties is a repeat of its ridiculous performance last year on the proposed asset sale to JGD Management Corp. d/b/a York Capital.

30. The Debtors first filed an "emergency" motion (dkt #149), and sought and obtained an expedited schedule with an objection deadline of November 1 and

a hearing date of November 6 (see order in dkt #156). They promised to file a proposed Asset Purchase Agreement ("APA") sometime before the hearing. After the objection deadline had passed, they then had the hearing continued to November 16 (the "emergency" requiring an expedited hearing and an early objection deadline apparently having been imaginary) (see Agenda in dkt #183).

31. The Debtors did not file the proposed APA (dkt #215) until 31 minutes before the hearing (15 days *after* the deadline for written objections thereto). Moreover, this so-called APA (just like this year's Incomplete Disclosure Statement) was actually only the skeleton of an APA, with numerous references to supposedly attached exhibits that did not exist.

32. After a pointless hearing on the nonexistent proposal, the Court set new objection and hearing dates, and it ordered the Debtors to file all of the missing documents by Noon on November 20, ten days *before* the new objection deadline (see dkt #221). The missing documents were never filed. (The Debtors did file a notice of the motion's withdrawal (dkt #225), two minutes before Noon on November 20.)

VI. CONCLUSION

33. For all the reasons above, I respectfully request that the Court not approve the Incomplete Disclosure Statement nor any amended or supplemented disclosure statement that may be filed before the hearing. Furthermore, to prevent yet another recurrence of inconvenience to the other parties and to the Court, the Debtors should be explicitly directed not to send out a notice for any future hearing on a disclosure statement until *after* a *complete* disclosure statement has been filed.

Dated the Twenty-sixth day of March, 2008,

/s/ Alan P. Petrofsky

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