

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
 )  
The SCO GROUP, INC., et al.,<sup>1</sup> ) Case No. 07-11337 (KG)  
 ) (Jointly Administered)  
 )  
Debtors. )

Objection Deadline: January 22, 2008 at 4:00 p.m. (prevailing Eastern time)  
Hearing: January 29, 2008 at 2:00 p.m. (prevailing Eastern time)

**FOURTH MOTION BY DEBTORS UNDER SECTION 1121(d)  
FOR EXTENSION OF EXCLUSIVITY DEADLINES**

For cause shown, the above captioned Debtors request that the Court to extend the Debtors' exclusive period to file a plan of reorganization sixteen (16) days to January 16, 2009 and to extend the Debtors' exclusive period to seek approval from impaired classes of such a plan an additional sixteen (16) days to March 18, 2009 (collectively, the "Exclusive Periods").

In support of this motion (the "Motion"), the Debtors state:

**Jurisdiction and Background**

1. The Court has jurisdiction over the matters subject of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The procedural predicates for the relief sought herein is 11 U.S.C. § 1121(d) implemented by Fed.R.Bankr.P. 3016.
2. On September 14, 2007 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

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<sup>1</sup> The Debtors and the last four digits of each of the Debtors' federal tax identification numbers are as follows: (a) The SCO Group, Inc., a Delaware corporation, Fed. Tax Id. #2823; and (b) SCO Operations, Inc., a Delaware corporation, Fed. Tax ID. #7393.

3. For greater detail regarding the background of the Debtors' business and events leading up to the filing of these cases, the Debtors refer the Court and parties to the *Declaration of Darl C. McBride, Chief Executive Officer of the Debtors, in Support of First Day Motions* (the "McBride Declaration") filed on the Petition Date and incorporated herein.

4. Pursuant to 11 U.S.C. § 1121(b), the initial period in which only the Debtors may file a plan was scheduled to expire on January 12, 2008. On January 2, 2008, the Debtors filed the *Motion by Debtors Under Section 1121(d) for Extension of Exclusivity Deadlines* [D.E. No. 289]. On February 5, 2008, the Court entered the *Order Pursuant to 11 U.S.C. § 1121(d) Further Extending Debtors' Exclusive Periods in Which to File a Chapter 11 Plan and Solicit Votes Thereon* [D.E. No. 329] extending the Debtors' exclusive period for filing a chapter 11 plan through May 11, 2008 and the exclusive period to solicit acceptances of such plan through July 11, 2008.

5. On February 29, 2008, the Debtors filed the *Debtors' Joint Plan of Reorganization* (the "Plan") [D.E. No. 368] and the *Disclosure Statement in Connection with Debtors' Joint Plan of Reorganization* (the "Disclosure Statement") [D.E. #369]. In summary, the Plan provided for payment in full and with interest to all creditors, including Novell and IBM on the earlier of the effective date or the date such claims became allowed. Various parties in interest filed objections to the Disclosure Statement, relating to, among other things: (a) the relatively high leverage ratio required by the Plan, and the high interest cost of the debt component contemplated by the Plan, and (b) various uncertainties pertaining to the Novell litigation pending in Utah District Court, and the difficulties of evaluating and confirming the Plan before the District Court rendered a final ruling therein.

6. On May 9, 2008, the Debtors filed their *Second Motion By Debtors Under Section 1121(d) For Extension Of Exclusivity Deadlines* [D.E. No. 470] seeking an extension of time based upon the conclusion of the trial in the Novell Litigation pending in Utah in early May, and the anticipation that a final judgment in that litigation would be entered shortly thereafter. On June 17, 2008, this Court granted the motion and extended the Debtors' exclusive periods through August 11, 2008 and October 13, 2008 [D.E. No. 502].

7. On August 11, 2008, the Debtors filed the *Third Motion By Debtors Under Section 1121(d) For Extension Of Exclusivity Deadlines* [D.E. No. 525] (the "Third Motion"). On September 9, 2008, Novell filed a response to the Third Motion (the "Response") [D.E. No. 541]. Following an evidentiary hearing on the Motion, the Court entered an order extending the exclusive periods to December 31, 2008 and March 2, 2009, respectively. [D.E. No. 559].

### **Relief Requested**

8. By this motion, the Debtors seek to further extend the section 1121(b) deadline for a mere sixteen (16) days to enable the Debtors to finalize drafting a plan and disclosure statement, the substance of which are complete. Counsel for the Debtors has communicated an outline of the significant terms of the plan to counsel for Novell. The Debtors submit that section 1121(d) and existing case law amply support such an extension.

9. The court may extend the exclusive period within which only a debtor may file a plan for "cause." 11 U.S.C. § 1121(d). Section 1121(d) of the Bankruptcy Code grants this Court authority to extend the Exclusive Periods "for cause" after notice and hearing. Although the Bankruptcy Code does not define the term "cause" in this context, the legislative history indicates that "cause" should be interpreted flexibly "in order to allow the debtor to reach

an agreement.” H.R. Rep. No. 95, 95<sup>th</sup> Cong., 1st Sess. 232 (1997): see also, In re McLean Indus., Inc., 87 B.R. 830, 833 (Bankr. S.D. N.Y. 1987) (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. 231 (1978), reprinted in 1978, U.S.C.C.A.N. 5963, 6190) and In re Public Serv. Co. of New Hampshire, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (“[T]he legislative intent . . . [is] to promote maximum flexibility.”).

10. To facilitate this legislative intent, the court should give a debtor a reasonable opportunity to negotiate an acceptable plan with creditors and to prepare adequate financial and non-financial information concerning the ramifications of any proposed plan for disclosure to creditors. See, e.g., In re McLean Indus., Inc., 87 B.R. at 833-34; In re Texaco Inc., 76 B.R. 322, 327 (Bankr. S.D. N.Y. 1987).

11. The decision to extend a debtor’s exclusive period is committed to the sound discretion of the bankruptcy court, based upon the facts and circumstances of each particular case. See, e.g., First American Bank of New York v. Southwest Gloves and Safety Equip., Inc., 64 B.R. 963, 965 (D. Del. 1986).

12. A determination of whether “cause” exists to extend such time will depend on the facts and circumstances of the case. Factors a court considers in determining cause include:

- a. The size and complexity of the case;
- b. The necessity of sufficient time to negotiate and prepare adequate information;
- c. The existence of good faith progress toward reorganization;
- d. Whether the debtor is paying its debts as they come due;

- e. Whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- f. Whether the debtor has made progress in negotiating with creditors;
- g. The length of time the case has been pending;
- h. Whether the debtor is seeking the extension to pressure creditors; and
- i. Whether unresolved contingencies exist.

In re Dow Corning Corp., 208 B.R. 661, 664 – 665 (Bankr. E.D. Mich. 1997) (citing In re Express One Int'l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996)); In re McLean Indus., Inc., 87 B.R. 830 (Bankr. S.D.N.Y. 1988); In re Wisconsin Barge Line, Inc., 78 B.R. 946 (Bankr. E.D. Mo. 1987)).

- 13. The Debtors believe that cause exists because, among other things:
  - a. The Debtors' cases are complex and complicated by virtue of, among other things, the Novell Litigation which has impacted the Debtors' ability to formulate a transaction-based plan because of the issues surrounding the disputed ownership rights of the parties;
  - b. The Debtors have made good faith progress toward reorganization;
  - c. The Debtors are paying their debts as they come due;
  - d. The Debtors have and can demonstrate reasonable prospects for filing a viable plan that will pay creditors holding allowed claims in full with interest;
  - e. The cases have been pending for approximately fifteen months; and
  - f. The Debtors are not seeking an extension of the Exclusive Periods to pressure creditors or equity security holders.

14. As noted above, the Debtors submit that the plan and disclosure statement are substantially complete. The 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.

15. The Debtors have attempted to reach out to the major constituencies in these cases, including counsel to Novell, counsel to IBM and counsel to the United States Trustee. Because of the intervening holiday schedule, however, the Debtors have not heard back from these parties with respect to whether they consent to the Debtors' requested extension.

16. Based upon the foregoing, the Debtors request a further extension of only sixteen (16) days of the exclusive periods and submit that cause is shown for such an extension

#### **Notice**

17. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; (ii) the creditors holding the 20 largest unsecured claims against the Debtors' estates (on a consolidated basis); and (iii) any party which has filed a request for notices with this Court prior to the date of this Motion. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors request that the Court enter an order granting this motion and extending the Debtors' exclusivity periods as requested herein, and granting them whatever other and further relief the Court deems just and appropriate.

Dated: December <sup>30</sup>\_\_, 2008

PACHULSKI STANG ZIEHL & JONES LLP

  
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