

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
The SCO GROUP, INC., et al., .
. Case No. 07-11337(KG)
. (Jointly Administered)
. **Related Docket No. 673**
.
. January 29, 2009
. 2:00 p.m.
Debtors. . (Wilmington)
.
.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Kathleen Makowski, Esq.
Pachulski, Stang, Ziehl & Jones

VIA TELEPHONE:

For the Debtors: Grace Robson, Esq.
Berger Singerman

Pro Se: Alan P. Petrofsky

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transcript produced by transcription service.

1 THE CLERK: Please rise.

2 THE COURT: Good afternoon. You may be seated.
3 Thank you.

4 MS. MAKOWSKI: Good afternoon, Your Honor.

5 THE COURT: Ms. Makowski, good afternoon to you.

6 MS. MAKOWSKI: Good afternoon.

7 THE COURT: We have some people on the telephone
8 with us as well. We have Ms. Robson, Mr. Robinson, and Mr.
9 Petrofsky on the telephone.

10 MS. MAKOWSKI: Your Honor, I don't believe Mr.
11 Robinson dialed in. Since Your Honor was kind enough to
12 enter the order expanding his, his firm's retention - -

13 THE COURT: Okay.

14 MS. MAKOWSKI: - - I think he's okay.

15 THE COURT: That makes sense.

16 MS. MAKOWSKI: For today.

17 THE COURT: Good.

18 MS. MAKOWSKI: Your Honor, with respect to the
19 amended agenda that was filed, for the record I note that
20 Your Honor did enter orders on no. 1, which is the expansion
21 of the Tanner retention - -

22 THE COURT: Correct.

23 MS. MAKOWSKI: - - as well as the last item on the
24 amended agenda, which is the quarterly fee application
25 matters. Thank you, Your Honor.

1 THE COURT: My pleasure.

2 MS. MAKOWSKI: So today we're going forward with
3 matters on the agenda, items no. 2 and no. 3.

4 THE COURT: Yes.

5 MS. MAKOWSKI: And Your Honor, item no. 2 is the
6 Debtors' fourth motion for a very short extension of the
7 exclusivity deadlines. I'm not sure if Your Honor had a
8 chance to review that.

9 THE COURT: I did.

10 MS. MAKOWSKI: Your Honor might be also aware that
11 we did file our plan and disclosure statement prior to our
12 expected deadline.

13 THE COURT: Yes.

14 MS. MAKOWSKI: So I think at this point, Your Honor,
15 we would stand on our motion and continue to assert that we
16 should solicit it as we determined. But Ms. Robson is on the
17 phone, and I believe she has some comments to make to the
18 Court.

19 THE COURT: Thank you. Ms. Robson, good afternoon.

20 MS. ROBSON (Telephonic): Good afternoon, Your
21 Honor. Thank you for letting me appear by phone.

22 THE COURT: Yes. It's a pleasure.

23 MS. ROBSON (Telephonic): Thank you. I do have a
24 proposal which I would hope might alleviate Mr. Petrofsky's
25 concerns expressed in his objection. What we would propose

1 is we're willing to continue the hearing on our motion for
2 the extension of exclusivity as it relates to the
3 solicitation period to the February 25th omnibus hearing. But
4 we would, in that vein, also modify our request such that
5 presuming Your Honor approves the form of the disclosure
6 statement for solicitation, we would also request a expansion
7 of the extension of exclusivity for solicitation purposes
8 through the confirmation hearing. And to the extent that
9 Your Honor, if in the even Your Honor does not approve the
10 disclosure statement for solicitation, we would file a motion
11 to extend exclusivity, you know, at that time. If Your Honor
12 did not approve it, and if we could show cause. So with that
13 being said, it would carry over today's hearing on the
14 exclusivity motion to the February 25th date, and depending on
15 the outcome of whether the form of disclosure statement is
16 approved, would either extend the solicitation period without
17 us having to file another motion, or if Your Honor did not
18 approve the disclosure statement, we'd file another motion at
19 that time.

20 THE COURT: All right. Does, Mr. Petrofsky, do you
21 wish to be heard on the subject?

22 MR. PETROFSKY (Telephonic): Yes. Thank you. This
23 is Al Petrofsky, pro se. That's the first I've heard of that
24 proposal, and it sounds pretty good to me. My only question
25 is I wasn't quite clear on the details with - - so, if the

1 disclosure statement is approved on February 25th, then the
2 solicitation period would be extended to, to when exactly?

3 MS. ROBSON (Telephonic): My, well, the proposal
4 that the Debtors are requesting that the Court approve is
5 that depending on the date the Court set the confirmation
6 hearing, we would request exclusivity to extend through that
7 date.

8 MR. PETROFSKY (Telephonic): Okay. Yes. That
9 sounds reasonable to me.

10 THE COURT: All right. And it certainly sounds
11 reasonable to the Court.

12 MS. MAKOWSKI: Thank you, Your Honor.

13 MS. ROBSON (Telephonic): Thank you.

14 MS. MAKOWSKI: So we'll mark that on the record as
15 continued to the February 25th date.

16 THE COURT: Exactly.

17 MS. MAKOWSKI: Thank you, Your Honor.

18 THE COURT: Thank you, Ms. Makowski.

19 MS. MAKOWSKI: Your Honor, the next matter on the
20 agenda is Mr. Petrofsky's motion to compel electronic text
21 requirements. And I would defer the microphone to Mr.
22 Petrofsky to present his motion.

23 THE COURT: That's fine. Thank you. Mr. Petrofsky,
24 it's your turn.

25 MR. PETROFSKY (Telephonic): Thank you. Well I put

1 it all in the papers. One thing I didn't go into on the
2 papers was, you know, the numerous benefits to converting
3 documents directly to PDF. (Microphone not recording). . .
4 you know, efficiency and readability, and searchability, and
5 being able to copy and paste. And I didn't go into that a
6 lot, because I mean, the Local Rules Committee already
7 determined that this is a good thing to do. And that's why
8 they wrote the requirement into the rules three years ago.
9 Now one thing I wasn't really anticipating when I filed it
10 was I mean, the rule states that, you know, that documents
11 should be converted directly to PDF electronically where
12 practicable, and there's obviously a lot of room for debate
13 on what is practicable. But it seems like we, we have a
14 dispute regardless of whether, regardless of whether it's
15 practicable or not, there's also the dispute as to what
16 actually constitutes electronically converting it to PDF.
17 And it seems fair to me, and I tried to lay out the evidence
18 as best I could in the papers, that doing a scan and then
19 doing OCR of the text, you know, doesn't give you the actual
20 text. It gives you an approximation which is not very good.
21 And that's why the requirement in the rules specifically
22 says, you know, that this is supposed to be done
23 electronically, as opposed to using the scan, which is what
24 the Debtors have been doing. So I don't really have much
25 else to add to the papers, and I would like to hear the

1 Debtors response. I would like to reserve the right to reply
2 to anything that they bring up that wasn't in their written
3 objection.

4 THE COURT: Okay. I will turn it over to the
5 Debtors, then, Mr. Petrofsky. Thank you, because I did read
6 your papers carefully. And Ms. Makowski, are you going to
7 address this?

8 MS. MAKOWSKI: Yes, Your Honor. Your Honor, first
9 and foremost, the Debtors, and in particular our firm, has
10 always and is always in compliance with the Local Rules. I
11 think the, and I've spoken to Mr. Petrofsky on a couple of
12 occasions last, earlier this week. And what the issue, I
13 believe, is is, and Mr. Petrofsky can certainly correct me if
14 I mis-speak. But my understanding is what Mr. Petrofsky is
15 trying to do is when you pull up the docket, and you click on
16 a particular docket item - -

17 THE COURT: Yes.

18 MS. MAKOWSKI: - - and the PDF comes up - -

19 THE COURT: Yes.

20 MS. MAKOWSKI: - - Mr. Petrofsky's goal is to be
21 able to copy and paste certain information from that PDF and
22 paste it into, say, a word processing document. When you do
23 that, the text that was copied and pulled over is not
24 pristine when you go to save it.

25 THE COURT: Okay.

1 MS. MAKOWSKI: There's many errors. As Mr.
2 Petrofsky set forth in his papers.

3 THE COURT: Yes.

4 MS. MAKOWSKI: And I think Mr. Petrofsky is correct
5 that that's where our primary dispute lies. I don't believe
6 the Local Rule requires us to enable our documents that way.
7 Where we do, and for Your Honor's information, where we do
8 have original source documents from our firm, Your Honor, we
9 do our best, and it is our practice to convert those original
10 source documents to PDF and file them. When we receive
11 documents from outside our firm, say for example, from the
12 company - - for example, one of, a few of the documents that
13 Mr. Petrofsky has an issue with the way that are filed are
14 the monthly operating reports.

15 THE COURT: Yes.

16 MS. MAKOWSKI: We receive those directly from the
17 company in PDF's. We then print those PDF's. We do not
18 receive original source documents from the company for
19 monthly operating reports. And from, sometimes from certain
20 outside counsel. And the reason for that is many times
21 there's metadata that needs to be protected. We certainly
22 don't want to, you know, put something on a public docket
23 that has metadata that needs to be protected. But what we do
24 when we have those PDF's that come from outside of our firm,
25 is that we do print them, we then scan them on a PDF scanner,

1 which has a soft, it's an Adobe software program that creates
2 a searchable PDF. That searchable PDF is then filed on the
3 docket. So that when you pull up the docket, and you open a
4 particular docket item, you can actually, it's searchable.

5 THE COURT: Yes.

6 MS. MAKOWSKI: So - -

7 THE COURT: I've done that myself.

8 MS. MAKOWSKI: Yes. With that, Your Honor, we
9 believe we are in full compliance with the Local Rule. But
10 in any event, Your Honor, to the extent there are any
11 original source documents that we did not file, convert
12 directly to PDF, and file that way, we have provided those
13 documents to Mr. Petrofsky. In particular, he wanted the
14 plan, the disclosure statement, and the notice of hearing on
15 the disclosure statement, and we provided those to him in a
16 form that I believe was acceptable to him. The monthly
17 operating reports he is still not happy with the form that is
18 filed on the docket. To that extent, Your Honor, again, we
19 believe we are in full compliance with the Local Rule, and we
20 don't believe we should have to file original source
21 documents with respect to the monthly operating reports.

22 THE COURT: Okay.

23 MS. MAKOWSKI: We do not believe that is
24 practicable.

25 THE COURT: Now, Mr. Petrofsky, any reply?

1 MR. PETROFSKY (Telephonic): Well, I disagree.

2 THE COURT: Yes.

3 MR. PETROFSKY (Telephonic): I will confirm two
4 things she said at the end there. That yes, they did provide
5 the plan and the form that it was provided to me in was
6 entirely acceptable. And that's the form I would like them
7 to file things on the docket. And I still, as she said, am
8 not happy with the form of the monthly operating reports.
9 And as I pointed out in the reply, they did file them, you
10 know, electronically converted versions of the operating
11 reports back in October, 2007, so it does seem like it should
12 be possible. That's all I have to say.

13 THE COURT: Okay. Well, let me say this. I, it so
14 happens that I serve on the Local Rules Committee for the
15 court, along with Judge Walrath. And this has been a topic
16 of discussion. And the proposal that Mr. Petrofsky makes,
17 and by the way, Mr. Petrofsky, you've certainly filed a very
18 fine set of papers. Very cogent, and very, very readable,
19 and persuasive. But the fact of the matter is that our Local
20 Rules Committee has had these discussions, and has elected
21 not to require the filing of documents in the manner in which
22 you are requesting. And indeed, I can tell you that, for
23 example when I sign an order and send it down to our Clerk's
24 Office, they scan it. And just as, just as the Debtors'
25 counsel is doing here. So I'm, I find that the Debtors are

1 in compliance with our Local Rules, and I obviously am
2 appreciative of the fact that they have been cooperative with
3 you here, and I would hope that they would continue to be
4 cooperative when it's convenient for them to do so. But on
5 the basis of my understanding of the Local Rules, I do find
6 that the Debtors are in compliance, and accordingly, I will
7 deny your motion.

8 MR. PETROFSKY (Telephonic): Okay. Thank you, Your
9 Honor.

10 THE COURT: Thank you, Mr. Petrofsky.

11 MS. MAKOWSKI: Thank you, Your Honor. And just for
12 the record, Debtors' counsel, and particularly our firm in
13 particular, and me in particular, I'm always happy to provide
14 any documents to anyone who sends me a request, to the extent
15 that they're publicly filed documents. Mr. Petrofsky has my
16 direct dial, he also has my email address. I'm happy to work
17 with him on an ongoing basis if there are documents that we
18 can provide him in another format.

19 THE COURT: All right. Well, I'll appreciate that,
20 that type of attitude very much, Ms. Makowski. And I
21 certainly know it from experience that that does reflect the
22 way your firm, and you in particular, practice. So it's much
23 appreciated.

24 MS. MAKOWSKI: Thank you, Your Honor.

25 THE COURT: Was there anything further, Ms.

1 Makowski?

2 MS. MAKOWSKI: Your Honor, I believe that's all for
3 today.

4 THE COURT: All right. Counsel and Mr. Petrofsky, I
5 appreciate your participation. And we will stand in recess.

6 MS. MAKOWSKI: Thank you, Your Honor.

7 THE COURT: Good day everyone.

8 (Whereupon at 2:16 p.m. the hearing in this matter was
9 concluded for this date.)

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18 I, Jennifer Ryan Enslin, approved transcriber for
19 the United States Courts, certify that the foregoing is a
20 correct transcript from the electronic sound recording of the
21 proceedings in the above entitled matter.

22

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February 2, 2009