EXHIBIT C

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Case No. 07-11337(KG)
	.
	.
The SCO GROUP, INC., et al.	.
	. 824 Market Street
	. Wilmington, Delaware 19801
Debtor.	.
	. November 6, 2007
. . . . .	. 10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Berger Singerman, P.A. By: ARTHUR J. SPECTOR, ESQ. JOHN EATON, ESQ. 200 South Biscayne Blvd. Suite 1000 Miami, FL 33131
For the Debtor:	Pachulski, Stang, Ziehl & Jones By: LAURA DAVIS JONES, ESQ. RACHEL L. WERKHEISER, ESQ. 919 North Market Street 17th Floor Wilmington, DE 19899-8705
Audio Operator:	Nicole Schaefer

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (CONT'D):

For Novell, SUSE:	Young Conaway Stargatt & Taylor, LLP By: MICHAEL NESTER, ESQ. The Brandywine Building 1000 West Street, 17th Floor Wilmington, DE 19801
	Morrison Foerster By: ADAM LEWIS, ESQ. MICHAEL JACOBS, ESQ. 425 Market Street San Francisco, Ca 94105-2482
	Morrison Foester By: JULIE DYAS, ESQ. 1290 Avenue of the Americas New York, NY 10104-0050
For York Capital:	McNutt & Litteneker By: SCOTT McNUTT, ESQ. 188 The Embarcadero Suite 800 San Francisco, Ca 94105
	Duane Morris LLP By: FRED ROSNER, ESQ. Suite 1200 1100 North Market Street Wilmington, DE 19801-1246
For U.S. Trustee:	U.S. Trustee's Office By: JOSEPH J. MCMAHON, JR., ESQ. United States Dept. of Justice J. Caleb Boggs Federal Building 844 King Street, Suite 2207, Lockbox 35 Wilmington, DE 19801

TELEPHONIC APPEARANCES:

For Alan P. Petrofsky:	By: ALAN P. PETROFSKY Pro se

THE COURT: Thank you, everyone, you may be seated. Good morning.

ALL ATTORNEYS: Good morning, Your Honor.

THE COURT: Good morning, Ms. Jones.

MS. JONES: Good morning, Your Honor. How are you?

THE COURT: Very well, thank you.

MS. JONES: Your Honor, for the record, Laura Davis Jones with Pachulski, Stang, Ziehl & Jones on behalf of The SCO Group et al.

Your Honor, we have a number of matters scheduled on the agenda for you this morning and does Your Honor have a copy of the notice of agenda?

THE COURT: I do, yes.

MS. JONES: Your Honor, if I may walk through that. And a number of the matters have been continued and/or otherwise are still the subject of discussion.

It's indicated on the agenda, Your Honor, Matters 1-3 are continued. Matter 4, Your Honor, the application for the approval of Dorsey and Whitney, Your Honor, I understand that that has now been resolved. There were issues raised by the Trustee's office on that and there is a supplemental affidavit that has been filed. My understanding though is the parties are working through a form of order that they would submit under certification of counsel if that's okay with the Court.

THE COURT: That is perfectly fine. Thank you.

MS. JONES: Your Honor, Matter 5, our motion for approval of employment of a CFO Solutions to furnish a chief financial officer to the debtors, Your Honor, the Trustee's office has given us comments with respect to that and, indeed, provided a revised form of order this morning. Unfortunately, Your Honor, we're not there yet, on agreement on that order. So as we reflected on the agenda, if we haven't reached resolution, this matter would be continued over to the November 16 day and, Your Honor, we seek to have that continued.

THE COURT: That's fine. We'll do that.

MS. JONES: Your Honor, the motion of SUSE with respect to filing exhibits under seal, my understanding is a certificate of no objection has been filed in connection with that.

THE COURT: Yes, and I don't know if anyone has a form of order at this point, but if not, I will be approving that. And that is fine. That order will be entered if it hasn't been already in chambers.

MS. JONES: Thank you, Your Honor. Your Honor, just to give Your Honor a preview of a couple other matters, we will be going forward and I'm going to yield to Mr. Spector momentarily with respect to Matter 7.

On Matter 8, Your Honor, the application for the employment of Mesirow Financial, Your Honor, that matter there had been issues raised by the U.S. Trustee. Those have been

resolved, Your Honor. There's the supplemental affidavit that has been filed. And I do have a proposed form of order that reflects comments from the Trustee's office, if I may approach.

THE COURT: You certainly may. Thank you, Ms. Jones. Mr. McMahon looks comfortable seated, so I'm not going to disturb him. And obviously he has approved the form of order and I am prepared to enter it.

MS. JONES: Thank you, Your Honor.

THE COURT: It's been entered. Thank you.

MS. JONES: Your Honor, we would be going forward on Matters 9 and 10. Let me jump ahead just for a second, though. On Matter 11, Your Honor, our application to seek the approval of the Boies Schiller firm. Your Honor, the Trustee's office had some issues with respect to that application. We have talked quite a bit about that. Mr. McMahon made another proposal to us right before the hearing. I'd like to have some time to digest that on our side of the table, Your Honor. So we're -- we may go forward with that today. We have to work through that.

THE COURT: That's fine. We can put that to the end.

MS. JONES: Thank you, Your Honor.

THE COURT: Or after a recess.

MS. JONES: And, Your Honor, also on the motion for the employment of the ordinary course professional, Your Honor, there were issues raised by the Trustee's office as well as an

individual who may be on the phone, Your Honor.

THE COURT: I believe he is, according to my roster. Yes. Mr. Petrofsky.

MS. JONES: Yes, sir. And, Your Honor, I believe we have resolved our issues with the Trustee's office. We sent a proposed form of order. I left a voice mail for Mr. McMahon to see if it was satisfactory and I know he's been busy this morning.

THE COURT: Good morning, Mr. McMahon.

MR. MCMAHON: Your Honor, good morning. Good to see you.

THE COURT: Good to see you. Thank you.

MR. MCMAHON: Joseph McMahon for the U.S. Trustee's Office. Your Honor, I would just like to have a few minutes to review the post form of order just to ensure that its consistent with my discussion with debtor's counsel. I just have not had the chance to do that prior to the hearing. But that's the request that I would make of the Court at this time.

THE COURT: That's fine. We can also, I think -- I know we do have Mr. Petrofsky on the phone and perhaps it would be well to hear from him before we proceed with what may be a lengthy hearing. Mr. Petrofsky.

MR. PETROFSKY: Yes, Your Honor.

THE COURT: Good morning.

MR. PETROFSKY: Good morning.

THE COURT: We do have your objection.

MR. PETROFSKY: Yes.

THE COURT: And if you would just like to be heard, this is your opportunity to do so.

(Appearing by telephone - difficult to discern)

MR. PETROFSKY: Thank you, Your Honor. Well, just quickly then, to recount what's in the written objection, there's two points. One is that the order (indiscernible) schedule of non-professionals. And all the parties have had a chance to view that list and file their objections, but through the back door in Paragraph 7 whereby, you know, 100 more professionals have been added to the list. And, no (indiscernible) voters would have any opportunity to object. And I don't see any reason for the noticed parties be summarily (indiscernible) and I don't think there will be any substantial burden in withstanding the noticed parties that have objected.

And then the second point is on the German litigation. This is not mentioned in the schedules and they claim that this is, you know, in ordinary course of business and that the business would somehow be fairly hindered if they could not (indiscernible). I just don't see any facts to support that. That's it, thank you.

THE COURT: You're most welcome. Ms. Jones, would you like to respond?

MS. JONES: A couple things, Your Honor. With

respect to providing notice of any supplement -- supplements to the OCP list, Your Honor, I don't know if the individual has added his appearance under Rule 2002, but that might be the simplest way to make sure that he has notice of any supplements that are submitted.

THE COURT: And I assume, Mr. Petrofsky, have you entered your appearance in this case?

MR. PETROFSKY: I have, Your Honor. The problem is is that the noticed parties are not just -- the order doesn't just say that those are the only people who get noticed. The order also says those are the only people who have the opportunity to object.

MS. JONES: Your Honor, we can made a point of making sure that if we have any supplements, that we'll add this individual. Your Honor, the order is very specific that if there are any supplements, there is an opportunity to review the affidavit.

THE COURT: Yes.

MS. JONES: And also to object, so I'm not sure I understand the individual's point. But, Your Honor, we can make sure that he does receive a copy of any supplements. And as I said, there is a period of objection in there.

THE COURT: Mr. Petrofsky, does that address your concern that there will be notice and, of course, it would be subject to the Court's review as well.

MR. PETROFSKY: Yes --

THE COURT: And specifically, notice would be given to you as a noticed party.

MR. PETROFSKY: Right. Okay.

THE COURT: All right. So that addresses that objection.

MR. PETROFSKY: Right.

THE COURT: And as far as the other litigation is concerned, Ms. Jones?

MS. JONES: Your Honor, I believe what I've heard is a concern about what is the German litigation about, Your Honor, not so much about the retention of the ordinary course professional. And Your Honor, I don't know if its something we want to do during the course of this hearing or if we can talk to this individual off-line and tell him what the German litigation is about. But, Your Honor, at this point, the debtor does believe in its business judgment that it does need the retention of the German firm. I don't think there's any dispute as the bona fides of that German firm. And we'd ask that they continue to be on th OCP list, Your Honor.

THE COURT: Mr. Petrofsky, what we'll do is I will have debtor's counsel speak with you about the German litigation. But I do think its appropriate to approve ordinary course counsel for that litigation. And to the extent you've objected on that ground, I'll overrule your objection. But

again, you will be advised by debtor's counsel of the nature of that litigation.

MR. PETROFSKY: Okay, thank you, Your Honor.

THE COURT: Certainly. Now, you are welcome to continue on the phone throughout what will be a lengthy hearing. Or you may excuse yourself at this point.

MR. PETROFSKY: Thank you. I'll stay on the line.

THE COURT: Okay.

MS. JONES: Your Honor --

THE COURT: So I, subject to Mr. McMahon's review and comment, I would be approving that order.

MS. JONES: That's fine, Your Honor, and we can submit that to the Court later in the hearing after -- once Mr. McMahon signs off on it.

THE COURT: That will be fine, thank you.

MS. JONES: Your Honor, at this point I would yield to Mr. Spector.

THE COURT: Okay. Thank you, Ms. Jones. Good morning, Mr. Spector.

MR. SPECTOR: Good morning, Your Honor. I rise primarily to introduce my partner, John Eaton --

THE COURT: Mr. Eaton.

MR. SPECTOR: -- who will addressing the next matter on the calendar.

THE COURT: Welcome.

MR. SPECTOR: I believe the next matter on the calendar is SCO's motion to enforce the automatic stay.

THE COURT: Yes.

MR. SPECTOR: With regard to the SUSE arbitration in Switzerland.

THE COURT: Thank you. Thank you, Mr. Spector. Mr. Eaton, good morning.

MR. EATON: Good morning, Your Honor. John Eaton on behalf of the debtor. Your Honor, the motion in question is one, quite frankly, that I'm surprised that the debtor was forced to file. It is simply a motion to enforce the automatic stay with respect to an arbitration proceeding that is pending in Switzerland that was instituted by SUSE Linux GMBH which I'm going to refer to simply as SUSE throughout this hearing.

The main issue, the primary issue is with respect to a fact that is not disputed. And that is who initiated the arbitration. And its undisputed that SUSE initiated the arbitration. And as Your Honor is well aware, under 362, the automatic stay applies to any and all proceedings, wherever located, that were brought against the debtor. And the Third Circuit in the Maritime Electric decision that we cited to in our motion and our reply specifically held that any and all actions against the debtor are stayed and cannot proceed forward. From our perspective, it's a very simple issue.

Unfortunately, Your Honor, the position that SUSE has

taken in the arbitration, and now before this Court, is that somehow the arbitration does not apply because the argument is made that their lawsuit, their arbitration claim, is defensive.

They also claim, not wanting to get to the merits, that the Court doesn't have jurisdiction over them because they don't have the requisite minimum contacts and they weren't properly served.

Your Honor, from our perspective, I don't believe any of those arguments have merit. And I think we've addressed each and every one of them in our reply. And I will take a few minutes to go through each of them if the Court wishes, but I think, quite frankly, that the primary issue and the only one really that is an issue for the Court to decide today is, does the automatic stay apply. And the reason its important is because the current arbitration, Your Honor, is scheduled to proceed on December 3rd, and go from December 3rd to December 14th.

THE COURT: Yes.

MR. EATON: The Swiss Arbitration Tribunal, as I understand it, have asked the parties to advise them as to what their respective positions are so as indicated that the automatic stay applies to the proceeding. And SUSE has indicated that it does not. And to a certain extent, as I understand it, they're looking -- "they" meaning the Tribunal

-- is looking for some guidance here so they know where it stands.

With that background, Your Honor, I think its important to understand what the nature is of the relief that SUSE is seeking in the Swiss arbitration. And there's several forms of relief that they're taking and its set forth in their statement of claim.

Specifically, Your Honor, they're seeking a declaratory judgment that SCO was precluded from asserting infringe -- copyright infringement claims, i.e. SCO cannot proceed with litigation that would be an asset of the estate.

They are seeking a declaration that two United Linux agreements divest SCO of ownership of certain alleged intellectual property rights in certain software. Again, divesting ownership with respect to an asset of the estate.

They are seeking an order to prevent SCO from making any public statements relating to certain software and other issues, specifically getting a preliminary injunction or a permanent injunction against SCO.

And finally, Your Honor, they're seeking damages of $100 million which is big. The $100 million aspect of the Swiss arbitration, Your Honor, as I understand it, is in a different phase than what is currently teed up because as I understand it, I don't think there's a dispute. The current Phase II is to contemplate a declaratory and injunctive relief

that SUSE is affirmatively seeking and also with respect to SCO's counter-claims against them.

The problem, Your Honor, is with respect to the SCO counter-claims, is that many of the counter-claims overlap with respect to defenses such that if there's a determination of a SCO counter-claim and it were against SCO, that wipe out a defense to an affirmative claim that SUSE is making.

So with that background, Your Honor, we get to the issues that are before the Court. And I think, as I already pointed out, Your Honor, the automatic stay applies to all proceedings that are blocked against the debtor. And I think that in and of itself demonstrates why the automatic stay applies. And the reason why we need an order from the Court is because SUSE doesn't believe -- SUSE doesn't believe that it applies and has affirmatively taken the position it does not.

With respect to their argument about service, Your Honor, the service issue was served on a number of different persons and entities when it was filed. The motion was served overnight on SUSE in Germany. It was served on SUSE's Swiss counsel by overnight mail. It was served by facsimile and on SUSE's United States attorneys in San Francisco, the Morrison and Foerster attorneys. And it was also served, Your Honor, on what we believe is SUSE's agent, their parent company, Novell, by hand-delivery on their counsel.

SUSE takes the position that the only way to

effectuate service was through use of the Hague Convention. And the Hague Convention would apply if you wanted to try to serve someone in Germany and do it through German. But the Hague Convention doesn't apply if you're trying to serve an agent that's located within the United States. And we believe we have properly done that. We've served SUSE's United States attorneys and we served Novell, its parent, in the United States.

There's no dispute that they were served. They're here. They filed a response. And I understand that their opposition reserve their rights on jurisdiction. But the bottom line is, the key is, they received notice and everybody is here in court today to address the substance with respect to the automatic stay.

SUSE's parent, Your Honor, is not just a company that owns SUSE. In 2004, the operations -- until 2004, SUSE operated in the United States. It was based in Oakland. It had employees in the United States. All of its contacts were here.

When Novell took over the operations, it functioned in the same fashion that SUSE did. It continued operating SUSE software. It did all of the activities in the United States. Novell officers were, in effect, the CEO of SUSE in the United States. And we've attached to our reply several website references that were public available to demonstrate some of

those contacts because at this juncture, we haven't had an opportunity to take any discovery to get into more specifics for an evidentiary hearing.

We've also served the Morrison and Foerster firm. And the Morrison and Foerster is not just -- its not just their attorneys in connection with the Swiss arbitration. Attached to our reply was a copy of a power of attorney that SUSE executed in favor of the Morrison and Foerster department. And I'm sure Your Honor's had a chance to look at it. It didn't just allow them to take any and all action necessary to protect their rights and to do things in connection with the Swiss arbitration. It also allowed an authorized debtor to do anything that was necessary to take action on their behalf and protecting their rights in related proceedings.

Well, this is a related proceeding, Your Honor. Its related to the debtor's assets. Its related to the debtor's creditors. And the assets that are in question include software, litigation rights which they're trying to go after, "they're" meaning SUSE is trying to go after during the Swiss arbitration.

So from our perspective, service has properly been effectuated already. But even if the Court believes that its not, there's still a way to resolve the issue, Your Honor, and that is through Rule 2004, or Rule 4(f)(3) which is incorporated through Rule 7004, which allows the Court to

authorize a different method of service. The Court could order an interim order declaring that we may serve SUSE through its agents in the United States, i.e. their Novell parent or its attorneys Morrison and Foerster. I don't think we need to go through that exercise because I think we've already properly served them and the Court could so find. But if the Court believes that an order through Rule 4(f)(3) is necessary, we would respectfully request that the Court makes such a ruling and make it nunc pro tunc to the time of the service so that we can get to the meet which is does the automatic stay apply.

Next order of attention, Your Honor, to the other argument they made which is that they don't have the requisite minimum contacts with the United States. And we believe we've laid out more than sufficient facts, not only to establish specific jurisdiction, but also general jurisdiction. But we don't need to have both. One is enough. And I think that for purposes here, we will focus our discussion on the specific jurisdiction and why the Court has it.

And in order to be subject to specific jurisdiction, it can take place and be found in any suit in which the actions relate to a single purposeful act in the United States or one that can have an effect in the United States, and specifically here on the bankruptcy case. And I believe one of the decisions they've cited to in their reply, the O'Conner v. Sandy Lane decision from the Third Circuit said that at least

one contact must relate to the plaintiff's claim.

Well, here, the claims are relating to the debtor's assets. Its relating to litigation. Its relating to the debtor's rights with respect to certain copyrights. And the action that they want to take is to divest the debtor of that and make a determination that the debtor doesn't have any rights and to prevent the debtor from enforcing or seeking recoveries on any litigation claims it may have.

They're affirmatively taking that position pre-petition. They are now trying an affirmatively taking that position post-petition. In fact, Your Honor, on October 30th, SUSE filed its memorandum with the Swiss Tribunal which laid out all of the reasons why the Court should find in its favor on all of its prayers for relief.

Now, we cited to a number of cases in our memorandum which show that taking action against property of the estate is enough to satisfy the requisite conduct that would necessitate and require in support of finding for minimum contacts. And I'm specifically referring, Your Honor, to the Lykes Brothers decision from the Middle District of Florida. And I'm also citing, Your Honor, to the Childs Power decision. And as well, Your Honor, the decision of McClain -- McClain decision. And here they have affirmatively taken those acts with respect to property of the estate. But they also have other contacts, Your Honor.

The Swiss arbitration is based upon, Your Honor, the United Linux agreements and alleged breaches by SCO of those agreements. The position that SUSE takes is that their arbitration -- if their arbitration doesn't relate at all to the Delaware LLC that was formed in which they had a 25 percent ownership interest. Its kind of surprising they've taken that tact because they've even alleged in their statement of claim, 74 times, they make reference to the Delaware LLC which was a at all times envisioned to be the joint venture entity that would be the basis upon which those contracts would operate. And they know that they have the 25 percent ownership interest and that was going to be the vehicle that was going to be used.

The negotiations for the execution of the agreements that are the subject of the litigation in Switzerland, the arbitration in Switzerland, are admitted by SUSE to have taken place in Salt Lake City, New York and Atlanta. Its found in their own statement of claim. And we've provided the Court with the citations to those contacts.

There has been numerous emails and faxes and calls to SCO with SCO's attorneys in the United States with respect to those contracts. And all of those are set forth in the statement of claim that took place which, I don't believe is in dispute, its in their own statement of claim.

In the October 30th arbitration filing that SUSE just made, they make it a point to say that, well, you know what?

The Delaware LLC has nothing to do with the underlying arbitration which we find somewhat surprising in light of the previous 74 references in their own statement of claim. And I think the Court can just look at the statement of claim to see the importance of the Delaware LLC to the claims that are the subject of the arbitration in Switzerland to understand why those provide the requisite -- you know, part of the requisite contacts in the United States.

SUSE's arbitration is being pursued not just by Swiss counsel. Its also being pursued, the arbitration itself, is being prosecuted by their attorneys at Morrison and Foerster. Morrison and Foerster has participated in telephonic hearings from the United States. Its had conduct in -- excuse me, its had telephone calls and communications with SCO's attorneys in the United States, all pertaining to the Swiss arbitration which are the contacts in the United States which I think would be additional evidence or additional indicia of the minimum contacts necessary to satisfy specific jurisdiction, Your Honor.

And, Your Honor, the reason why I think its important with respect to the Delaware LLC, as I understand it, is that part of the argument that is being articulated by SUSE in the Swiss arbitration is that the Delaware LLC assigned to SUSE its use in the United States and worldwide for certain of the software that is in essence at issue in the litigation.

So, the Delaware LLC, which was a joint venture that had been contemplated by the parties as part of the very agreements at issue lies at the heart of that litigation and is a contact they have with the United States.

Your Honor, the Lykes decision and the McClain Industries decision and the Childs Power decision, Your Honor, I think all demonstrate that the minimum contact which allows this Court to exercise the jurisdiction over SUSE has been more than met simply with respect to the relief relating to the property of the estate, namely the copyright infringement claims and divesting ownership.

The other indicia that we've articulated and the other factors we've articulated relate to some of the other non-bankruptcy cases that we've set forth in our motion. But I think one or both, and certainly all show that they have the necessary contacts related to the specific issue of what is at issue in the Swiss arbitration and how it impacts the bankruptcy case and the effect on the bankruptcy here in the United States.

On the general jurisdiction, Your Honor, we set forth and attached to our reply a number of matters that have been the matter of public record, both interviews with former SUSE officers. We attached information that I understand is in German that reflect other indicia which were specifically officers and directors or officers of SUSE, how they were in

the United States and had United States operations on behalf of SUSE after, after Novell took over the operations.

I don't want to spend a lot of time going through the general jurisdiction other than to point out that we do believe its met. But I think we don't need to go there because that's really getting into more, and acknowledges more than evidentiary issue which would require a certain degree of discovery which has not been taken. But I didn't want the Court to believe or understand that we were not seeking to have a determination of belief that the general jurisdiction requirements have been met in this particular case.

THE COURT: And I understood that.

MR. EATON: And I appreciate that, Your Honor. So the one decision that was the focus, I think, of SUSE's response was the Fotochrome decisions from the Eastern District of New York in the Second Circuit which specifically dealt with a situation in which -- under the Bankruptcy Act, not the Bankruptcy Code -- in which there had been an arbitration pending in Japan. An arbitration award was made post-petition and then the Japanese entity came into the United States and sought enforcement of that arbitration in the bankruptcy court. And the court, in that particular case, held that they didn't have the requisite minimum contacts.

Interestingly, Your Honor, there was zero discussion as I saw in my reading of the cases of what contacts they had.

Here, we've established what the contacts are. So from a factual standpoint, the case is wholly in opposite and does not apply. But there's other interesting aspects to it, Your Honor, which show why it doesn't apply here. And one of the most important is, is (1) the focus was not on what the Third Circuit has held in Maritime Electronic which is the bread of the automatic stay in its worldwide application.

And also, Your Honor, there was a specific statement by the Second Circuit that shows why that decision doesn't apply here under the Bankruptcy Code. One, it had no statutory basis akin to the automatic stay of the worldwide application. And in fact, Your Honor, I believe the court in that case said there was not an issue there because the court said that the jurisdiction over the estate property was not exclusive. That's not the case, Your Honor, under the Bankruptcy Code. Your Honor's well aware that Your Honor has the exclusive jurisdiction of all property of the debtor.

So I don't think that the Photochrome decision really has any application in this particular case. And I think the bankruptcy cases that we've cited and have even been referred to by SUSE, the Lykes decision, the McClain Industry decision, the Childs Power decision reflect why, under the current Code, the minimum contacts can take place with respect to one particular act pertaining to property of the estate.

So that, Your Honor, brings us back to again the

point of why we're all here. Does the automatic stay apply. And I think the Court can simply just look to the Maritime Electric decision from the Third Circuit and which the Court specifically held that you look at the initiation of the lawsuit, or the arbitration as the case may be. Was it initiated against the debtor? Its admitted here, Your Honor. There is no dispute that they initiate it. The argument that it was defensive in nature to protect their rights, quite frankly, Your Honor, would apply to any lawsuit that a plaintiff brought because presumably any lawsuit is to protect their rights.

That's -- even assuming that is the law, its not the law in the Third Circuit in light of the Maritime Electric decision. And Your Honor, I would also point out that 362(b) sets forth about 28 different types of matters that are not subject to the automatic stay. Nowhere in there will you see anything relating to an arbitration in a foreign jurisdiction. There's nothing in there that says it doesn't apply to a defensive claim.

I think the Court can just simply look at the Third Circuit's decision in the Maritime Electric and see that in this particular case, its very clear that the automatic stay applies. Its very clear that we need to have a direction to SUSE and, more importantly, Your Honor, to the Tribunal in Switzerland letting them know that the automatic stay applies

so that debtor can move forward with its reorganization efforts and not have to deal with the time and expense relating to the Swiss arbitration.

We attached the form of a proposed order, Your Honor. I don't believe that evidence is required with respect to the matters to show the requisite context, the requisite service. We've attached the documents to our motion and our reply. To the extent that SUSE disputes it, we can certainly have a discovery schedule established by the Court. Discovery could be taken. I think that would be expensive. I think its not necessary when the Court has before it and has before it, the parties, the specific issue relating to the applicability of the automatic stay. And for that reason, Your Honor, we simply request that the motion be granted.

THE COURT: Thank you, Mr. Eaton. Mr. Lewis.

MR. LEWIS: Good morning, Your Honor. Thank you. Adam Lewis of Morrison and Foerster. If I may just take a moment with you today.

THE COURT: Please.

MR. LEWIS: Mr. Nestor from Young Conaway.

THE COURT: Yes, Mr. Nestor.

MR. NESTOR: Good morning, Your Honor.

MR. LEWIS: And my co-partner and co-counsel, Mr. Jacobs --

MR. JACOBS: Good morning, Your Honor.

THE COURT: Welcome.

MR. LEWIS: -- who's been involved in the patent litigation from Morrison and Foerster. And my associate Julie Dyas --

MS. DYAS: Good morning, Your Honor.

THE COURT: Good morning.

MR. LEWIS: -- is helping on this case.

THE COURT: Thank you, Mr. Lewis.

MR. LEWIS: Probably the secret behind it.

THE COURT: Thank you.

MR. LEWIS: And I appreciate appearing in front of the Court for the first time.

THE COURT: Thank you. It's a pleasure to have you here, Mr. Lewis.

MR. LEWIS: Your Honor --

THE COURT: I don't want to interfere, but as you're making your presentation, I think a principal concern of mine is the argument that this is a defensive action taken by -- may we call them SUSE? Is that acceptable to --

MR. LEWIS: Sure, sure, Your Honor. That's fine.

THE COURT: -- to your -- fine.

MR. LEWIS: Your Honor --

THE COURT: And I don't ask you that you address that right off the back, but just in certainly making your argument.

MR. LEWIS: Well, as it happens, Your Honor, that's

exactly what I was going to do because I think once we've gone over what that arbitration's all about with some care, you will see, I hope, that it is not covered by the automatic stay except in the very limited way and we're prepared to deal with that limited way this morning. So let me go over that very briefly.

You can break the arbitration issues into three components. The first component is the debtor's claims against SUSE. Those are clearly not barred by the automatic stay. The debtor claims, well, gee, they're so related to the other claims that are barred by the automatic stay that there's some kind of presto chango protection that comes with the automatic stay to the extent that it applies to SUSE's claims. But there's nothing in the law that says that.

So far as we're concerned, the debtor's admitted the automatic stay, in its own papers, is not covered although it took a different position initially with the Arbitral Tribunal. The fact is, it is not covered by the automatic stay and whether they proceed in the Arbitral Tribunal with their claims against SUSE, their counter-claims, is between them and the Tribunal and to some extent us as parties, that is SUSE, to the proceeding in Switzerland. So that's not covered. That's out. You don't have to discuss that this morning.

The second component is SUSE's damage claim. I want to come back to that at the end because I think in some ways

it's the least important. The third component which I want to talk about now is probably the one the Court is the most interested in and the most controversial. And I want to talk about how that arose. And to do that, I have to talk a little about SUSE and then about O'Dell because I think it helps to throw some light on the situation.

As the Court is aware from the pleadings, the litigation in Utah was stayed with respect to the arbitration issues. And here's the reason why. The debtor's, in the Utah litigation, made various claims against Novell. Some of them had to do with Novell's use of IP, intellectual property, that it had licensed from SUSE. And the way that Novell handles those claims is by raising its license from SUSE as an affirmative defense. Not as an affirmative claim, just an affirmative defense.

What's going on in Switzerland is the very same thing except up the line one step. That is, the party involved is the party that licensed to Novell. And although its made an -- its brought a declaratory relief action against the debtor in the arbitration, the declaratory relief action really is all about the affirmative defenses that nobody claims are stayed in the litigation in Utah that Novell has raised. It's the same defenses.

So while SUSE has taken the initiative in Utah, its really taken the initiative, in effect, saying, well, SCO,

we're not going to wait for you to sue us like you sued Novell in Utah and then raise these as affirmative defenses. We're just going to get this thing underway because you're messing with our business in Europe. And that's all its about.

And, indeed, to the extent that SUSE -- that the debtor claims that Novell and SUSE are one in the same, essentially, for purposes of the jurisdictional and automatic stay issues, how can they then argue that its not really a defensive claim because its really just exactly what Novell is doing that there's argument about, is defensive in Utah and is not barred by the automatic stay.

SUSE's answer to that question is, well -- I mean, the debtor's answer to that question is, well, you started it in Europe. That's what it amounts to. And we come down to that work against in section 362(a). And the question is, what's the real key language in that provision of 362. And they say that the key language is "brought". And so the key issue is who started it, who filed the complaint, who started the proceeding.

We believe that that's trivializing that statute. What the "against" means is attempts to recover from the debtor, whoever starts it. And if the Court agrees with us on that score, that the statute has to be interpreted in terms of whether you're trying to recover from the debtor, not who just started the litigation, that's almost irrelevant, then the stay

simply does not apply to those claims that are brought, the declaratory relief part, of the arbitration. Its as simple as that.

Now, we've heard a lot about the cases, the Maritime case, but if you look at the Maritime case, Your Honor, the underlying issue there was a claim against the debtor, to recover from the debtor. All of the cases that the debtor has sited in its favor involve either outright claims against the debtor which came up in various ways, or claims against property that everybody admitted that the debtor owned, like the insurance proceeds in the one particular case. That was property of the estate. It was just this party trying to get its hands on it.

We're not arguing over trying to get our hands on property of the estate. The issue really here, ultimately, in the arbitration, is whether its property of the estate at all. And we don't have to wait around until the debtor is ready to deal with that anymore than we do in Utah in order to protect our rights and protect our business. And that surely is what the automatic stay is about.

Otherwise, the argument is -- reduces itself to the argument that, well, the real purpose of the automatic stay is to save the debtor litigation costs. But if that were the purpose of the automatic stay, then the automatic stay would stay all litigation, including brought by the debtor, until

somebody, either the debtor or somebody else, sought relief. And that's not what Section 362(a) says.

And I remind the Court that its not simply a matter of what the debtor chooses or not -- chooses not to do with respect to the automatic stay. Remember, anybody who is barred by the automatic stay from doing something has to get relief from the bankruptcy court. The debtor cannot unilaterally go the court and say -- or on its own, without going to the court, and say to the other party to litigation that the debtors initiate it, well, even though this is barred by the automatic stay, we're willing to go ahead, so let's go ahead. The debtor would have to come to this court for that relief.

And so, two, if the automatic stay really barred -- was really designed to simply stay litigation costs, there is a larger interest at -- that would be at issue then simply what the debtor chose to do. There's preservation of the estate for the benefit of all creditors meaning that the debtor would have to come to this court to ask this court's guidance on whether its wise to get stay relief to be able to continue with its own claims. But of course, the automatic stay doesn't cover claims that they've brought.

And the claims that have been brought in Switzerland are no more than the defensive claims that everybody admits are still at issue and can still be litigated in Utah that Novell has raised as affirmative defenses. They are the same claims,

just raised up the line.

So the debtor's interpretation of the word "against" trivializes the automatic stay and makes that statute meaningless. And also, I think, is not consistent with the actual facts of the cases, whatever the broad language is that is sometimes used in some of those cases may say in a kind of general way. In everyone of those cases, the automatic stay was held to apply because assets of the estate, money that -- either the other property was seeking money or was seeking property that everybody admitted belonged to the estate. We don't have that here and I don't think those cases serve as precedent.

Incidently, the debtor spent some time arguing that we claimed that the automatic stay doesn't apply to arbitration. We never made any such claim.

So, now we have two components that I've talked about so far of the Swiss arbitration. The first is the debtor's claims, the counter-claims. And clearly they're not barred by the automatic stay. In fact, we sort of just talked about, at a second time, in a way, in talking about the second component which is the defensive declaratory relief action that is simply the Novell defenses, affirmative defenses in Utah repackage by SUSE so that it doesn't have to wait around while the debtor continues to bad mouth its business in Europe and interfere with its business in Europe.

The third issue is the damage claims. And we acknowledge, Your Honor, that the damage claims would be covered by the automatic stay. Let me, at first, however, just say that the notion that the damage claims are $100 million is a complete misstatement of what's in the record. A $100 million is determined as follows.

Under the Swiss arbitration rules, we have to put a value on the case, as it were, in order to determine what the fees are to be paid to the arbitrators. We did that. Not by asserting a damage claim, but by calculating what the injury to our business would be if this went on and on and on. That's where the $100 million came from. Its not the damage claim.

But that said, we acknowledge that the affirmative claims for monetary relief is barred by the automatic stay. A couple of points about that. The first is as everybody acknowledges, its not teed up yet. And we're prepared to ask this Court for stay relief at the right time if we need to do that. The Court can always just grant us that if the Court's otherwise inclined to let the arbitration go forward as we think it should.

Second thing is, if we need to, we are prepared to consider waiving that damage claim so that the arbitration can go ahead in some sensible fashion.

And that leads to the next point here. It will take, perhaps, 6 to 12 months to get another arbitration proceeding

set if we can't go forward as scheduled right now. Subject, of course, to whatever the Arbitration Tribunal wants to do. We don't control that.

THE COURT: When was the arbitration proceeding commenced? On what date? Do you recall?

MR. LEWIS: I think it was commenced in 2006, is that right? I think it was April 10th, maybe, in 2006.

So on the third point, it's a non-issue in this instant. We acknowledge that the automatic stay would apply here. We'd ask the Court to consider granting stay relief sua sponte today. And if not, to simply postpone the issue until it comes up because its not ripe yet. Because no one is at that phase of the arbitration proceedings. The phase we're at is, the critical phase, who has what. Who owns those copyrights. The same critical issues that we're asking this Court to allow to finish off in Utah, that are critical to this case, to the debtor as the debtor's own recent motion to sell reflects and critical to the creditors.

THE COURT: Could this have joined in the Utah litigation? I'm sorry, could SUSE --

MR. LEWIS: I'm going to defer to Mr. Jacobs on that.

THE COURT: Oh, that's fine. Mr. Jacobs, thank you. Could SUSE not have joined in the Utah litigation?

MR. JACOBS: I don't know the answer to -- we didn't look at that specific question because of the scope of the

United Linux agreements, which is what's at issue in the Zurich arbitration, is an arbitral issue by the terms of those agreements. So the exact sequence was counter-claim -- amended complaint by SCO in Utah asserting copyright infringement against Novell by virtue of Novell's distribution of SUSE Linux, step one.

Step two, SUSE files an arbitration in -- its an ICC arbitration in Zurich. Files an arbitration demand seeking, among other things, declaratory relief that SCO doesn't have a claim relating to SUSE Linux by virtue of the United Linux agreements.

Novell goes into the district court in Utah and says, these issues -- there are issues now in the litigation that are referable to arbitration within the meeting of the federal arbitration acts, asks the district court to stay those issues. The district court parses through the complaint that's not operative in Salt Lake City and says, I see, yes, these claims relating to SUSE Linux, they are arbitral under the United Linux agreements, makes a preliminary reading of those agreements, decides, in fact, that those issues are referable to arbitration and stays component of the Utah litigation.

So there's two different stays at issue here. It's a little bit complex. The point, I think, that we're driving at is the automatic stay doesn't apply to SCO's affirmative claim against Novell in Salt Lake City for copyright infringement

because that's their claim. That's an affirmative claim they're making. And this is in the nature of a precondition to the assertion by Novel of the affirmative defense. The scope of the United Linux agreements drives the scope of Novell's affirmative defense in Salt Lake City. Hence, the defensive nature of the declaratory relief claim.

One way to -- there's a little riddle I was realizing as Mr. Lewis was talking. If we went back to -- if we went back to Judge Kimball in Salt Lake City and said, you know, this affirmative claim from SCO isn't stayed by the automatic stay. So, you can continue on with that. The automatic stay applies to our counter-claim. You have the lift stay motion. But this affirmative claim by SCO isn't stayed. He would say, but how can I proceed with that claim. The issues are referable to arbitration in Zurich. The arbitration has to be completed first.

It should be the result, we submit, that because of the defensive nature of the arbitration claim, the automatic stay doesn't apply to that component of SUSE.

THE COURT: I understand. Thank you.

MR. LEWIS: Does that answer your question, Your Honor?

THE COURT: Yes. Thank you, Mr. Lewis, that was a good answer you gave me.

MR. LEWIS: I can think of other situations where

both domestic and legal where I would like to send Mr. Jacobs to represent me as.

Okay. So I think that's my argument on the merits of the scope of the stay. And I guess my basic point, once again, is we just don't think the stay applies except to very limited extent we're prepared to live with whatever the Court decides to do about that limited extent. Although we would recommend that since the stay doesn't apply to the defensive, the territory relief action that SUSE has brought and certainly does not apply to SCO's affirmative claims in the arbitration, if those are going to go forward, then we might as well have everything go forward together. Let's get it done together and let's get it done and we'll all know better where things stand.

This is not the kind of thing to put off for 6 or 12 months. The parties are ready, or should be ready. They've had plenty of notice. And it would make much more sense to let this go forward where the parties agree that would be decided with their arbitration clause which referred it to Swiss arbitration and its governed by Swiss law. And I don't think there's any dispute about that.

So with that said, let me turn now to the jurisdictional issues and let me start by saying that we don't contend that the Court couldn't authorize the kind of service that the debtor affected in this case. But the debtor didn't affect that service in this case with this Court's authority

which is what the rule requires. What the debtor didn't do was go and look at the rule which is in black and white in the Federal Rules as adopted by the Bankruptcy Rules about what they had to do.

One thing they could have done if they read the rule was come to this Court in the first place and ask for authority to serve whomever. And that would have been decided and we probably would have agreed. We probably wouldn't have opposed an attempt to service counsel once we'd had a chance to confer with our client. I don't know what would have happened for sure because we didn't get the chance.

But they didn't do that and that's what the rule says they're suppose to do and they're attitude seems to be, well, rules, rules, you know, we all know what's really going on here. Let's just not play by the rules. We'll just kind of make it up as we go along. You know, we're the debtor and we need special care and attention. And we ask you to give us that special care and attention. That's not how it works. That's not due process. Its not in accordance with the rules.

The debtor claims that we, Morrison and Foerster, through the power of attorney in the arbitration somehow consented to this, to having Morrison and Foerster served in this bankruptcy case because this is a, quote, related proceeding. Well, as in other arguments they've made, the debtor trivializes the language. There's no reason a debtor

would be suing a non-debtor except as it somehow related to the debtor's welfare. Its not enough to say that it's a related proceeding because the debtor's now in bankruptcy and the assets are somehow related to what's going on. No one is envisioning bankruptcy. We're talking about related proceedings on the merits. That's what that's -- that's what that provision means.

And to read it otherwise is, again, to say that somehow the -- SUSE is saying, well, whatever happens, whatever may come, fine, you can serve Morrison and Foerster if it has the slightest connection now or in the future with the arbitration proceedings out of which the power of attorney grows. You have to read that in connection with the proceeding in which its filed and to which it refers in its very first sentence.

Now, the debtor also argues that we have all kinds of contacts because we're controlled by Novell and so on and so forth. And the debtor admits it doesn't really have any evidence here. No admissible evidence, no competent evidence. It has a lot of speculation and stuff its pulled of Google. And we all appreciate Google, but Google is not admissible evidence.

But just a couple of comments on this. The debtor's argument amounts to the -- amounts to claiming in many ways that because we're a wholly-owned subsidiary and because we

happen to share certain management personnel that we're one in the same as Novell, in essence. That's an alter ego argument. There's no evidence for alter ego grounds here. Every related company -- surely in Delaware, this is something that we all know -- every related company, every subsidiary is going to share some officers and managers. And there's going to be some relationship in how they're run. You wouldn't buy a subsidiary if you didn't want to try to influence its affairs. If that's enough, then every company is an alter ego of its parents and every company can be served however you want to. That's not what the law is.

And so, the mere fact that Novell -- and I remind the Court that SUSE is not a direct subsidiary. Its -- there's a number of intervening companies between Novell and SUSE. The fact that they share some management, that they share some strategic visions and objectives, that they talk to each other, that's not enough to turn them into nothing more than Novell. And I don't think the law says anything to the contrary. On the --

THE COURT: Did they not operate, though, in the United States?

MR. LEWIS: They -- what they do in the United States, its my understanding, is they basically sell through -- they have no office in the United States. They may have at one time, they no longer do. They sell through Novell exclusively