

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re : Chapter 11
THE SCO GROUP, INC., *et al.*, :
Debtors. : Case Number 07-11337 (KG)
 : (Jointly Administered)

Hearing Date: October 25, 2007 at 4:00 P.M.

**LIMITED OBJECTION OF THE UNITED STATES TRUSTEE TO THE DEBTORS’
MOTION TO FILE UNDER SEAL DOCUMENTS AND DATA SUBJECT TO
DEBTORS’ MOTION FOR AUTHORIZATION TO (I) CONTINUE PREPETITION
SEVERANCE POLICY APPLICABLE TO ALL EMPLOYEES AND
(II) PAY SEVERANCE AND ACCRUED BENEFITS TO EMPLOYEES
TERMINATED POSTPETITION
(DOCKET ENTRY # 118)**

In support of her limited objection to the Debtors’ motion to file under seal documents and data subject to the Debtors’ motion for authorization to (i) continue prepetition severance policy applicable to all employees and (ii) pay severance and accrued benefits to employees terminated postpetition (the “Motion”), Kelly Beaudin Stapleton, United States Trustee for Region 3 (“U.S. Trustee”), by and through her counsel, avers:

INTRODUCTION

1. Under (i) (an) applicable order(s) of the United States District Court for the District of Delaware issued pursuant to 28 U.S.C. § 157(a) and (ii) 28 U.S.C. § 157(b)(2)(A), this Court has jurisdiction to hear and determine the Motion.

2. Under 28 U.S.C. § 586, the U.S. Trustee has an overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.), 33 F.3d 294, 295-96 (3d Cir. 1994) (noting

that UST has “public interest standing” under 11 U.S.C. § 307 which goes beyond mere pecuniary interest); Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.), 898 F.2d 498, 500 (6th Cir. 1990) (describing the UST as a “watchdog”).

3. Under 11 U.S.C. § 307, the U.S. Trustee has standing to be heard on the Motion and the issues raised in this objection.

GROUND/BASIS FOR RELIEF

4. 11 U.S.C. § 107(b) provides:

On request of a party in interest, the bankruptcy court shall, and on the court’s own motion, the bankruptcy court may – (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

5. Federal Rule of Bankruptcy Procedure 9018 provides:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

6. There is a strong, compelling presumption of open access to judicial records and proceedings in civil matters. See 11 U.S.C. § 107(a) (“Except as provided in subsections (b) and (c) of this section and subject to section 112, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.”); United States v. Continental Airlines, Inc. (In re Continental Airlines), 150 B.R.

334, 340 (D. Del. 1993) (citing In re Revco D.S., Inc., No. 588-1308, 1990 WL 269887 (Bankr. N.D. Ohio Dec. 30, 1990)); cf. Pansy v. Borough of Stroudsburg, 23 F.3d 772, 785-86 (3d Cir. 1994) (discussing public interest in access to court records). In In re Foundation for New Era Philanthropy, No. 95-13729, 1995 WL 478841 (Bankr. E.D. Pa. 1995), the court observed:

[Section 107(b)] was not intended to save the debtor or its creditors from embarrassment, or to protect their privacy in light of countervailing statutory, constitutional and policy concerns Full disclosure of bankruptcy records may help insure that the bankruptcy statute is applied effectively in this case. It may also assist governmental entities in the performance of their duties *vis-a-vis* this debtor and its officers Thus, there are significant public concerns which favor full public access to all documents filed in this case. Id. at *4, 6.

7. The Debtors are obligated under applicable securities law to make disclosures regarding compensation and related benefits paid to insiders. Accordingly, to the extent that this Court grants relief, it should be limited consistent with that obligation.

8. The U.S. Trustee leaves the Debtors to their burden under 11 U.S.C. § 107(b).

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CONCLUSION

WHEREFORE the U.S. Trustee requests that this Court issue an order granting relief consistent with this objection.

Respectfully submitted,

**KELLY BEAUDIN STAPLETON
UNITED STATES TRUSTEE**

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