UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
The SCO Group, Inc., et al.,	)	
	)	Case No. 07-11337 (KG)
Debtors.	)	(Jointly Administered)

Objection Deadline: November 28, 2007 at 4:00 p.m. (prevailing Eastern time)
Hearing: December 5, 2007 at 10:00 a.m. (prevailing Eastern time)

NOVELL'S LIMITED OBJECTION TO MOTION FOR APPROVAL OF COMPROMISE OF INCIPIENT CONTROVERSY REGARDING CATTLEBACK INTELLECTUAL PROPERTY HOLDINGS, INC.

Novell, Inc. ("Novell") hereby submits this limited objection (the "Objection") to the Debtors' Motion for Approval of a Compromise of Incipient Controversy (the "Motion") between The SCO Group, Inc. and – as disclosed in the Motion – one of its wholly-owned subsidiaries that is *not* in bankruptcy, Cattleback Intellectual Property Holdings, Inc. ("Cattleback"). As is characteristic of the Debtors' bankruptcy cases so far, the Motion fails because it does not provide adequate information on which the Court and creditors of the estates, including Novell, can reasonably evaluate the settlement.

In support of its Objection, Novell respectfully states as follows:

The Motion

1. By the Motion, the Debtors seek the Court's approval of their "incipient" controversy consisting of potential actual and constructive fraudulent conveyance claims SCO may have

against Cattleback under Bankruptcy Code sections 544(a) and 548 arising out of SCO's contribution of the Patent[1] to Cattleback shortly before the Debtors filed their voluntary petitions.

2. According to the Motion, SCO decided last summer to sell the Patent. The Motion provides no information about the Patent other than its United States patent number. Nor does the Motion discuss *why* SCO decided to sell the Patent.

3. SCO hired Ocean Tomo to assist it with selling the Patent. According to the Motion, Ocean Tomo, in turn, advised SCO to form and contribute the Patent to a subsidiary for that purpose. The Motion does not disclose the rationale of the advice. Following Ocean Tomo's advice, SCO formed Cattleback and contributed the Patent to it.

4. Ocean Tomo then marketed the Patent. Apart from stating that Ocean Tomo marketed the Patent in some fashion to "almost 200 companies" in the ensuing couple of months and received "six [undisclosed] bids" for it, the Motion does not detail the marketing process or activity or the alleged "bids."

5. Ultimately, according to the Motion, SCO and Ocean Tomo concluded to sell the Patent to the buyer for $580,000. However, the sale was not concluded before SCO filed its bankruptcy petition. The Motion does not include a copy of the winning bid or any associated proposed contract.

6. SCO now evidently has agreed with Cattleback – its own subsidiary – to resolve potential fraudulent conveyance claims it may have against Cattleback to recover the Patent by: (a) permitting the sale to the buyer to close; (b) receiving all the proceeds of the sale *except* for Ocean Tomo's fees under Ocean Tomo's contract with Cattleback and certain related obligations

[1] As described in the Motion, the "Patent" is defined as U.S. Patent No. US 6,529,784, titled "Method and Apparatus for Monitoring Computer Systems and Alerting Users of Actual or Potential System Errors."

to SCO's own employees and the inventor; releasing its fraudulent conveyance claims against Cattleback.

7. The Motion claims that the fraudulent conveyance claims are weak because of an "insurmountable" task of proving actual intent to hinder, delay or defraud because SCO had been "trying to sell the Patent at market prices" and contributed to Cattleback at Ocean Tomo's advice; and (b) SCO was "plainly solvent" when it transferred the Patent to Cattleback.

The Objection

8. Novell asserts the Objection because the Motion does not provide adequate information on which the Court and creditors of the estates, including Novell, can reasonably evaluate the proposed settlement.

9. The Debtors ask the Court to review the Motion under the standard of Federal Rule of Bankruptcy Procedure 9019, under which the settlement must be fair, reasonable, and in the interest of the estates. Viewed alternatively, the Motion requests relief appropriate under section 363(b) of the Bankruptcy Code, as causing a wholly-owned subsidiary such as Cattleback to sell its only asset is a use of property of the estate that is outside of the ordinary course of business. Uses of estate property outside of the ordinary course of business must be fair, equitable, and in the best interests of the estates.

10. Whether reviewed under Rule 9019 or section 363(b), the Debtors should be required to provide additional information to the Court and the estates' creditors prior to approving the proposed settlement, as the proposed settlement cannot be appropriately evaluated on the Debtors' submission. The protection to the estates of requiring adequate disclosure is particularly important as the Debtors propose a settlement with Cattleback – an insider – with whom transactions are inherently subject to higher scrutiny by the Court. The Third Circuit in *In*

re Nutraquest, Inc., 434 F. 3d 639 (3d. Cir. 2006), recognized that insider settlements must be scrutinized so that insiders do not insulate themselves from litigation outside the bankruptcy context. *Id.* at 647 (upholding a settlement between non-insiders as distinguishable from settlements with insiders).

11. As another example of the heightened level of scrutiny for insider settlements, the Fifth Circuit in *Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp.(In re Foster Mortgage Corp.)*, 68 F. 3d 914 (5th Cir. 1995), overturned a Rule 9019 settlement between a debtor and non-debtor parent and subsidiary out of deference to an objecting creditor group. The Fifth Circuit expressed particular concern that creditors were not involved in the negotiation of the settlement, noting that though "future possible compromise agreements of this claim" may be reached, the court's scrutiny must be great when the settlement is between insiders. *Id.* at 919. In finding that the bankruptcy court abused its discretion in approving the Rule 9019 settlement, the Fifth Circuit held:

> [A] bankruptcy court should consider the amount of creditor support for a compromise settlement as a factor bearing on the wisdom of the compromise, as a way to show deference to the reasonable views of the creditors....When a debtor subsidiary settles a claim it has against a parent corporation without the participation of the creditors, a bankruptcy court should carefully scrutinize the agreement.

Id. at 918 (internal citations omitted). *See also In re Drexel Burnham Lambert Group*, 134 B.R. 493, 498 (Bankr. S.D.N.Y. 1991) ("Lastly, this agreement was negotiated by Debtors with an insider. We subjected the agreement to closer scrutiny because it was negotiated with an insider, and hold that closer scrutiny of insider agreements should be added to the cook book list of factors that Courts use to determine whether a settlement is fair and reasonable.").

12. Even were there no applicable heightened standard of settlement, Novell submits that the Debtors must provide substantial additional information before the Court and parties-in-interest[2] can properly consider the Motion for approval according to the most basic standards.

13. Much of that information pertains to the value of the Patent and the adequacy of the proposed sale price. This is an important issue, in part, because if the Patent is worth far more than the sale price, the estates may be benefited in negotiating more favorable terms through settlement, or even commencing a fraudulent conveyance or other action to try to recover the Patent or its value; clearly, the greater the potential value of the Patent, the more value litigation may have to the estates.

14. Thus, for example, the Debtor should provide more information about the Patent itself, how it fits into the Debtors' business and portfolio, and why it decided to sell it last summer while engaged in bitter litigation with Novell and others. Similarly, the Debtors should identify the buyer and discuss what relationship, if any, it has with the Debtors, the Debtors' personnel or Cattleback and its personnel, as well as any other offers the Debtors may have received for the Patent. The Debtors should also supply a copy of the winning bid, relevant competing offers, and any related proposed sale contracts.

15. Additionally, the Debtors should disclose their marketing agreement with Ocean Tomo for review and evaluation; expenses of sale in excess of 18% surely warrant greater review, even were this not an insider transaction.[3]

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[2] As the Court is aware, no official committee of unsecured creditors has been appointed in these cases.

[3] In fact, given that the Debtor is paying for the obligations of a third party (Cattleback), some of which normally would be carefully scrutinized under Bankruptcy Code sections 327 and 330, there is even more reason for the Court and creditors to understand and evaluate these underlying prepetition obligations and what Ocean Tomo has done to earn them.

16. Additionally, with respect to the issue of actual fraudulent intent, creditors should have the opportunity to vet the reasons behind SCO's decision to sell the Patent last summer and Ocean Tomo's recommendation that the Debtors create a new entity to accomplish the transaction. Without information on those subjects, parties in interest are left to rely solely on SCO's conclusory statement that the intent issue is "insurmountable" because of a sale process creditors know little about.

17. The Debtors should also provide some useful information on SCO's alleged solvency at the time it contributed the Patent to Cattleback. SCO's lack of fraudulent intent and solvency are not as obvious as SCO declares in the Motion and such expressions are argument unsupported by the Debtors in fact. Yet, SCO is asking the Court to approve the settlement.

18. Finally, if there is a settlement agreement between SCO and Cattleback to resolve this "incipient" controversy, it should be presented to the Court and creditors as part of the Motion. If there is not a written agreement, there should be one. In the meantime the Motion should be denied for that reason alone.

19. Novell wishes to make it clear, once again, that it does not necessarily oppose the proposed settlement. Indeed, the settlement might be in the best interests of the estates. But the problem is that it simply is not possible to assess the settlement intelligently on the paucity of information the Motion supplies. Novell therefore presents this Objection in limited form in acknowledgement that it may support the relief requested once appropriate disclosures are made. However, given the current inadequacy of disclosure, Novell proffers this limited Objection and asks the Court to require the disclosures requested herein prior to consideration of the settlement for approval.

Dated: November 28, 2007
Wilmington, Delaware

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