

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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|--------------------------------------|---|---------------------------|
| In re: |) | |
| |) | |
| The SCO GROUP, INC., <i>et al.</i> , |) | Chapter 11 |
| |) | |
| Debtors. |) | Case No. 07-11337 (KG) |
| |) | (Jointly Administered) |
| |) | |
| |) | Re: Docket No. 194 |

RESPONSE OF THE 363 GROUP, INC. TO DEBTORS' MOTION FOR APPROVAL OF COMPROMISE OF INCIPIENT CONTROVERSY

The 363 Group, Inc. ("363") hereby submits this response (the "Response") to the Motion for Approval of Compromise of Incipient Controversy (the "Motion"), filed by that above-captioned Debtors and Debtors in Possession (collectively, the "Debtors"). In support of this Response, 363 respectfully represents as follows:

The Response

1. 363 does not object to the proposed settlement between the Debtors and their wholly-owned non-debtor subsidiary, Cattleback Intellectual Property Holdings, Inc. ("Cattleback"), or the waiver of the Debtors' avoidance powers, generally, with respect to the sale of the U.S. Patent No. 6,529,784, titled "Method and Apparatus for Monitoring Computer Systems and Alerting Users of Actual or Potential System Errors" (the "Patent") by Cattleback.

2. However, the Motion does not clearly indicate whether the sale of the Patent has been completed or become binding on Cattleback. Instead, the Motion merely states that "Ocean Tomko and Cattleback settled upon a buyer for \$570,000." (See Motion at 5.)

3. 363 recognizes, the sale of the Patent by Cattleback may not governed by section 363 of the Bankruptcy Code but believes that it might appropriately be governed by section 363. However, to the extent the Motion seeks to grant Cattleback and the purchaser of

the Patents protections similar to those granted by an order entered pursuant to section 363 of the Bankruptcy Code — such as insulation from future avoidance actions — the sale should be governed by the same standards.

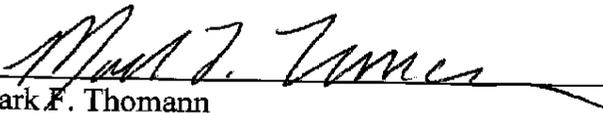
4. Courts typically require debtors-in-possession to establish a "sound business purpose" to sell any or all their assets before confirmation of a plan of reorganization. In re Delaware & Hudson Railway Co., 124 B.R. 169, 175-76 (D. Del. 1991); In re Titusville Country Club, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Sovereign Estates, Ltd., 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); In re Conroe Forge & Manufacturing Corp., 82 B.R. 781, 783-86 (Bankr. W.D. Pa. 1988); In re Industrial Valley Refrigeration & Air Conditioning Supplies, Inc., 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987). Courts consider the following non-exhaustive list of factors in determining whether a sound business purpose exists: (1) sound business reason for the sale; (2) accurate and reasonable notice; (3) proportionate value of the asset to the estate as a whole (fair and reasonable); (4) the amount of elapsed time since the filing; (5) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (6) the effect of the proposed disposition on the future plan; (7) the amount of proceeds to be obtained from the sale versus the appraised value of the property sold; and (8) Whether the asset is decreasing or increasing in value. Delaware & Hudson Railway, 124 B.R. at 176; In re Weatherly Frozen Food Group, Inc., 149 B.R. 480, 483 (Bankr. N.D. Ohio 1992).

5. The Debtor has made no such showing with respect to the proposed sale of the Patent and, as set forth above, 363 is willing to offer \$670,000 on behalf of an entity TBD to purchase the Patents (nearly 17.5% more than the current offer). Under these circumstances, 363 requests that the Court consider its offer and, to the extent necessary, reopen the sale process with respect to the Patent.

6. 363 is aware that the hearing for this case is scheduled at 10 am on December 5th, 2007, however, due to a prior engagement, 363 respectfully asks for the hearing to be rescheduled for 3 pm.

Dated: Wilmington, Delaware
November 28, 2007

Respectfully submitted,


Mark F. Thomann
Chief Executive Officer
The 363 Group, Inc.