

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| In re | : | Chapter 11 |
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| The SCO GROUP, INC., <i>et al.</i> , ¹ | : | Case No. 07-11337 (KG) |
| | : | |
| Debtors. | : | (Jointly Administered) |
| | : | |
| | | Hearing Date: 12/30/2009 at 10:00 a.m. (ET) |
| | | Objection Deadline: 12/23/2009 at 4:00 p.m. (ET) |

**MOTION OF THE CHAPTER 11 TRUSTEE FOR ENTRY OF AN ORDER
APPROVING CERTAIN PROCEDURES FOR THE SALE,
TRANSFER OR ABANDONMENT OF DE MINIMIS ASSETS**

Edward N. Cahn, Esq. (the “Chapter 11 Trustee” or “Trustee”), in his capacity as Chapter 11 Trustee for the above-captioned debtors (collectively, the “Debtors”) hereby moves this Court (the “Motion”), pursuant to sections 105, 363 and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order approving certain procedures for the sale, transfer or abandonment of De Minimis Assets (as defined below). In support of the Motion, the Trustee respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested herein are Bankruptcy Code sections 105, 363 and 554 and Bankruptcy Rule 6004.

¹ The Debtors and the last four digits of each of the Debtors’ federal tax identification numbers are as follows: (a) The SCO Group, Inc., a Delaware corporation, Fed. Tax Id. #2823; and (b) SCO Operations, Inc., a Delaware corporation, Fed. Tax Id. #7393.

BACKGROUND

3. On September 14, 2007 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases are being jointly administered.

4. On August 25, 2009, this Court approved the appointment of Edward N. Cahn, Esq. as the Chapter 11 Trustee in these cases [Docket No. 900]. No official committee of unsecured creditors has been established to date.

RELIEF REQUESTED

5. Pursuant to a continuing reorganization effort, the Trustee, in consultation with his retained professionals, has identified certain assets that are not a part of the strategic plans for the Debtors’ estates. The Debtors’ estates own certain aged trucks, forklifts and equipment – computer, communications and office equipment. Many of these assets are likely to be surplus, obsolete or non-core assets of a relatively *de minimis* value compared to the Debtors’ total and primary asset base. Indeed, the Trustee and his professionals do not expect that proceeds for any single De Minimis Asset will exceed \$10,000. By this Motion, the Trustee seeks the entry of an order implementing certain procedures that would authorize the Trustee, without the need for any further approval from this Court, to (a) effectuate, from time to time, sales, transfers, assignments, conveyances or other dispositions of surplus, obsolete, non-core, burdensome, non-performing or under-performing assets (collectively, the “De Minimis Assets”) in any individual transaction or series of related transactions (each, a “Sale”, and collectively, “Sales”) to a single buyer or group of related buyers with a gross transaction value equal to or less than \$25,000, free and clear of all liens, claims, interests and encumbrances (collectively, the “Liens”), with any such Liens attaching to the proceeds of the Sale with the same validity, extent and priority as had attached to the assets immediately prior to the Sale; (b) abandon a De Minimis Asset to the

extent that a Sale of such De Minimis Asset cannot be consummated on a profitable and efficient basis; and (c) pay any necessary and reasonable fees and expenses incurred in connection with any such Sale, including, but not limited to, any commission fees that may be owed to agents, auctioneers and liquidators who provided services to the Debtors' estates in connection with such Sale, with the amount of the proposed commission fees to be disclosed in the Quarterly Report (as defined herein).

6. The Trustee respectfully submits that requiring separate Court approval of each De Minimis Asset Sale would be administratively burdensome to the Court and costly for the Debtors' estates, especially in light of the relatively small size of the assets that will be involved in such transactions. Indeed, in many cases, the costs and delays associated with seeking individual Court approval of a Sale would substantially undermine if not eliminate the economic benefits of the transaction. Accordingly, in an effort to minimize delays, administrative burdens and expenses, and in order to maximize the value of the Debtors' estates, the Trustee seeks the Court's authority to implement the procedures described in this Motion.

THE DE MINIMIS ASSET SALE AND ABANDONMENT PROCEDURES

7. The Trustee proposes to dispose of each of the De Minimis Assets for the highest and best offer received, taking into consideration the exigencies and circumstances of each such Sale, in accordance with the following procedures (the "Sale Procedures"). With regard to each Sale of De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with a single or combined selling price² equal to or less than \$25,000:

- (a) The Trustee shall be authorized to consummate such Sale without providing any notice to interested parties and without the need for any

² For purposes of the Sale Procedures, the term "selling price" shall refer to the Trustee's good faith estimate of the gross transaction value that the Trustee expects to realize from any proposed Sale.

further authorization from this Court, so long as the Trustee determines in the reasonable exercise of his business judgment that such Sale is in the best interests of the Debtors' estates and otherwise complies with the Sale Procedures set forth herein;

- (b) Any such Sale of De Minimis Assets shall be free and clear of all Liens, with such Liens attaching to the Sale proceeds with the same validity, extent and priority as had attached to the De Minimis Assets immediately prior to such Sale;
- (c) To the extent any Sales are consummated, the Trustee shall provide a written report (the "Quarterly Report") to the Court, the U.S. Trustee, the Debtors, and those parties requesting notice pursuant to Bankruptcy Rule 2002, no later than 30 days after the end of each calendar quarter beginning with the calendar quarter ending on March 31, 2010, describing the material terms of any Sales that were consummated during the preceding calendar quarter pursuant hereto and listing the names of the purchasing parties and the total consideration received by the Trustee from each Sale.

8. To the extent the Trustee, in consultation with his retained professionals and in the reasonable exercise of their business judgment, concludes that (a) any De Minimis Assets cannot be sold or otherwise transferred for value and (b) such De Minimis Assets are no longer necessary to the Debtors' business operations, the Trustee seeks authority to abandon such De Minimis Assets in accordance with the following procedures (the "Abandonment Procedures"):

- (a) The Trustee shall provide written notice of the proposed abandonment (the "Abandonment Notice") to the U.S. Trustee, the Debtors and any creditor(s) known by the Trustee to assert a Lien on any of the De Minimis Asset(s) that are the subject of such Abandonment Notice (collectively, the "Notice Parties");
- (b) The Abandonment Notice shall describe in reasonable detail the De Minimis Assets to be abandoned by the Trustee and the Trustee's reasons for such abandonment;
- (c) If no written objections from any of the Notice Parties are filed with the Court within ten (10) business days after the date of receipt of such Abandonment Notice, then the Trustee shall be authorized to immediately proceed with the abandonment; and
- (d) If a written objection from any Notice Party is filed with the Court within ten (10) business days after receipt of such Abandonment Notice, then the

relevant De Minimis Asset shall only be abandoned by the Trustee upon either the consensual resolution of the objection by the parties in question or further order of the Court after notice and a hearing.

BASIS FOR RELIEF REQUESTED

A. The Sale Procedures Are Reasonable And Appropriate Under §§ 105(a) and 363(b)

9. Bankruptcy Code section 363(b)(1) provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Whether a sale of assets pursuant to Bankruptcy Code section 363(b) should be approved in a particular case is a matter addressed to the Court’s discretion, giving due consideration to the sound business judgment of the proponent of the sale. *See Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Delaware & Hudson Rv. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

10. Additionally, section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its powers under section 105(a) to achieve a result not contemplated by the Bankruptcy Code, the exercise of its powers under section 105(a) is proper. *See In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993); *Pincus v. Graduate Loan Ctr. (In re Pincus)*, 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), the court may fashion an order or decree that helps preserve or protect the value of a debtor’s assets. *See, e.g., Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code”); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986).

11. The Trustee anticipates selling various De Minimis Assets to third parties during the course of these chapter 11 cases because such De Minimis Assets may no longer be necessary for the operation of the Debtors' businesses or their rehabilitation efforts. Such De Minimis Assets may include, without limitation, computer and communications equipment, trucks and forklifts, and office equipment. Given the relatively insignificant monetary value of such De Minimis Assets in relation to the magnitude of the Debtors' overall operations and asset base, the Trustee believes that it would not be an efficient use of estate resources to seek specific Court approval each time the Trustee has an opportunity to sell such assets.

12. The Trustee submits that the Sale Procedures will provide an orderly and efficient mechanism for the disposition of De Minimis Assets while minimizing the professional fees that would otherwise be incurred by the Trustee, either directly or indirectly. The Sale Procedures will also defray any carrying, moving, maintenance, storage or additional costs the Trustee may incur in connection with the De Minimis Assets. Additionally, the Sale Procedures will reduce the burden on the Court's docket. Thus, the Trustee respectfully requests that the Court enter an order authorizing the Debtors to engage in Sales of De Minimis Assets from time to time in these chapter 11 cases in accordance with the Sale Procedures set forth herein.

B. The Shortened Notice Procedures Are Appropriate

13. The notice and hearing requirements of Bankruptcy Code section 363(b)(1) are satisfied if appropriate notice and an opportunity for a hearing are given in light of the particular circumstances. *See* 11 U.S.C. § 102(1)(A) (defining "after notice and a hearing" to mean such notice and an opportunity for hearing "as [are] appropriate in the particular circumstances"). Generally, Bankruptcy Rules 2002(a)(2) and 2002(i) require that a minimum of 20 days' notice of proposed sales of property outside the ordinary course of business be provided by mail to "the

debtor, the trustee, all creditors and indenture trustees” and any committee appointed under Bankruptcy Code section 1102.

14. Courts are authorized to shorten the 20-day notice period generally applicable to asset sales, or to direct another method of providing notice, upon a showing of “cause.” *See* Fed. R. Bank. P. 2002(a)(2). The usual process of obtaining court approval of each Sale of De Minimis Assets (a) would create costs to the Debtors’ estates that may undermine or eliminate the economic benefits of the underlying *de minimis* transaction; and (b) may hinder the Trustee’s ability to take advantage of sale opportunities that are available only for a limited period of time. Therefore, the Trustee proposes to streamline the process by eliminating the notice period required for Sales with a selling price equal to or less than \$25,000. Such streamlined notice procedures are reasonable and appropriate under the circumstances.

C. The Sale Procedures Are Appropriate Under Section 363(f)

15. Pursuant to Bankruptcy Code section 363(f), a Trustee may sell estate property free and clear of Liens in such property if (i) such a sale is permitted under applicable non-bankruptcy law, (ii) the party asserting a lien, claim or interest consents to such sale, (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property, (iv) the interest is the subject of a *bona fide* dispute, or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. *See* 11 U.S.C. § 363(f); *In re Elliot*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (section 363(f) is written in the disjunctive; the court may approve sale “free and clear” provided at least one of the subsections is met).

16. The Trustee proposes to sell or transfer the De Minimis Assets in a commercially reasonable manner, after due diligence and in the exercise of sound business judgment, and

expects that the value of the proceeds from such Sales will fairly reflect the value of the De Minimis Assets that are sold. The Trustee further proposes that any party with a Lien on a De Minimis Asset sold or transferred pursuant to this Motion shall have a corresponding lien in the proceeds of such Sale, with the same validity, force, and effect as such lien had prior to such Sale. As such, the requirements of Bankruptcy Code section 363(f) would be satisfied for any proposed Sale of a De Minimis Asset free and clear of Liens

D. The Abandonment Procedures Are Appropriate Under Section 554(a)

17. Bankruptcy Code section 554(a) provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). The Trustee expects to take all reasonable steps to sell the De Minimis Assets that are not needed for the Debtors’ operations. The costs associated with Sales of certain De Minimis Assets, however, may exceed any possible proceeds thereof. The inability to consummate a commercially reasonable sale of De Minimis Assets would indicate that these De Minimis Assets have no meaningful monetary value to the Debtors’ estates. Further, the costs of storing and maintaining such De Minimis Assets may unnecessarily burden the Debtors’ estates. Accordingly, the Trustee submits that, in such circumstances, the abandonment of a De Minimis Asset pursuant to the Abandonment Procedures would be in the best interest of the Debtors’ estates. The Trustee will provide notice of such proposed abandonment to the Notice Parties, who will have the opportunity to object to the abandonment of a De Minimis Asset as they deem appropriate.

18. In light of the demonstrable benefits of streamlined procedures to sell, transfer or abandon De Minimis Assets, courts in this District have approved similar procedures in other

large chapter 11 cases. The Debtors respectfully submit that similar relief is warranted in these chapter 11 cases.

E. Waiver Of The Stay Period Under Bankruptcy Rule 6004(h)

19. Bankruptcy Rule 6004(h) provides that an order authorizing the sale of property of the estate “is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The Trustee respectfully seeks a waiver of the 10-day stay period in order to be able to consummate the Sales of De Minimis Assets immediately following compliance with the applicable Sale Procedures.

NOTICE

20. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; and (b) any party filing a request for notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Trustee submits that no other or further notice is necessary or required.

NO PRIOR REQUEST

21. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Trustee respectfully requests entry of an order substantially in the form attached hereto granting the relief requested herein and such other and further relief as is just and proper.

Dated: December 7, 2009
Wilmington, Delaware

Respectfully submitted,

BLANK ROME LLP

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