

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re : Chapter 11
: :
The TSG GROUP, INC., *et al.*,¹ : Case No. 07-11337 (KG)
: (Jointly Administered)
Debtors. :
: **Hearing Date: August 28, 2012 at 10:00 a.m. ET**
: **Objection Deadline: August 21, 2012 at 4:00 p.m. ET**

**MOTION OF THE CHAPTER 11 TRUSTEE TO CONVERT CASES FROM
CHAPTER 11 TO CHAPTER 7 OF THE BANKRUPTCY CODE**

Edward N. Cahn, Esq. (the “**Chapter 11 Trustee**”), in his capacity as chapter 11 trustee for the above-captioned debtors (collectively, the “**Debtors**”), hereby moves (this “**Motion**”) this Court, pursuant to section 1112(b) of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) and Rules 1017(f)(1) and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order, substantially in the form attached hereto as **Exhibit A**, converting these cases from chapter 11 of the Bankruptcy Code to chapter 7 of the Bankruptcy Code. In support of this Motion, the Trustee respectfully states as follows:

PRELIMINARY STATEMENT

On April 11, 2011, the Debtors sold and conveyed to UnXis, Inc. the UNIX® system software product and related services business. There are no other assets in the Debtors’ estates other than certain unfair competition and tortious interference claims asserted by the Debtors’ estates against International Business Machines Corporation (“**IBM**”) in an action (“**District Court Action**”) currently pending in the District Court for the District of Utah (the “**District**

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

Court”). The Chapter 11 Trustee does not believe the Debtors will be able to propose or confirm a plan in these cases because the Debtors’ estates are administratively insolvent and continue to incur administrative expenses. Nevertheless, the Chapter 11 Trustee believes that it is in the best interests of the Debtors’ estates and its creditors to continue the prosecution of the District Court Action, which was the subject of this Court’s *Order Granting Stipulation and Order Modifying the Automatic Stay* [D.I. 1396].² Based on these circumstances, the Chapter 11 Trustee requests that this Court grant the Motion to convert these cases as soon as possible.

JURISDICTION

1. This Court has jurisdiction to entertain this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicate for the relief requested herein are Bankruptcy Code section 1112(b) and Bankruptcy Rules 1017(f)(1) and 9014.

BACKGROUND

2. On September 14, 2007 (the “**Petition Date**”), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases are being jointly administered.

3. On August 25, 2009 (the “**Appointment Date**”) this Court approved the appointment of Edward N. Cahn, Esquire as the Chapter 11 Trustee in these cases [D.I. 900]. No official committee of unsecured creditors has been appointed to date. The Chapter 11 Trustee has been performing his duties and operating the Debtors as authorized by Bankruptcy Code sections 1106 and 1108.

² A *Motion to Reopen* the administratively closed District Court Action was filed on behalf of the Debtors’ estates on November 4, 2011 and, after the District Court canceled an April hearing on such motion, a *Request for Decision and Notice to Submit* was filed by on behalf of the Debtors’ estates on June 14, 2012.

4. The Chapter 11 Trustee was appointed, in significant part, to evaluate the merit of and, as appropriate and necessary, oversee the prosecution of causes of action the Debtors' estates might assert against, among others, IBM and Novell, Inc (“**Novell**”). With respect to causes of action against Novell, a jury trial was held in District Court from March 8, 2010 to March 26, 2010 and the jury rendered a verdict in favor of Novell.

5. Since the Appointment Date, among other things, the Chapter 11 Trustee has continued to perform the duties of a trustee pursuant to Bankruptcy Code section 1106, including, without limitation, an efficient administration of the Debtors' estates by hiring professionals to perform necessary audits and wind-down of the Debtors' 401(k) plan [D.I. 1362], preparation of tax returns [D.I. 1158, 1169, 1363], sale(s) of certain assets [D.I. 1104, 1113] and the abandonment of property [D.I. 1330].

6. On August 9, 2010, the Chapter 11 Trustee filed the motion seeking to sell substantially all of the UNIX® system software product and related services business [D.I. 1141], for which this Court held a hearing on March 2, 2011 and entered an order approving such sale transaction on March 7, 2011 [D.I. 1253] (the “**Sale Order**”). The sale transaction approved by the Sale Order closed on April 11, 2011.

RELIEF REQUESTED

7. The Chapter 11 Trustee respectfully requests that the Court enter an order pursuant to Bankruptcy Code section 1112(b) converting these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code and naming the Chapter 11 Trustee as the chapter 7 trustee for the converted cases (the “**Converted Cases**”).

8. Bankruptcy Code section 1112 governs the conversion from chapter 11 to chapter 7. Bankruptcy Code section 1112(b) provides that a party in interest, including the Chapter 11

Trustee, may convert a chapter 11 case to a case under chapter 7 by demonstrating “cause.”

Specifically, Bankruptcy Code section 1112(b)(1) provides that:

“...on request of a party in interest, and after a notice and hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion [] is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7..., if the movant establishes cause.”

11 U.S.C. § 1112(b)(1).

9. Moreover, Bankruptcy Code section 1112(b)(4)(A) expressly provides for the Chapter 11 Trustee’s conversion of these cases to chapter 7 based upon the “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A); *see, e.g.*, D.I. 1586, 1603, *In re Edison Brothers Stores, Inc.*, Case No. 99-529 (Bankr. D. Del.) (MFW); 7 COLLIER ON BANKRUPTCY ¶ 1112.02[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.); *In re Dieckhaus Stationers of King of Prussia, Inc.*, 73 B.R. 969 (Bankr. E.D. Pa. 1987); *Abbott v. Blackwelder Furniture Co.*, 33 B.R. 399 (W.D.N.C. 1983); *see also* Fed. R. Bankr. P. 1017(f)(1) (Bankruptcy Rule 9014 governs a conversion motion under section 1112(b)).

10. Here, the “continuing loss/diminution” prong of Bankruptcy Code section 1112(b)(4)(A) is satisfied by statements in the most recent monthly operating reports, which indicate that the Debtors are administratively insolvent. In the May 2012 monthly operating report, filed on August 1 2012, the Debtors’ estates report \$3,721,181.00 in unpaid postpetition debts and only \$145,352.00 cash on hand. [D.I. 1413, 1414]. Additionally, there is no reasonable chance of “rehabilitation” in these cases as the Debtors’ estates have already sold substantially all of their assets and have no continuing business operations. Furthermore, the only reasonable opportunity for the Debtors’ estates to be in a position to pay outstanding

administrative expenses and to potentially make a distribution to general unsecured creditors hinges upon a successful outcome in the District Court Action. A chapter 7 trustee would be in a better position to eliminate administrative expenses going forward while awaiting an outcome with respect to the District Court Action.

11. The Chapter 11 Trustee is best qualified to serve as the chapter 7 trustee for the Converted Cases given his familiarity with the District Court Action and the law firm representing the Debtors' estates in the matter, Boies Schiller & Flexner LLP. The continuity between the Chapter 11 Trustee and a chapter 7 trustee in the Converted Cases will limit additional costs and fees necessary for a chapter 7 trustee to become familiar with the District Court Action. Consistent this Court's order in *In re Edison Brothers Stores, Inc.* (*supra*) and pursuant to the United States Trustee's authority under Bankruptcy Code section 701(a), the Chapter 11 Trustee may act as the chapter 7 trustee in the Converted Cases. Under such circumstances, and consistent with Bankruptcy Code section 1112(b), this Court should convert the above-captioned cases to cases under chapter 7, as it cannot be disputed that "cause" exists to convert the cases.

NOTICE

12. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; and (ii) those parties who have requested notice pursuant to Bankruptcy Rule 2002 and Rule 2002-1(b) of the Local Rules. The Chapter 11 Trustee submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

13. No prior application for the relief sought herein has been duly made by the Chapter 11 Trustee to this or any other Court.

WHEREFORE, the Chapter 11 Trustee respectfully requests that the Court enter an order substantially in the form attached hereto as **Exhibit A** converting these cases from chapter 11 to chapter 7 of the Bankruptcy Code, appointing the Chapter 11 Trustee to serve as the chapter 7 trustee of the Converted Cases, and granting the Chapter 11 Trustee such additional relief as this Court shall deem just, proper and necessary.

Dated: August 6, 2012
Wilmington, Delaware

Respectfully submitted,

BLANK ROME LLP

/s/ Bonnie Glantz Fatell
Bonnie Glantz Fatell (No. 3809)
Stanley B. Tarr (No. 5535)
1201 Market Street, Suite 800
Wilmington, DE 19801
Telephone: (302) 425-6400
Facsimile: (302) 425-6464

Counsel for Edward N. Cahn, Chapter 11 Trustee