

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
The SCO GROUP, INC., et al., 1) Case No. 07-11337 (KG)
) (Jointly Administered)
Debtors.)

DEBTORS' MOTION FOR AUTHORITY TO (I) MAINTAIN EXISTING BANK ACCOUNTS, (II) CONTINUE TO USE EXISTING BUSINESS FORMS, (III) CONTINUE TO USE EXISTING CASH MANAGEMENT SYSTEM, AND (IV) TO EXCUSE SECTION 345(b) DEPOSIT AND INVESTMENT REQUIREMENTS

The SCO Group, Inc. and SCO Operations, Inc. (collectively, the "Debtors") hereby move, through undersigned counsel, for entry of an order under 11 U.S.C. §§ 105, 345, 363, 364(c)(1), 1107 and 1108, authorizing the Debtors to (i) maintain existing bank accounts, (ii) continue to use existing business forms, (iii) continue to use existing cash management system, and (iv) to excuse the 11 U.S.C. § 345(b) deposit and investment guidelines (this "Motion"). In support of this Motion, the Debtors respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction over this case under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding. 28 U.S.C. § 157(b)(2) (A) and (M).
2. The statutory bases for the relief requested herein are sections 105(a), 345(b), 363, 364(b)(1), 1107 and 1108 of title 11 of the Bankruptcy Code, 11 U.S.C. § 101-1532.

Background

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. The address for both Debtors is 355 South 520 West, Lindon, UT 84042.

Background

3. On the date hereof (the “Petition Date”), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors have continued in the possession of their property and have continued to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Debtors are a leading provider of software technology for distributed, embedded, network-based, and mobile systems, offering SCO OpenServer for small to medium business, UnixWare, and SCO Mobile Server for enterprise applications and digital network services.

6. The SCO Group, Inc. (“SCO”) is a Delaware corporation traded on the NASDAQ stock exchange under the ticker symbol “SCOX.”

7. SCO Operations, Inc. is a Delaware corporation that is wholly owned by SCO and operates the research, development, sales and implementation of technology owned by SCO.

8. For a detailed description of the Debtor and its operations, the Debtor respectfully refers the Court and parties in interest to the *Declaration of Darl C. McBride, Chief Executive Officer, in Support of First Day Pleadings* filed contemporaneously herewith and incorporated herein by reference..

Relief Requested

9. By this Motion, the Debtors seek authorization to (1) maintain their existing bank accounts, (2) continue to use their existing business forms (3) continue to use their existing cash management system, and (4) to obtain the Court's permission to disregard the Bankruptcy Code § 345(b) requirements. Accordingly, the Debtors respectfully request the entry of an order pursuant to sections 105, 363, 1107 and 1108 of the Bankruptcy Code granting such authority.

Description of Existing Cash Management System

10. The Debtors' cash management system (the "Cash Management System") is used to handle the operations of both the U.S. and foreign operations. The bank accounts maintained by the Debtors or their subsidiaries/affiliates (the "Bank Accounts") are listed on Exhibit A and further described below.

a. Collections and Deposits. The Debtors derive revenues and cash flows primarily from the payment by customers for products or services purchased from the Debtors or, in limited instances, on-site services provided by the foreign affiliates/subsidiaries. Revenues and cash flows derived from the Debtors' U.S. operations are initially deposited into Operations' lockbox account with Zions Bank in Lindon, Utah, then transferred into Operations' operating and payroll account with Zions Bank as needed. Excess funds are transferred into Operations' high-yield money market or investment accounts with either Zions Bank or Citibank Smith Barney. Revenue and cash flows from the Debtors' international operations are deposited into the Allied Irish Bank Accounts. The accounts of the Debtors' foreign subsidiaries/affiliates

are maintained in local currency with various banks. Funds are transferred as necessary between the Debtors' accounts to maximize cash flow. The Debtors propose to continue using these Bank Accounts after the Petition Date.

b. Disbursements. The Debtors make operating and payroll disbursements in connection with their U.S. operations from the Zions Bank operating and payroll accounts, respectively. Once expenditures are authorized through the Debtors' headquarters in Utah, the Debtors fund the approved disbursements to their foreign affiliates/subsidiaries through Operations' Allied Irish Bank accounts and local subsidiary bank accounts. The subsidiary accounting bureaus, in turn, make disbursements to vendors from bank accounts in the name of the respective foreign affiliate/subsidiary in the local currency. The foreign Bank Accounts are located in the United Kingdom (Allied Irish Bank), France (Barclays Bank PLC), Germany (Deutsche Bank), Japan (Sumitomo Bank) and India (Bank of America). As set forth herein, there are procedures in place whereby the foreign accounting bureaus must seek approval from the Debtors' Vice President of Finance and Controller (located in Lindon, Utah) prior to making any disbursements over certain threshold amounts (approximately US \$2,500). The Debtors propose to continue using these disbursement accounts (the "Disbursement Accounts") after the Petition Date.

11. The Debtors maintain current and accurate accounting records of daily cash transactions, and submit that maintenance of this Cash Management System will prevent undue disruption to the Debtors' U.S. and foreign operations, while protecting the Debtors' cash for the benefit of their estates. Additionally, in the ordinary course of business, the Debtors

deposit and withdraw funds from the Bank Accounts routinely by check, wire transfer or other electronic funds transfer method.

**The Court Should Authorize the
Debtor to Maintain Existing Bank Accounts**

12. The United States Trustee for the District of Delaware has established certain operating guidelines for debtors in possession. One such provision requires a chapter 11 debtor in possession to open new bank accounts and close all existing accounts. The United States Trustee Guidelines also require that the new bank accounts only be opened in certain financial institutions designated as authorized depositories by the United States Trustee. This requirement, designed to provide a clear line of demarcation between prepetition and postpetition claims and payments, helps to protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date.

13. The Debtors seek a waiver of the United States Trustee's requirement that the Bank Accounts be closed and new postpetition bank accounts be opened at depositories authorized by the United States Trustee. If strictly enforced in this case, the United States Trustee's requirement would cause disruption in the Debtors' activities and would impair the Debtors' ability to reorganize their business for the benefit of their estate and parties in interest.

14. Maintenance of the Bank Accounts will greatly facilitate the Debtors' operations in chapter 11. The Debtors' have in excess of 400 customers who make regular payments to the existing Debtors' credit card and lockbox accounts by check or electronic transfers, and closing these accounts, establishing new accounts in their place and instructing customers of the changes will substantially disrupt and delay the Debtors' receipt of payments

from their customers. To avoid disruptions and delays in the Debtors' receipt of payments and the Debtors' payment of debts incurred postpetition, the Debtors should be permitted to continue to maintain the existing Bank Accounts and, if necessary, to open new accounts or close unnecessary existing accounts.

15. To guard against improper transfers resulting from the postpetition honoring of prepetition checks, courts have ordered banks, with limited court-approved exceptions, not to honor any checks drawn on a Debtors' accounts before the Petition Date. Subject to a prohibition against honoring prepetition checks or offsets without specific authorization from this Court, the Debtors request that the Bank Accounts be deemed debtors-in-possession accounts and that the Debtors be authorized to maintain and continue the use of these accounts in the same manner and with the same account numbers, styles and document forms as those employed during the prepetition period.

16. If the relief requested herein is granted, the Debtors will not pay, and each of their banks where the Bank Accounts are maintained will be instructed not to pay, any debts incurred before the Petition Date other than as specifically authorized by this Court.

**The Court Should Authorize the Debtor to
Continue Its Existing Cash Management System**

17. The Debtors hereby seek authority to continue to use their Cash Management System.

18. The Debtors' Cash Management System constitute a customary and essential business practice and was created and implemented by the management of the Debtors in the exercise of their business judgment. The Cash Management System is similar to those

commonly employed by corporate enterprises comparable to the Debtors in size and complexity. The widespread use of this type of Cash Management System, moreover, is attributable to the numerous benefits it provides, including the ability to (a) control and monitor corporate funds, (b) reduce idle cash balances, (c) ensure cash availability and (d) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate balance and presentment information. In addition, preserving a “business as usual” atmosphere and avoiding the unnecessary distractions that would inevitably be associated with a substantial disruption of the Cash Management System, will facilitate and enhance the Debtors’ reorganization efforts to maximize its assets for the benefit of its stakeholders. For similar reasons, the Debtors should be authorized to continue to fund their businesses and operations by payments made from the Disbursement Accounts. Moreover, the Debtors submit that the relief requested is consistent with the relief provided to debtors in a number of other cases pending in this district.

**The Court Should Grant the Debtor Authority
To Use Existing Business Forms and Checks**

19. To minimize expense to their estates, the Debtors also request authority to continue to use all correspondence and business forms (including, but not limited to letterhead, purchase orders, invoices, etc.), as well as checks without reference to their “debtor in possession” status.

20. Parties doing business with the Debtors undoubtedly will be aware, as a result of the notice that will be sent of the filing of the case and the publicity of the filing, of the Debtors’ status as chapter 11 debtors in possession. Changing correspondence and business forms would be unnecessary and burdensome to the estate, as well as expensive and disruptive to

the Debtors' reorganization efforts, particularly with respect to programming that would be necessary to alter the Debtors' check drafting practices. For this reason, the Debtors request that they be authorized to use checks and business forms without placing the label "debtor in possession" on each such check or form; provided that the Debtors shall add such designation to any new checks they obtain postpetition.

The Court Should Grant The Limited § 345(b) Waiver

21. The Debtors do not maintain any investment accounts. All of the Bank Accounts are maintained at federally insured institutions. The Debtors seek a waiver of Section 345(b) of the Bankruptcy Code permitting the Debtors to maintain their Bank Accounts without the need to post a bond or other security to the extent that, at any given time, funds are deposited in their depository accounts or have accumulated in the main Disbursement Account that create an excess of the limits of Section 345 temporarily.

Authority for the Requested Relief

A. The Continued Use of the Debtor's Routine Cash Management System, Bank Accounts and Business Forms Is Essential to the Debtors' Operations and Approval to Maintain the Status Quo Is Routinely Granted Under Bankruptcy Code Sections 363 and 105

22. Bankruptcy courts routinely grant chapter 11 debtors authority to continue utilizing existing cash management systems and treat requests for such authority as a relatively "simple matter." In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987).

23. The bankruptcy court in the Columbia Gas chapter 11 case explained that a centralized cash management system "allows efficient utilization of cash resources and recognizes the impracticabilities of maintaining separate cash accounts for the many different

purposes that require cash.” In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr. D. Del. 1993), aff’d in part and rev’d in part, 997 F.2d 1039 (3d Cir. 1993). The Third Circuit agreed, emphasizing that a requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” Columbia Gas, 997 F.2d at 1061. See also In re Southmark Corp., 49 F.3d 111, 114 (5th Cir. 1995) (cash management system allows debtor “to administer more efficiently and effectively its financial operations and assets”); In re UNR Indus., Inc., 46 B.R. 25, 27 (Bankr. N.D. Ill. 1984).

24. Section 363(c)(1) of the Bankruptcy Code authorizes the debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without undue oversight by creditors or the court. Medical Malpractice Ins. Ass’n. v. Hirsch (In re Lavigne), 114 F.3d 379, 384 (2nd Cir. 1997). Included within the purview of section 363(c) is a debtor’s ability to continue the “routine transactions” necessitated by a debtor’s cash management system. Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.), 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, the Debtor seeks authority under section 363(c)(1) of the Bankruptcy Code to continue the collection, concentration, and disbursement of cash pursuant to its Cash Management System described above.

25. Additionally the Court may exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary to carry out the provisions of this title.” 11 U.S.C. §

105(a). Continuing the Debtors' Cash Management System without interruption is important to the success of these chapter 11 cases. The Cash Management System is a complex mechanism whereby the Debtors are able to transfer their revenues toward the payment of their U.S. and foreign obligations and without which the Debtors' reorganization would fail.

26. In other cases in this District, this Court has granted relief similar to that requested in this Motion. See, e.g., American Home Mortgage Holding, Inc., et al. Case No. 07-11047 (CSS); In re New Century TRS Holdings, Inc., et al., Case No. 07-10416 (KJC); In re Mortgage Lenders Network, USA, Inc., Case No. 07-10146 (Bank. D.Del. February 5, 2007);

27. It is well within the Court's equitable power under section 105(a) to approve the continued use of the Cash Management System, and to authorize the Debtors' continued use of their existing business forms, including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, checks and other business forms (the "Business Forms") and without reference to the Debtors' debtors in possession status, substantially in the forms existing immediately before the Petition Date.

B. Waiver of Section 345(b) to Allow the Debtor to Continue to Use Its Bank Accounts Without the Need for Posting a Bond or Providing Other Security is Appropriate in This Case

28. Bankruptcy Code § 345(a) authorizes deposits or investments of money "as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." Section 345(b) provides:

Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the trustee shall require from an entity with which such money is deposited or invested --

- 1) a bond –
 - a) in favor of the United States;
 - b) secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and
 - c) conditioned on --
 - i) a proper accounting of all money so deposited or invested and for any return on such money;
 - ii) prompt repayment of such money and return; and
 - iii) faithful performance of duties as a depository; or
- 2) the deposit of securities of the kind specified in section 9303 of title 31 unless the court for cause orders otherwise.

29. The Court's ability to excuse strict performance of the deposit and

investment requirements of §345(b) “for cause” arises from the 1994 amendments to the Bankruptcy Code. The legislative history of that amendment provides:

Section 345 of the Code governs investments of funds of bankruptcy estates. The purposes (sic) is to make sure that funds of a bankrupt that are obliged to creditors are invested prudently and safely with the eventual goal of being able to satisfy all claims against the bankruptcy estate. Under current law, all investments are required to be FDIC insured, collateralized or bonded. While this requirement is wise in the case of smaller Debtors with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated Debtors. This section would amend the Code to allow the courts to approve investments other than those permitted by section 345(b) for just cause, thereby overruling *In re Columbia Gas Systems, Inc.*, 33 F.3d 294 (3d Cir. 1994).

In re Service Merchandise Company, Inc., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (quoting H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10767 (Oct. 4, 1994)) (emphasis added).

30. In determining whether the “for cause” standard has been met, the Court should consider a “totality of the circumstances,” utilizing the following factors:

- a. The sophistication of the debtor’s business;
- b. The size of the debtor’s business operations;
- c. The amount of the investments involved;
- d. The bank ratings (Moody's and Standard and Poor) of the financial institutions where the debtor in possession funds are held;
- e. The complexity of the case;
- f. The safeguards in place within the debtor’s own business of insuring the safety of the funds;
- g. The debtor’s ability to reorganize in the face of a failure of one or more of the financial institutions;
- h. The benefit to the debtor;
- i. The harm, if any, to the estate; and
- j. The reasonableness of the debtor’s request for relief from section 345(b) requirements in light of the overall circumstances of the case. *Id.*

31. The Debtors do not maintain any non-cash investments and they transact their business through cash, check and credit card receipts. The Debtors rarely have an available balance or deposit at any single account in excess of the amount being utilized to make contemporaneous disbursements.

32. The Debtors submit that their funds will not be sufficiently at risk to necessitate strict adherence to the requirements of Section 345 of the Bankruptcy Code. On occasion, the Debtors will have funds accumulated in their depository accounts and their Disbursement Accounts that exceed the limits provided in section 345, and therefore necessitate a waiver of section 345(b). If granted a waiver, the Debtors will not be required to incur the significant administrative difficulties and expenses relating to opening new accounts to ensure that all of its funds are fully insured strictly in accordance with the restrictions established by Bankruptcy Code section 345, but yet the risks will be minimal.

33. In other chapter 11 cases, courts have liberally construed the requirement of section 345(b) that a debtor in possession obtain a bond from any entity with which its money is deposited or invested. In those instances, courts, including many within this district, have waived the requirements of section 345(b) and replaced them with alternative procedures. *See, e.g., Aegis Mortgage Corporation, et al.*, Case No. 07-11119 (BLS) (Bank. D.Del. August 15, 2007); *In re Mortgage Lenders Network, USA, Inc.*, Case No. 07-10146 (PJW) (Bank. D.Del. February 5, 2007)

34. . In light of the potential amount of funds that may flow through the estates, the regular deposits and sweeps into the operating, payroll and high-yield accounts, and the minimal or zero balances of the Disbursement Accounts, it would be imprudent for the Debtors to be forced to incur the expense of obtaining a bond given the safeguards embedded in the Debtors' Cash Management System regarding the preservation and safeguard of the funds therein.

35. For the foregoing reasons, it is critical that the Debtors continue to utilize their existing Cash Management System and to continue to use their existing Business Forms as set forth herein, without disruption. Accordingly, it is appropriate and entirely consistent with applicable provisions of the Bankruptcy Code and case law for the Court to approve the Debtors' centralized Cash Management System in their current form.

Notice

36. Notice of this Motion has been given to the Office of the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801; and (iii) the 20 largest unsecured creditors of the Debtors. As the Motion is seeking "first day" relief, within two business days of the hearing on the Motion, the Debtors will serve copies of the Motion and any order entered respecting the Motion as required by Del. Bankr. LR 9013-2(d). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

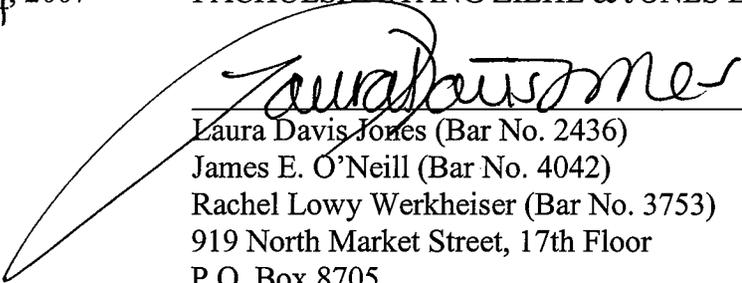
37. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto, (i) authorizing the Debtors to maintain the Bank Accounts, subject to the Debtors' ability, in their discretion, to close any unnecessary Bank Accounts throughout these chapter 11 cases; (ii) authorizing the Debtors to continue to use the existing checks and other business forms without reference to their debtors in possession status; (iii) authorizing the Debtors to continue to employ their existing Cash Management System;

(iv) granting the Debtors a limited waiver of section 345(b) deposit and investment requirements;
and (v) granting such other and further relief as the Court deems appropriate.

Dated: September 14, 2007

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