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Facsimile Transmittal Coversheet

DATE: October 16, 2007

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OUR FILE NUMBER:	SCO Group, Inc. – Our File No. 11994-0001
FROM:	Arthur J. Spector

NUMBER OF PAGES SENT: 5 (including cover page)

MESSAGE (if any): See attached.

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October 16, 2007

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Ref: 14320/FM

SUPPLEMENT TO SCO'S LETTER OF 1 OCTOBER 2007

In the matter of:
SuSE Linux GmbH
Maxfeldstr. 5, 90409 Nürnberg, Germany - **Claimant**

Dear Members of the Tribunal:

In my letter of October 1, 2007, I advised that SCO would soon file an application with the Bankruptcy Court for the approval of Boies Schiller & Flexner ("BSF") as special litigation counsel in connection with this arbitration. I would now like to report that this motion (the "Motion") has been filed (copy attached) and set for hearing on November 6. SCO is still in the process of attempting to reach agreement on terms for the appointment of Swiss counsel.

Please allow me a few words in response to SUSE's letter of October 9.

A. Timeliness.

It is grossly unfair for SUSE to assert, as it does, that SCO "could have and should have" filed the Motion sooner, and that BSF should have continued preparing for the scheduled

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December arbitral hearing, even though that firm was not then, and is not now, authorized to represent the debtor, SCO.

SUSE totally fails to recognize the many responsibilities that a debtor and its bankruptcy counsel must assume at the start of the bankruptcy of a publicly traded company. Numerous motions were filed in the first week of the bankruptcy case. Most of SCO's accounting department left the company shortly after the bankruptcy petition was filed. It has been a hectic month for SCO, with no let-up in sight.

SUSE contended that, because SCO is a debtor in possession, this case should go forward immediately because there is no trustee or liquidator who needs to become familiar with the file. However, with the filing of the bankruptcy petition, this is no longer a two-party matter. The creditors, the Court, the United States trustee, and undersigned counsel all require time to familiarize themselves with SCO's business in general and this arbitration in particular, just as a trustee or liquidator would. The creditors are still in the process of forming the Creditors' Committee, which under U.S. law has the right to be heard on matters potentially affecting the estate.

It was appropriate to take care and a modest amount of time to prepare the Motion. Before SCO filed Chapter 11, BSF was representing it in several lawsuits, in addition to this arbitration, that are critical to the debtor's future. In view of the company's limited financial resources and the ability of all creditors to file objections, it is not at all certain that the motion for the approval of the employment of BSF will be "decided quickly," as SUSE contended. Even if the Court immediately grants the application on November 6, BSF can hardly be expected to prepare a memorial in three days, as would be required under SUSE's proposal to extend the rejoinder memorial deadline until November 9.

B. SUSE is Subject to the Automatic Stay.

While the Bankruptcy Court will decide SUSE's purported defense of lack of jurisdiction (which SCO heard for the first time in SUSE's October 9 letter), SUSE's contacts with the USA are extensive. SUSE's contention that it lacks the "minimum contacts" necessary for personal jurisdiction is difficult to fathom. SUSE's own memorial acknowledged that the JDC and MTA were negotiated in face-to-face meetings in Salt Lake City, New York, and Atlanta, not to mention the numerous emails, faxes, and phone calls that SUSE made to SCO in the course of the negotiations. SUSE even retained U.S. counsel, which inserted a "special clause ... referring to the U.S. bankruptcy code." SUSE Memorial (6/15/07) ¶¶ 33, 34, 37, 66. Given these admissions, plus UnitedLinux's status as an active Delaware LLC, and SUSE's other business contacts with the USA, SUSE's jurisdictional argument is highly dubious.

SUSE also argued that this phase of the arbitration is not automatically stayed because it does not relate to monetary damages and relates only to injunctive or declaratory relief. This phase of the arbitration, however, is certainly intended to establish SCO's liability for monetary

damages, even though the quantum of damages is being left for a future proceeding. Moreover, while this is again an issue for the Bankruptcy Court and not this Tribunal, actions for injunctive and declaratory relief are in fact subject to the automatic stay. *Advanced Computer Services of Michigan, Inc. v. MAI Systems Corp.*, 161 B.R. 771, 774 (E.D. Va. 1993) (there is "no merit to the argument that a suit for injunctive and declaratory relief" is not stayed); *In re Johns-Manville Corp.*, 31 B.R. 965, 969-70 (Bankr. S.D.N.Y. 1983) (it would "disregard the plain wording of the statute" to say that declaratory judgment action is not stayed). The case cited by SUSE, *In re Transportation Systems Intern., Inc.*, 110 B.R. 888 (D. Minn. 1990), did not involve an "ICC arbitration" and does not hold otherwise.

C. Lack of Present Need for Hearing.

Moreover, even if SUSE had some valid legal basis for disregarding the stay, it is hard to comprehend why it would even want this arbitration to continue at this time. As I understand it, SUSE has contended in the arbitration that, if SCO acquired the UNIX copyrights from its 100% parent Novell, SCO "divested itself" of those copyrights when it signed the UnitedLinux agreements. As I assume the Tribunal is aware, in August the Utah court ruled that SCO did not acquire the UNIX copyrights. Unless and until that ruling is overturned on appeal, an arbitral hearing on whether SCO "divested itself" of copyrights that it never owned would largely be pointless and a waste of the parties' and the Tribunal's time and effort. It would also, of course, be a drain on the limited financial resources of the debtor.

D. SCO's Counterclaim.

SUSE correctly stated in its letter that the automatic stay does not apply to SCO's counterclaim in this arbitration. However, as it would make no sense for the claim and the counterclaim to be heard separately, SCO is willing to stay its counterclaim until and unless the Bankruptcy Court allows SUSE's claim to go forward. In any event, as SCO does not have arbitration counsel at present, it does not now have the ability to prepare a rejoinder memorial, collect evidence, or otherwise prepare for a hearing.

E. Lack of Enforceability.

SCO also pointed out in its October 1 letter that an arbitration award in violation of the automatic stay would not be enforceable in the United States and, therefore, there will be no prejudice if the Tribunal awaits a ruling by the Bankruptcy Court before proceeding with this arbitration. SUSE in its letter did not dispute that the only place that any award will be useful to SUSE is the United States. Ironically, however, SUSE also argued that, because it lacks contacts with the United States, an award in its favor could still be enforceable in the United States. SUSE argued that the Tribunal does not have a duty to ensure that its award may be enforced in a specific jurisdiction such as the United States. But, based on efficiency and equity, I would assume that the Tribunal has the discretion to set a schedule in the arbitration to take account of whether its award may be enforceable in the only jurisdiction that matters to the Claimant.

SCO's prior letter cited as authority for the unenforceability of an award here a decision of the United States Court of Appeals for the Third Circuit (which includes Delaware, the site of SCO's bankruptcy), *Acands, Inc. v. Travelers Casualty and Surety Co.*, 435 F.3d 252 (3d Cir. 2006) ("We hold that the automatic stay provision of the Bankruptcy Code promotes a public policy sufficient to preclude enforcement of an award that violates its terms or interferes with its purposes"). The authority that SUSE relies on is from the U.S. Court of Appeals for the Second Circuit, a different circuit, but is consistent with SCO's position, as it notes that "We are not concerned here with a case where the Japanese firm seeking arbitration in Japan is also doing business here and is subject to an in personam restraint by a United States Bankruptcy Court from proceeding against its contracting party whose assets are under the exclusive jurisdiction of the Federal Bankruptcy Court." *Fotochrome, Inc. v. Copal Co.*, 517 F.2d 512, 520 (2d Cir. 1975).

F. No Obligation to Comply With Invalid Award

SUSE also questioned why SCO would not comply voluntarily with any adverse award. If SUSE proceeds hastily without waiting for a ruling of the Bankruptcy Court, without seeking a lifting of the stay, and in disregard of SCO's right to be heard, with bankruptcy counsel and arbitration counsel duly appointed by the Bankruptcy Court with time to prepare for the hearing, then, of course, SCO reserves its right to challenge an award using valid defenses under the New York Convention.

G. Conclusion

Accordingly, for the reasons stated above and in my prior letter, the scheduled December hearing in this arbitration should be postponed indefinitely. If the Bankruptcy Court orders SUSE to cease its prosecution of this arbitration, the Tribunal should respect that decision as a matter of international comity.

Respectfully submitted,

BERGER SINGERMAN

Arthur J. Spector

Arthur J. Spector