

EXHIBIT F

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

In re:

The SCO Group, Inc., et al.,

Debtors.

Chapter 11

Case No. 07-11337 (KG)
(Jointly Administered)

Hearing Date: November 6, 2007 at 2:00 p.m. (ET)
Objection Deadline: October 23, 2007 at 4:00 p.m. (ET)

**NOVELL, INC.'S MOTION FOR RELIEF FROM AUTOMATIC STAY TO PROCEED
WITH DISTRICT COURT ACTION TO (I) APPORTION REVENUE
FROM SCOSOURCE LICENSES AND (II) DETERMINE SCO'S AUTHORITY
TO ENTER INTO SCOSOURCE LICENSES, ETC.**

When debtor and debtor in possession The SCO Group, Inc. ("SCO") filed its voluntary Chapter 11 petition with this Court on Friday, September 14, 2007, it was just one business day before a five-day trial of the remaining issues between it and Novell, Inc. ("Novell"). Novell's summary judgment victories in the United States District Court for the District of Utah (the "District Court") were virtually a complete resolution of the action.

Only a few issues and claims remain for the District Court's determination. Efficient resolution of remaining issues and claims in this dispute is important not only to Novell, but also to SCO, for the issues concern both legal and financial questions that are critical to the direction of SCO's reorganization. Moreover, having presided through virtually the entire four-year history of this litigation, the District Court is the best situated to wrap the case up from the perspectives of both judicial economy generally and its specific knowledge of the complex legal issues, the parties and the factual background.

By this Motion, therefore, Novell seeks relief from the automatic stay so that it may proceed by whatever means are appropriate and consistent with the District Court's schedule to have those claims liquidated.

PRELIMINARY STATEMENT

1. Over four years ago, SCO sued Novell based on Novell's public statements claiming that it retained certain software copyrights in a sale of other property by Novell to SCO. SCO asserted it purchased those copyrights as part of the overall sale. What SCO could and could not do with those copyrights depended largely on the ownership question (and certain related issues). The resolution of these questions, in turn, has broad implications for SCO's business model and its ability to generate revenues from the licensing of the copyrighted material. At issue with respect to revenues were the parties' respective rights to certain past and future revenues.

2. Novell filed counterclaims against SCO alleging that Novell, not SCO, owned the copyrights, that SCO had engaged in unauthorized licensing of the copyrights and that past and future revenues generated by SCO's wrongful activities were Novell's property, not SCO's.

3. Barely one month ago, on competing motions for summary judgment in the District Court, Judge Dale A. Kimball ruled in favor of Novell, holding that Novell is the owner of the copyrights at issue and that SCO's conduct constituted breach of fiduciary duty, conversion, unjust enrichment and breach of express contract. Following four years of litigation and the District Court's ruling, the parties were poised for a short, five-day trial scheduled for Monday, September 17th. The purpose of the trial was to apportion the funds SCO had wrongfully received and retained, as well as provide limited declaratory relief regarding SCO's authority to enter into certain licenses with third parties. On Friday, September 14th, and on the eve of the apportionment trial (and a month after the summary judgment ruling), SCO filed for relief under Chapter 11 of the Bankruptcy Code. The bankruptcy filing invoked the automatic stay of

litigation against SCO under Bankruptcy Code section 362(a), including the SCO/Novell trial scheduled for the next business day.¹

4. By this Motion, Novell seeks to lift the automatic stay to resolve the issues that were before the District Court, including those issues that were the subject of the five-day trial on its counterclaims. As it will show, under the circumstances present here, Novell meets both the general test widely used by courts and the balancing-of-the-hardships standard common in the Third Circuit to lift the automatic stay for “cause” under section 362(d)(1) of the Bankruptcy Code. The following facts support stay relief in this case on *either* approach:

- **Advanced Litigation.** Allowing the District Court Action to conclude in its advanced stage provides complete resolution of the issues in a forum that is already well steeped in specialized knowledge of sometimes complex issues underlying this intellectual property litigation.
- **Judicial Economy.** The remaining issues between the parties must be decided in some court of competent jurisdiction. It makes more sense to have the District Court, familiar as it is with the parties, facts and issues, handle the matter through its conclusion. Granting stay relief now will allow the parties to take advantage of whatever opportunities may come up in the District Court’s calendar, through cancellation of other trials or other appropriate means.
- **Bankruptcy Estates are Aided not Prejudiced.** Finally, and perhaps most importantly, both the apportionment of revenue from the SCOSource licenses that the District Court has determined or determines that SCO wrongfully retained, as well as final determination as to SCO’s authority to enter into SCOSource licenses generally, provides necessary finality as to whether certain assets are or ever were property of the Debtors’ estates. Because SCO’s business model is so tied to its issues with Novell, both strategically and financially, SCO will be hard pressed to make any progress towards reorganization in the Chapter 11 cases without finality concerning the respective rights between it and Novell. SCO has separate litigation counsel who are well prepared for trial and therefore, given the

¹ Though it does not raise the issue as part of this Motion, Novell expressly reserves the right to assert that SCO’s Chapter 11 cases were filed in bad faith.

limited time actually needed to resolve the parties' remaining disputes, granting stay relief to Novell will not unduly burden SCO or the estates.

These facts and applicable law provide compelling support for Novell's request for stay relief.

JURISDICTION

5. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

This is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(G).

6. Venue is proper in this Court, pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The relief requested in this Motion is predicated on 11 U.S.C. § 362(d), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

GENERAL BACKGROUND

8. SCO and its affiliate, SCO Operations, Inc. (collectively, the "Debtors"), filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on September 14, 2007 (the "Petition Date"). On September 18, 2007, this Court entered an Order directing joint administration of the Debtors' estates.

9. Pursuant to an Asset Purchase Agreement dated as of September 19, 1995 (as amended, the "APA"), Novell transferred its UNIX SVRX software licenses (the "SVRX Licenses") to SCO's predecessor, The Santa Cruz Operation, Inc., but retained all UNIX copyrights. The SVRX Licenses generate a royalty payment stream paid by end users (the "SVRX Royalties"). The Affidavit of Greg Jones in support of the Motion and Novell's Motion for Order Directing The Debtors to Remit Royalties (the "Jones Affidavit") has been filed contemporaneously with the Motion. The APA is Exhibit "A" to the Jones Affidavit.

10. In an attempt to generate additional revenue, SCO improperly entered into a licensing campaign based on SVRX Licenses ("SCOsource").

11. In 2004, SCO sued Novell (now *The SCO Group, Inc. v. Novell, Inc.*, Case No. 2:04CV00139 in the District Court) concerning a dispute over the APA (the “District Court Action”). Jones Affidavit, ¶ 8. On August 10, 2007, the District Court ruled almost completely in Novell’s favor on cross summary judgment motions by dismissing many of SCO’s claims against Novell and granting most of Novell’s claims (the “District Court Order”). Jones Affidavit, ¶¶ 12-14. Most importantly, the District Court ruled that: (a) Novell is the owner of the SVRX copyrights; (b) SCO was in breach of contract of the APA and owed the SVRX Royalties it had collected to Novell due to SCO’s breach of fiduciary duty, conversion, unjust enrichment and breach of express contract; and (c) the majority of the causes of action in SCO’s direct case were dismissed, including the original underlying allegation of slander of title. Jones Affidavit, ¶ 14.

12. Following entry of the District Court Order, the parties were scheduled to try Novell’s remaining counterclaims. Jones Affidavit, ¶ 15. These issues are derivative of and will build upon Novell’s victory in the District Court Order. Whatever their result, they will not undo the District Court’s essential rulings in Novell’s favor. In particular, as detailed in Novell’s trial brief, the principal questions that remained for trial were: (a) apportionment of the revenue from certain specific SCOSource licenses that the District Court determined SCO wrongfully retained; (b) whether there are additional SCOSource licenses that are SVRX Licenses and, if so, apportionment of the revenue from those licenses that SCO wrongfully retained; and (c) whether SCO had the authority to enter into the SCOSource licenses generally. Additionally, there are a few issues remaining to be decided between the parties that are not ready for trial. For example, the District Court stayed one count of the underlying complaint pending an arbitration decision in Switzerland between SCO and a Novell affiliate. Granting relief from the stay for disposition of all of the remaining issues in the District Court Action, as the Motion requests, will permit the

parties to resolve all issues in the District Court Action, when timely, without returning to this Court for additional stay relief.

13. The District Court Order has special importance for SCO's attempt to reorganize. It already makes SCO's current business model questionable. The only periods in which SCO appears to have been profitable are those periods in which it generated substantial one-time revenues through transactions wrongfully based on Novell's property (the SVRX copyrights). When not based on Novell's property, SCO's historic business model does not appear to be profitable or provide SCO with reasonable prospects for reorganization. These facts provide all the more reason for this Court to lift the automatic stay to address the remaining issues. With those issues resolved, precisely how much of SCO's past income is attributable to its wrongful use of the SVRX copyrights will be clear. SCO can then turn its focus to trying to create a sustainable business model or other strategy in furtherance of its attempt to confirm a reorganization plan. And, of course, SCO's plan must take into account the amount of Novell's claim and what cash it has that does not belong to Novell. Determination of the remaining issues in the District Court Action will clarify these important subjects, too.

RELIEF REQUESTED

*Relief From the Automatic Stay is Warranted
Under 11 U.S.C. § 362(d)(1)*

14. Novell seeks relief from the automatic stay to proceed with the District Court Action to final judgment. Lifting the stay for this purpose will allow the District Court to (I) apportion revenue from certain SCOSource licenses that the District Court has determined or determines that SCO wrongfully retained and (II) determine SCO's authority to enter into SCOSource licenses generally, as well as resolve all other remaining issues in the District Court Action. Decisions on these issues are relevant to SCO's reorganization prospects because, obviously, SCO's post-petition business model cannot continue to be based on Novell's property. If the

automatic stay is lifted to allow for the remaining issues in the District Court Action to be timely resolved, SCO can turn its focus to formulating a confirmable plan of reorganization because it will know what resources it has, the size of Novell's claim (almost surely the largest against SCO) and what SCO can and cannot do as a business going forward.

15. Section 362(d)(1) of the Bankruptcy Code provides that:

- (d) On request of a party in interest after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay -
 - (1) *for cause*, including the lack of adequate protection of an interest in property of such party in interest;...

11 U.S.C. § 362(d) (emphasis added). Under the application of section 362(d)(1), relief from the automatic stay with respect to Novell is warranted for "cause."²

The General Test for Litigation Stay Relief is Satisfied

16. Courts have often permitted "litigation to be concluded in another forum, particularly if the non-bankruptcy suit involves multiple parties or is ready for trial." Lawrence P. King, COLLIER ON BANKRUPTCY (15th ed. 2006) at 362.07[3][a]; *In re Rexene Prods. Co.*, 141 B.R. 574, 575 (Bankr. D. Del. 1992) ("...the fact that [the non-bankruptcy judge] has already heard and decided two issues support[s] the granting of relief on the grounds of judicial economy.") (hereinafter, "*Rexene*"); *In re Sonmax Indus., Inc. v. Tri Component Prods. Corp.*, 907 F.2d 1280 (2d Cir. 1990) (hereinafter, "*Sonmax*"); *In re Castlerock Properties*, 781 F.2d 159 (9th Cir. 1986); *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984). In fact, the legislative history of section 362(d)(1) emphasizes that a single factor, such as allowing a proceeding to advance before

² As a threshold matter, Novell reserves the right to assert that a portion of the revenue from the SCOsource licenses that SCO wrongfully retained, whatever that portion may be, is not property of the estate as it is being held by SCO for Novell's benefit. In this case, SCO does not have an equity interest in such property, nor is such property necessary to an effective reorganization. Accordingly, Novell would not require relief from the automatic stay, as it would not be affecting property of the estate, or, at a minimum, Novell would be entitled to relief from the stay in accordance with section 362(d)(2). Section 362(d)(2) provides, in relevant part, that the stay may be lifted with

another tribunal, can constitute the requisite “cause.” “It will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere.” H.R. Rep. No. 595, 95th Cong., 1st Sess., 341 (1977) (cited in *Rexene* at 576).

17. With respect to the District Court Action, lifting the stay for cause is merited as the action is at a very advanced stage. After four years of intensive litigation and the disposition of the cross summary judgment motions, the parties were poised to begin trial on the bulk of the few remaining (though important) issues the next business day after SCO petitioned for relief under Chapter 11. Those issues are the apportionment of revenue between the parties that SCO received from the SCOSource licenses and the scope of SCO’s authority to enter into SCOSource licenses generally. Thus, the District Court has necessarily developed specialized knowledge of the underlying copyright law, the facts of the dispute, and is fully versed in the issues between the parties. Indeed, the cross motions for summary judgment alone involved over 1,500 pages of briefing, along with hundreds of pages of accompanying declarations and exhibits. By the same token, the parties, their counsel and Judge Kimball by now understand each other’s expectations and practices. These are precisely the kind of circumstances under which lifting the automatic stay for “cause” to conclude litigation is appropriate. The alternatives of delay or trial by another judicial authority that is unfamiliar with the District Court Action are inconsistent with the dictates of judicial economy and fairness to the parties themselves, who have already determined the forum for litigation. Moreover, given the role of the underlying copyrights in SCO’s business model and already historically marginal financial affairs, resolution of the balance of the District Court Action is paramount to the prospects of these Chapter 11 cases. Finally, that

respect to property where “the debtor does not have an equity in such property; and...such property is not necessary to an effective reorganization.” 11 U.S.C. § 362(d)(2).

Novell's claim – almost surely the largest against SCO – will have to be liquidated at some time in these Chapter 11 cases (and liquidated sooner rather than later) -- counsels stay relief now.

***The “Balancing Test” Also Compels Relief
From the Stay***

18. As just discussed, courts have widely found the kind of facts and circumstances present in this case to constitute “cause” for modifying the automatic stay to permit parties to conclude pending litigation. In addition, courts in the Third Circuit separately have approached the issue of stay relief by applying a balancing test between the interests of the bankrupt estate and the movant. For example, in deciding to lift the stay in favor of the movant, the Delaware Bankruptcy Court in *Rexene* considered three factors in its analysis. Those factors are:

- (1) whether any great prejudice to either the bankrupt estate or the debtor will result from continuation of the suit;
- (2) whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor; and
- (3) the probability of the creditor prevailing on the merits.

In re Rexene Prods. Co., 141 B.R. 574 (Bankr. D. Del. 1992). The United States District Court of Delaware applied this same test in affirming stay relief for the movant in *In re Continental Airlines, Inc.*, 152 B.R. 420 (D. Del. 1993).

19. Even more recently, the Delaware Bankruptcy Court has considered the three *Rexene* factors along with the general “policies underlying the automatic stay,” which include the twelve factors followed by the United States Court of Appeals for the Second Circuit in *Sonnax*. *In re W.R. Grace & Co., et al.*, 2007 Bankr. LEXIS 1214, *12 (Bankr. D. Del. 2007); *see also In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984). The *Sonnax* factors are:

- (1) whether the relief would result in a partial or complete resolution of the issues;
- (2) lack of any connection with or interference with the bankruptcy case;

- (3) whether the other proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
- (5) whether the debtor's insurer has assumed full responsibility for defending it;
- (6) whether the action primarily involves third parties;
- (7) whether litigation in another forum would prejudice the interests of other creditors;
- (8) whether the judgment claim arising from the other action is subject to equitable subordination;
- (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;
- (10) the interests of judicial economy and the expeditious and economical resolution of litigation;
- (11) whether the parties are ready for trial in the other proceedings; and
- (12) impact of the stay on the parties and the balance of harms.

Id. Courts have been clear that not all of the factors will be implicated in every case. *See Mazzeo v. Lenhart (In re Mazzeo)*, 167 F.3d 139, 143 (2d Cir. 1999), *In re Enron Corp.*, 306 B.R. 465, 476 (Bankr. S.D.N.Y. 2004). However, the factors that are applicable here plainly favor lifting the automatic stay to allow the District Court Action to conclude.

(i) The Parties are Ready for Trial in the District Court Action

20. As discussed above, lifting the stay to allow the District Court Action to conclude is merited because the litigation is at a very advanced stage. The parties had already completed pre-trial motion practice, pre-trial briefing, and were poised to begin trial the next business day after SCO's petition for bankruptcy relief. The majority of the issues between the parties have already been decided by the District Court on summary judgment, including the item of greatest debate – ownership of the SVRX copyrights. Given the late stage of litigation, the District Court is uniquely situated to resolve the remaining issues between the parties, which are the

apportionment of revenue between the parties that SCO received from the SCOSource licenses and the scope of SCO's authority to enter into SCOSource licenses generally.

21. Further, lifting the stay now, as opposed to at a later juncture in the bankruptcy cases, is useful so that the parties, this Court and SCO's creditors will not be in limbo any longer than unavoidable as to when and how there will be a resolution of remaining issues between SCO and Novell – issues that are of importance to both to the parties and the future of these Chapter 11 cases. *See Rexene* at 577 (“Judicial economy dictates a prompt resolution in a single forum and with the same judge who was originally assigned to the case.”). With stay relief now, the parties will give the parties the flexibility to capitalize on whatever opportunities may arise in the District Court to resolve the remaining issues by appropriate means.

(ii) The Interests of Judicial Economy Favor the District Court Action; and
(iii) The Specialized Expertise of the Court

22. Both the interests of judicial economy and the specialized expertise the District Court has developed over the past four years of activity in the District Court Action militate in favor of lifting the automatic stay to allow the District Court Action to conclude before the District Court. It would be a waste of resources to discard the time, energy and money that brought the District Court Action to the eve of trial on the issues that remain. Under these circumstances, from the perspectives of judicial economy, the parties' own resources and fairness to the parties, it makes no sense to ask this Court at some time in the future to take the necessary time to acquaint itself with the extensive background of the District Court Action and then to resolve the remaining disputes to the extent it otherwise would have jurisdiction to do so. *See In re Continental Airlines, Inc., et al.*, 152 B.R. 420, 425 (D. Del. 1993) (in lifting the stay the court held that “the difference between filing briefs and preparing for oral argument in [the non-bankruptcy forum]...is negligible in terms of added litigation expenses and diverted attention.”); *see also*

Rexene at 577 (“This Court is of the opinion that to begin this litigation anew in this bankruptcy court... would certainly result in a waste of judicial resources.”).

(iv) The District Court Action Results in Complete Resolution of the Issues

23. If the automatic stay is lifted, the District Court will resolve all remaining issues. Thus, there will be a final determination and liquidation of any and all claims Novell may have against SCO in the District Court Action. The parties have already run virtually the entire, grueling race; they should be allowed to take advantage of the only step that remains – to cross the finish line. *See In re Patriot Contracting Corp.*, 2006 Bankr. LEXIS 4133, *10 (Bankr. D. N.J. 2006) (court found that permitting the action to proceed in the original forum was merited because it would result in “complete resolution of the dispute”).

(v) The District Court Action Will Not Interfere With the Bankruptcy Cases

24. Allowing the District Court Action to proceed will not interfere with SCO’s bankruptcy cases because SCO already has counsel for this matter, separate and apart from bankruptcy counsel. Again, due to the timing of the bankruptcy filings, on the eve of trial, SCO’s litigation counsel is fully prepared to litigate the majority of the limited remaining issues in the District Court Action. Finally, as discussed above, and as compared to the overall action, the issues that remain to be determined are finite and trial on the majority of those issues is expected to last no more than approximately five days. This level of work, when compared to the four years of prior litigation in the District Court Action by litigation counsel that is otherwise unaffiliated with the bankruptcy cases simply cannot be reasonably viewed as an imposition on SCO’s bankruptcy cases, the more so because these issues will have to be decided somewhere, some time, for these Chapter 11 cases. For those same reasons, there is no argument that the estates would be prejudiced by having to expend additional financial resources on the District Court Action, as lifting the stay provides the shortest and least expensive means to

resolution of the issues that remain in the District Court Action. *See In re Ware Window Co.*, 2003 Bankr. LEXIS 885, *9 (Bankr. E.D. Pa. 2003) (“In all cases addressing relief from the stay under § 362(d)(1) to allow the commencement or continuation of non-bankruptcy litigation, the overriding consideration is whether the debtor’s estate or the debtor will be prejudiced if the litigation is permitted in another forum. Absent a showing of prejudice, relief has generally been granted.”).

(vi) Judgment Not Subject to Equitable Subordination; and
(vii) Resolution Will Not Result in Avoidable Judicial Lien

25. Given the nature of the District Court Action and the apportionment and declaratory relief sought by the counterclaims, there is simply no argument that any judgment that would stem from the District Court Action could be subject to equitable subordination or result in an avoidable judicial lien. Therefore, these two factors, as delineated in *Sonmax*, weigh in favor of lifting the automatic stay and allowing the District Court Action to conclude before the District Court, as the results of the action would not be effectively reversed by the rights afforded to SCO through the bankruptcy process.

(viii) Balance of Hardships and the *Rexene* Analysis

26. The analysis of the *Sonmax* factors, above, demonstrates that the prevalent balancing test in *Rexene*, as favored by courts in the Third Circuit, heavily weighs in favor of lifting the automatic stay to allow Novell to proceed with the District Court Action. Most importantly (and of enough weight in and of itself to merit lifting the stay), the District Court Action was advanced literally to the eve of trial when SCO sought bankruptcy protection. Given the time, expense and developed expertise of the District Court with respect to the District Court Action, to deny its completion would simply be inefficient. When balancing, on the one hand, the hypothetical harm to the estates of allowing SCO’s separate litigation counsel to conclude the remaining issues in a four-year litigation against, on the other hand, the harm to Novell of

substantial delay and/or recommencing litigation before the Bankruptcy Court, the result is clear – the stay should be lifted. Additionally, resolution of the remaining issues in the District Court Action is actually in the best interests of the Debtors’ estates. Given the weight of the apportionment and assets in dispute, the Chapter 11 cases cannot substantially advance without resolution of Novell’s claims against it.

27. Finally, the third consideration in *Rexene*, which is the probability that Novell will prevail on the merits, provides further support for lifting the stay. The “probability” that Novell will prevail on the merits has already solidified into actual success on the merits. As the majority of the issues between the parties were decided on summary judgment, including, especially, the key issue of ownership of the copyrights, what remains of the litigation largely is focused on determination of SCO’s authority to enter into SCOSource licenses generally and on apportionment of revenue from all SCOSource licenses that SCO wrongfully retained. In other words, what remains for determination in the District Court Action are, in essence, damage calculations on an already successful action for Novell. Accordingly, a balancing test under *Rexene*, whether considered simply or in conjunction with the *Sonnax* factors, strongly favors lifting the stay to allow the District Court Action to conclude.

CONCLUSION

WHEREFORE, Novell respectfully requests that the automatic stay be lifted so that Novell may proceed with all remaining issues in the District Court Action by whatever means are appropriate and consistent with the District Court’s schedule in order to have its claims liquidated, including allowing the District Court to (I) apportion revenue from certain SCOSource licenses that the District Court has determined or determines that SCO wrongfully retained, (II) determine SCO’s authority to enter into SCOSource licenses generally, and that the Court grant such other and further relief as is just and proper.

Dated: October 4, 2007
Wilmington, Delaware

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