

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

In re	: Chapter 11
	: .
The SCO GROUP, INC., <i>et al.</i> , ¹	: Case No. 07-11337 (KG)
	: (Jointly Administered)
Debtors.	: .
-----	: Hearing Date: 3/15/2010 at 10:00 a.m. (ET)
	: Objection Deadline: 3/8/2010 at 4:00 p.m. (ET)

**MOTION OF THE CHAPTER 11 TRUSTEE FOR ORDER UNDER 11
U.S.C. §§ 105(a), 363, AND 365 AND FED. R. BANKR. P. 2002, 6004, 6006
AND 9014 (A) APPROVING THE SALE OF MOBILITY BUSINESS FREE
AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363, (B) AUTHORIZING
AND APPROVING THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS IN CONNECTION
THEREWITH, AND (C) GRANTING RELATED RELIEF**

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 (this “Motion”), pursuant to sections 105(a), 363(b) and (f), and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and Rules 2002(a)(2), 6004, 6006, 9007 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** (the “Sale Order”) (a) authorizing and approving the Asset Purchase Agreement (collectively, with all related documents, agreements or other instruments, the “APA”) by and between The SCO Group, Inc. (“SCO”), Me Inc Holdings, LLC (“MIH”) and Darl McBride (“McBride”), attached hereto as **Exhibit C**; (b) approving the sale of the Mobility Business (as defined in paragraph 6 below); (c)

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.

approving the assumption and assignment of certain executory contracts pursuant to Bankruptcy Code section 365; (d) authorizing the Trustee to consummate transactions related to the above; and (e) granting other relief. In support of this Motion, the Trustee respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these proceedings and this Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are Bankruptcy Code §§ 105(a), 363(b) and (f), and 365 and Fed. R. Bankr. P. 2002(a)(2), 6004(a), (b),(c),(e),(f) and (h), 6006, 9007 and 9014.

BACKGROUND

Chapter 11 Cases

2. On September 14, 2007, 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 this Court approved the appointment of Edward N. Cahn, Esquire as Chapter 11 trustee in these cases [Docket No. 900]. No official committee of unsecured creditors has been appointed to date. The Trustee has been performing his duties and operating the Debtors as authorized by Bankruptcy Code sections 1106 and 1108.

Debtors' Business

4. The Debtors are publicly held Delaware corporations with their corporate headquarters located in Lindon, Utah.

5. The Debtors' core business focus is to serve the needs of small-to-medium sized businesses and branch offices and franchisees of Fortune 1000 companies, by providing reliable, cost-effective UNIX software technology for distributed, embedded, and network-based systems.

6. In addition to the Debtors' core business focus, the Debtors provide mobile productivity solutions and tools to allow mobile devices to access corporate data and conduct business anywhere, which meet certain security, availability and reliability requirements of enterprise mobile solutions and to provide the raw building blocks for IT organizations and vertical solution providers to develop and deploy applications for their respective customer base (together with the entire business and operations of Debtor SCO relating thereto and the goodwill appurtenant to such business and assets, and the furnishing of services in connection therewith, the "Mobility Business").

7. Due to the current restructuring of the Debtors' business, the Trustee, in the exercise of his business judgment and in consultation with his retained professionals, determined that it is not in the best interests of the Debtors' estates to continue operating the Mobility Business. The Mobility Business is in the early stages of product development and the Debtors do not have sufficient capital to fully develop the Mobility Business at this time. In order for the Debtors' estates to gain the maximum benefit from the Mobility Business, the Trustee determined to sell the assets related to the Mobility

Business (the “Mobility Business Assets”), or if there were no purchasers, to seek court approval to wind down the business.

RELIEF REQUESTED

8. By this Motion, the Trustee respectfully requests, pursuant to Bankruptcy Code sections 105, 363 and 365² and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014 entry of the Sale Order: (a) authorizing and approving the APA; (b) approving the sale of the Mobility Business Assets to MIH or another higher and better bidder pursuant to Bankruptcy Code section 363; (c) approving the assumption and assignment of certain executory contracts pursuant to Bankruptcy Code section 365; (d) authorizing the Trustee to consummate transactions related to the above; and (e) granting other relief.

A. The Marketing of the Mobility Business

9. Upon determining that the Mobility Business should be sold or wound down, the Trustee consulted with his counsel and financial advisor, Ocean Park Advisors, LLC (“OPA”), and authorized and directed OPA to investigate the possibilities for a sale of the Mobility Business.

10. Early in December 2009, OPA had been approached informally by McBride, a former CEO and equityholder of the Debtors, to discuss a possible purchase of the Mobility Business. On December 9, 2009, OPA met with McBride to discuss a potential sale of the Mobility Business and shortly thereafter, McBride delivered a draft Letter of Intent (“LOI”) to OPA, which outlined the relevant terms for McBride’s purchase of the Mobility Business.

² The Trustee asserts that no consumer privacy ombudsman is required pursuant to Bankruptcy Code section 332 since this Motion does not contemplate a sale of any personally identifiable information.

11. After consultation among the Trustee, his professionals, and the SCO business people most familiar with the Mobility Business and the market for mobility products, OPA entered into negotiations with McBride for a sale of the Mobility Business. From December 15, 2009 until January 15, 2010, OPA and McBride engaged in arms-length negotiations regarding a sale of the Mobility Business Assets.

12. Thereafter, in consultation with his professionals, the Trustee concluded that the best use of estate resources is to pursue a private sale of the Mobility Business rather than incur the expense and delay associated with public sale and auction procedures often employed in connection with a Bankruptcy Code section 363 sale. Accordingly, the Trustee instructed OPA to engage in a competitive sale process to determine whether there were other potential buyers interested in the Mobility Business for greater value than the estate would realize from McBride's offer. Specifically, as set forth more fully in the Affidavit of Mark Fisler in Support of the Motion, ("Fisler Affidavit") attached hereto as **Exhibit B**, OPA took the following steps:

a. After consulting with representatives of SCO who were involved in the Mobility Business, OPA compiled a list of 12 persons and entities that also might have an interest in acquiring the Mobility Business Assets (the "Targets");

b. OPA prepared a "teaser" that provided an overview of the assets of the Mobility Business to be sold and prepared a non-disclosure agreement for potential bidders to sign if they desired to pursue the purchase of the Mobility Business; and

c. Over a two week period, OPA contacted all the Targets either via electronic mail, telephone, or both, except one Target that could not be reached.

d. Although some of the Targets considered the Mobility Business for a period of time, none of the contacted Targets indicated an interest in further pursuing the purchase of the Mobility Business Assets.

13. To further market the Mobility Business Assets, upon the filing of this Motion, an advertisement will be placed in newspapers published locally in Salt Lake City, Utah indicating that an asset purchase agreement has been entered into for the sale of the Mobility Business Assets and inviting any other parties interested in purchasing the Mobility Business Assets to contact OPA.

B. APA³

14. Subject to this Court's entry of the Sale Order, on the Closing Date, the Trustee will sell the Mobility Business Assets to MIH, as described in the APA. Briefly, the APA provides as follows:

a. The assets being sold are the assets of the Mobility Business as set forth on Schedule A to the APA including certain Intellectual Property; certain Liabilities will be assumed by the Buyer; certain Contracts will be assumed and assigned to Buyer; and Buyer will enter into a Source Code License Agreement with SCO;

b. The purchase price is \$35,000;

c. Upon execution of the APA, MIH will pay to the Debtors a \$5,000 deposit;

d. On the Closing Date, MIH will pay the Debtors the balance of the Purchase Price of \$30,000;

³ The description of the APA set forth herein is fully qualified by the APA, and parties in interest are advised to review the APA in its entirety. Unless otherwise defined herein, all capitalized terms used in this description of the APA shall have the meanings ascribed to them in the APA. To any extent this Motion conflicts with the APA, the APA shall control.

e. In addition to payment of the Purchase Price, the APA provides for up to an aggregate of \$60,000 in “Income Participation” payments to the Debtors when the annual Gross Revenue earned by MIH from the Mobility Business reaches \$1,000,001 with no more than \$30,000 paid in any given year; and

f. In further consideration for the purchase of the Mobility Business Assets, McBride will grant a release to the Debtors, the estates and the Trustee and all Seller Parties (as defined in the APA). *See* APA § 6.2.

C. Sale to Insider

15. The Trustee is advised that MIH is a newly formed company owned by McBride and others and was created for the purpose of purchasing the Mobility Business Assets. Since McBride is the Debtors’ former CEO and an equityholder thereof, McBride may be an insider pursuant to Bankruptcy Code section 101(31). *See* 11 U.S.C. § 101(31). The Trustee represents that at all times the negotiations among the Trustee, his advisors and McBride were at arms-length and in good faith.

APPLICABLE AUTHORITY

A. The Sale Is Reasonable and Appropriate Under §§ 105(a) and 363(b)

16. 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 within the Court’s discretion, giving due consideration to the sound business judgment of the proponent of the sale. *See In re Martin*, 91 F.3d 389 (3d Cir. 1996); *In re Abbotts*

Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991).

17. 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).

18. To approve the use, sale, or lease of property outside the ordinary course of business, this Court need determine only that the trustee’s decision is supported by “some articulated business justification.” *See, e.g., Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *see also, In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991)); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999).

19. Once the trustee articulates a valid business justification, there “is a presumption that in making a business decision the directors of a corporation acted on an

informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Once a valid business judgment is made, the business judgment rule shields the trustee from judicial second-guessing. See *In re Farmland Indus., Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003).

20. The Trustee, with assistance from his retained professionals, has demonstrated sound business justification for the relief requested in this Motion. The Trustee submits that it is in the best interest of the Debtors’ estates to sell the Mobility Business Assets to MIH because the sale will maximize the amount of value received for the Mobility Business. The sale is especially valuable to the Debtors’ estates because Debtors lack the capital necessary to turn the Mobility Business, as it currently exists, into a more profitable business. As described in the Fisler Affidavit and herein, the Trustee has undertaken numerous steps to ensure that the Debtors’ estates are receiving market value for the Mobility Business Assets.

B. A Private Sale is Permitted under Section 363

21. The Trustee submits that a private sale of the Mobility Business Assets satisfies the requirements of Bankruptcy Code section 363. In fact, there is no requirement that a bankruptcy sale be by public auction and there is no prohibition against a private sale to an insider. See *In re Trans World Airlines, Inc.* 2001 Bankr. LEXIS 980, *13 (Bankr. D. Del. April 2, 2001) (“...a § 363(b) sale transaction does not require an auction procedure. The auction procedure has developed over the years as an effective means for producing an arm’s length fair value transaction”); accord

Bankruptcy Rule 6004(f)(1) (providing for a public or private sale); *Penn Mut. Life Ins. Co. v. Woodscape Ltd. Partnership (In re Woodscape Ltd. Partnership)*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (“[t]here is no prohibition against a private sale or against a sale to insiders; and there is no requirement that the sale be by public auction”). The Trustee believes that the Mobility Business has been marketed adequately in an effort to generate the highest and best recovery for the benefit of the Debtors’ estates.

22. The offer represented by the APA is fair and reasonable, has been proposed and negotiated in good faith, is the highest, best and only offer received to date for the Mobility Business Assets, and has the highest degree of certainty of a guaranteed payment to the Debtors’ estates. The Trustee has fully disclosed the fact that McBride is a former insider. The Trustee submits that MIH is purchasing the Mobility Business Assets in good faith and is entitled to the protections of Bankruptcy Code section 363(m). *See In re Abbotts Dairies*, 788 F.2d at 149-150.

23. Moreover, by selling the Mobility Business Assets in the proposed private sale, the Trustee will maximize the estates’ profits by avoiding the costly expenses of an auction. In light of the size and nature of the Mobility Business Assets, and the fact that after marketing by OPA only one potential purchaser was identified, the Trustee respectfully submits that requiring a separate auction for the sale of the Mobility Business Assets would be unreasonably costly for the Debtors’ estates. Indeed, the costs and delays associated with holding an auction for the Mobility Business Assets would substantially undermine, if not eliminate, the economic benefits of selling the Mobility Business Assets.

24. Nevertheless, out of an abundance of caution and to ensure that the Debtors' estates receive maximum value for the Mobility Business Assets, the Mobility Business will continue to be marketed for sale until this Court's approval of this Motion. Specifically, this Motion and the APA will be provided to all parties previously identified as potentially having an interest in the assets and the proposed sale will be advertised in the local Salt Lake City, UT newspapers. Any party interested in purchasing the assets will be required to submit a written bid and OPA and the Trustee will conduct an auction of the assets on March 12, 2010, one business day prior to the hearing on the sale of the assets. The APA specifically recognizes that the Trustee will continue to market the assets until this Motion is approved.

C. The Sale is Appropriate under Section 363(f)

25. 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).

26. The Trustee is not aware of any liens against, claims secured by or third party interests in the Mobility Business Assets. The Trustee further proposes that any

party with a lien on the Mobility Business Assets 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.

D. Successful Purchaser Should be Entitled to the Protections of Section 363(m)

27. Pursuant to Bankruptcy Code section 363(m), a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See Abbotts Dairies* 788 F.2d at 147.

28. The APA was negotiated at arm's length. OPA engaged in discussions with several other Targets, which were ultimately fruitless. The Trustee submits that the APA represents the best, highest and only offer for the Mobility Business Assets. Accordingly, the Sale Order will include a provision that MIH and/or any proposed buyer with a higher and better offer, determined in the exercise of the Trustee's business judgment and after consultation with his professionals, is a "good faith" purchaser within the meaning of Bankruptcy Code section 363(m).

E. Assumption and Assignment of Executory Contracts

29. The assumption and assignment of the executory contracts identified in Schedule 2.1(a) of the APA (collectively, the "Executory Contracts") is an integral part of the proposed sale and should be approved by this Court. Bankruptcy Code section 365(a) provides, in pertinent part, that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. §365(a). By enacting Bankruptcy Code section 365(a), Congress intended to allow a trustee to assume those contracts that benefit the estate, and to reject those that

are of no value or are burdensome to the estate. *See Cinicloa v. Scharffenberger*, 248 F.3d 110, 119 (3d Cir. 2001); *Leland v. Gardinier, Inc. (In re Gardinier, Inc.)*, 831 F.2d 974, 976 n.2 (11th Cir. 1987); *In re Whitcomb & Keller Mortgage Co., Inc.*, 715 F.2d 375, 379 (7th Cir. 1983).

30. It is well established that decisions to assume or reject executory contracts are matters within the “business judgment” of the trustee. *See Gardinier*, 831 F.2d at 976 n.2; *In re G. Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) (noting that “[i]n determining whether a debtor may be permitted to reject an executory contract, courts usually apply the business judgment test. Generally, absent a showing of bad faith, or an abuse of discretion, the debtor’s business judgment will not be altered”) (citations omitted); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *Sharon Steel Corp. v. National Fuel Gas Dist Corp*, 872 F.2d 36, 40 (3d Cir. 1989). Accordingly, courts approve the assumption or rejection of an executory contract unless evidence is presented that the trustee’s decision to assume or reject was “so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.” *In re Richmond Metal Finishers, Inc.*, 756 F.2d 1043,1047 (4th Cir. 1985).

31. Adequate business justification exists to merit this Court’s approval of the proposed assumption and assignment of the Executory Contracts. The Executory Contracts are valuable assets of the Debtors’ estates and represent an integral part of the proposed sale of the Mobility Business Assets.

32. Bankruptcy Code section 365 authorizes a trustee to assume and assign an executory contract if the debtor:

(b)(1)(A) cures, or provides adequate assurance that [it] will promptly cure, such default other than a

default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an expired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease. . . .

(f)(2) The trustee may assign an executory contract or unexpired lease of the debtor only if —

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

See 11 U.S.C. §§ 365(b)(1), (f)(2). Accordingly, Bankruptcy Code section 365 authorizes the proposed assumptions and assignments of the Executory Contracts, provided that the defaults under such contracts are cured and adequate assurance of future performance is provided.

33. It is well settled that the meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but that a contract

counterparty is not required to receive an absolute guarantee of future performance. *See, e.g., In re Glycogensys, Inc.*, 352 B.R. 568, 578 (Bankr. D. Mass. 2006) (“[I]t is appropriate to evaluate the financial condition of the assignee and the likelihood that the non-debtor party will receive the benefit of its bargain from the assignee”); *Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D. N.J. 1989) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (same). The Trustee will provide all parties to the Executory Contracts to be assumed and assigned pursuant to this Motion with an opportunity to be heard, and the Trustee will provide evidence that all requirements for the assumption and assignment of executory contracts to be assigned to MIH will be satisfied. Thus, the Trustee respectfully submits that assumption and assignment of the executory contracts should be approved.

F. Procedures Regarding Cure Amounts

34. To facilitate the sale and the assumption and assignment of the Executory Contracts, the Trustee proposes to serve a notice of assumption and assignment and of the proposed cure amounts relating to such executory contracts in the form annexed hereto as **Exhibit D** (the “Assumption Notice”) by March 1, 2010 and request that this Court approve the following procedure for fixing any cure amounts owed on all executory contracts.

35. The Trustee will attach to the Assumption Notice, the Debtors’ calculation of the undisputed cure amounts that the Trustee believes must be paid to cure all prepetition defaults under all the Executory Contracts (the “Cure Amount”). The Trustee

requests that if a non-debtor party to any Executory Contract disputes the Cure Amount or objects to the assumption and/or assignment of the Executory Contracts that such party be required to file an objection (the “Cure Objection”) on or before 4:00 p.m. (prevailing Eastern Time) on March 8, 2010 (the “Cure Objection Deadline”) and serve a copy of the Cure Objection so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on the same day, upon (a) the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801; (b) counsel for the Trustee: Blank Rome LLP, 1201 N. Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell, Esq.; (c) The SCO Group, Inc., 333 South 520 West, Suite. 170, Lindon, Utah 84042, Attn: Ryan Tibbitts, General Counsel; and (d) counsel for MIH.: Holland & Hart LLP, 60 E. South Temple, Suite 2000, Salt Lake City, Utah 84111, Attn: Marc Porter.

36. If any such party fails to timely file and serve a Cure Objection by the Cure Objection Deadline, such party shall (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such executory contracts and the Trustee shall be entitled to rely solely upon the Cure Amount; and (ii) be deemed to have consented to the assumption and assignment of such executory contracts and shall be forever barred and estopped from asserting or claiming against the Debtors’ estate, MIH (or a higher and better bidder as approved by this Court) or any other assignee of the relevant Executory Contracts that any additional amounts are due or defaults exist, or conditions to assumption and assignment must be satisfied under such Executory Contracts.

37. If a Cure Objection is timely filed, the Cure Objection must set forth (i) the basis for the objection, and (ii) the amount the party asserts as the Cure Amount.

After receipt of the Cure Objection, the Trustee will attempt to reconcile any differences in the Cure Amount believed by the non-debtor party to exist. In the event, however, that the Trustee and the non-debtor party are unable to consensually resolve the Cure Objection, the Trustee will segregate any disputed Cure Amount pending the resolution of any such disputes by this Court or mutual agreement of the parties.

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

38. 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 sale of the Mobility Business immediately following approval of this Motion.

NOTICE

39. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) any party filing a request for notice pursuant to Bankruptcy Rule 2002, (c) all parties to any contracts proposed to be assumed and assigned to the purchaser under the APA, and (d) all persons known to the Trustee who have expressed an interest in the assets of the Mobility Business. In addition, an advertisement of this Motion will be placed in the local Salt Lake City, UT newspapers. 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

31. 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: February 26, 2010
Wilmington, Delaware

Respectfully submitted,

BLANK ROME LLP

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