

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

**DECLARATION OF ARTHUR J. SPECTOR IN SUPPORT OF
APPLICATION OF DEBTORS FOR APPROVAL, PURSUANT TO 11 U.S.C. § 327(a)
AND FED. R. BANKR. P. 2014(a) AND 2016, OF EMPLOYMENT OF BERGER
SINGERMAN AS COUNSEL FOR DEBTORS**

1. I am Arthur J. Spector. I am an attorney and shareholder of the law firm of Berger Singerman, P.A. (“Berger Singerman”). Our firm maintains offices for the practice of law at 200 South Biscayne Boulevard, Suite 1000, Miami, Florida 33131; 350 E. Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301; 315 South Calhoun Street, Suite 712, Tallahassee, Florida 32301 and 2650 North Military Trail, Suite 240, Boca Raton, Florida 33431. I am familiar with the matters set forth herein and make this Declaration in support of the Debtors’ Application, Pursuant To 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014(a) and 2016, for Approval of Employment of Berger Singerman, P.A. as Counsel for Debtors Nunc Pro Tunc to the Petition Date (the “Application”).

2. In support of the Application, I disclose the following:

a. Unless otherwise stated, this Declaration is based upon facts of which I have personal knowledge.

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.

b. In preparing this Declaration, I reviewed (i) the list of all of the creditors of the Debtors provided to us by the Debtors; and (ii) UCC searches run for the Debtors. I compared the information obtained thereby with the information contained in our law firm's client and adverse party conflict check index system. The facts stated in this Declaration as to the relationship between other lawyers in our law firm and the Debtors, the Debtors' creditors, the United States Trustee, other persons employed by the Office of the United States Trustee, and those persons and entities who are defined as disinterested persons in Section 101(14) of the Bankruptcy Code are based on the results of my review of our firm's conflict check index system. Specifically, I have caused to be conducted (i) a computer search of our firm's records in respect of all of the names referred to in the first sentence of this paragraph 2(b) and (ii) disseminated a written request for information to all of the attorneys in our firm regarding connections to the Debtors and their respective creditors based on the accounts payable listings provided to us by the Debtors. Based upon such search, our firm does not represent any entity in a matter which would constitute a conflict of interest or impair the disinterestedness of Berger Singerman. Because Berger Singerman (formerly Berger Davis & Singerman, P.A., previously Berger & Davis, P.A. and previously Berger, Shapiro & Davis, P.A.) has been in existence since 1985 and does not maintain computerized records of all cases during all of those years, it is impossible to state with certainty whether the firm has ever represented any existing creditor of the Debtors.

3. Berger Singerman's client and adverse party conflicts check system is comprised of records regularly maintained in the course of business of the firm and it is the regular practice of the firm to make and maintain these records. It reflects entries that are noted

in the system at the time the information becomes known by persons whose regular duties include recording and maintaining this information. I am one of the persons who is responsible for the supervision of the department of our firm which keeps this system up-to-date, and I regularly use and rely upon the information contained in the system in the performance of my duties with the law firm and in my practice of law.

4. A search of our firm's conflicts check system revealed the following matters, none of which impairs my or our firm's disinterestedness or constitutes any conflict of interest:

a. *AT&T* is listed as a creditor of the Debtors. Berger Singerman has represented a number of clients who are adverse to *AT&T*, in that they have incurred a debt to *AT&T* in matters wholly unrelated to these cases. In addition, Berger Singerman represents *AT&T* in various matter wholly unrelated to these cases and also represented *AT&T* Latin America Corp. and its affiliates ("ATTLA") in jointly administered Chapter 11 cases (Case No. 03-13538-BKC-RAM) that were filed in the United States Bankruptcy Court for the Southern District of Florida before the Honorable Robert A. Mark. On January 27, 2004, the Court entered an order confirming the joint plan of liquidation in the ATTLA case and the case was closed on June 26, 2007. Berger Singerman continues to represent the Debtors in the case, which is wholly unrelated to these cases;

b. *CT Corporation System* is listed as a creditor of the Debtors. Berger Singerman has represented *CT Corporation System* in matters wholly unrelated to these cases. In addition, Berger Singerman has represented various third parties in wholly unrelated

matters whose interests may have been adverse to *CT Corporation System*. Berger Singerman does not deem these representations to constitute conflicts in these cases;

c. *DHL Express (USA), Inc.* is listed as a creditor of the Debtors.

Berger Singerman has represented DHL Regional Services, Inc., now known as *DHL Express (USA), Inc.* in matters wholly unrelated to these cases. In addition, Berger Singerman has represented various third parties in wholly unrelated matters whose interests may have been adverse to *DHL Express (USA), Inc.* Berger Singerman does not deem these representations to constitute conflicts in these cases;

d. *IBM Global Financing* is listed as a creditor of the Debtors.

Berger Singerman represents *IBM Global Financing* in matters wholly unrelated to these cases. In addition, Berger Singerman has represented various third parties in wholly unrelated matters whose interests may have been adverse to *IBM Global Financing*. Berger Singerman does not deem these representations to constitute conflicts in these cases;

e. *Pitney Bowes Credit Corporation* is listed as a creditor of the

Debtors. Berger Singerman represents *Pitney Bowes Credit Corporation* in matters wholly unrelated to these cases. In addition, Berger Singerman has represented various third parties in wholly unrelated matters whose interests may have been adverse to *Pitney Bowes Credit Corporation*. Berger Singerman does not deem these representations to constitute conflicts in these cases;

f. *Qwest* is listed as a creditor of the Debtors. Berger Singerman has

represented a number of clients who are adverse to *Qwest*, in that they have incurred debt to

Qwest in matters wholly unrelated to these cases. In addition, Berger Singerman represents *Qwest* in matters wholly unrelated to these cases;

g. *Oracle Corporation* is listed as a creditor of the Debtors. Berger Singerman has represented a number of clients who are adverse to *Oracle*, in that they have incurred debt to *Oracle* in matters wholly unrelated to these cases. In addition, Berger Singerman represents *Oracle* in matters wholly unrelated to these cases;

h. *Key Equipment Finance Group and Key Corp. Leasing* are listed as creditors of the Debtors. Berger Singerman has represented a number of clients who are adverse to *Key Equipment Finance Group and Key Corp. Leasing*, in that they have incurred debt to *Key Equipment Finance Group and Key Corp. Leasing* in matters wholly unrelated to these cases. In addition, Berger Singerman represents *Key Equipment Finance Group and Key Corp. Leasing* in matters wholly unrelated to these cases;

i. *The Hartford* is listed as a creditor of the Debtors. Berger Singerman has represented *The Hartford* in matters wholly unrelated to these cases. In addition, Berger Singerman has represented various third parties in wholly unrelated matters whose interests may have been adverse to *The Hartford*. Berger Singerman does not deem these representations to constitute conflicts in these cases;

j. *Sprint Communications* is listed as a creditor of the Debtors. Berger Singerman has represented *Sprint Communications* in matters wholly unrelated to these cases. In addition, Berger Singerman has represented various third parties in wholly unrelated matters whose interests may have been adverse to *Sprint Communications*. Berger Singerman does not deem these representations to constitute conflicts in these cases;

k. Individuals by the names of *Mark Hoffman, Watson Wyatt, Scott Anderson, Mohammed Ali, John R. Dubois, II, Dennis Hanks, Michael Davidson* and *Barbara Howe* are listed as employees of the Debtors (the "Employees"). Berger Singerman is unaware as to whether the Employees listed in these cases are the same individuals represented by Berger Singerman in unrelated matters. In addition, Berger Singerman has also represented third parties in wholly unrelated matters whose interests may have been adverse to the Employees. Berger Singerman does not deem these representations to constitute conflicts in these cases;

l. There are numerous creditors of the Debtors which have been creditors of, or adverse to, other entities represented by Berger Singerman in cases and matters wholly unrelated to these cases. These creditors include Accountemps, Automatic Data Processing, Allied Waste, Alphagraphics, American Express, Applied Graphics, Arizona Department of Revenue, Baker & McKenzie, Bowne of Los Angeles, Inc., Arrowhead Mountain Spring Water, Canon Financial Services, CCH Incorporated, CDW Direct, LLC, Chili's, Cintas Corporation, Cingular Wireless, Citicorp Vendor Finance, CMP Media, Inc., Colorado Department of Revenue, Computer Associates International, PricewaterhouseCoopers, Miami-Dade Tax Collector, Cushman & Wakefield, Cusip Service Bureau, Cybersource, Davis Wright Tremaine, LLP, DeLage Landen Financial, Dell Financial Services, Dell Marketing, Dell Computer, Deloitte & Touche, Florida Department of Labor & Employment, Florida Department of Revenue, Direct Marketing Association, Direct TV, Express One, Financial Acct Standards, Dorsey & Whitney, LLP, Dow Jones Publications, Dun & Bradstreet, Esquire Deposition Services, Forever Young Foundation, Franchise Tax Board, Federal Express, Filterfresh, FTI Consulting, Georgia Department of Revenue, GES Exposition Services, Global Crossing,

Verizon, Hampton Inn, Hewlett Packard, Hilton, IBM Corporation, Ice Systems, Idaho State Tax Commission, IDC West, IKon, Imagistics, Insight, AIG Insurance, XL Specialty, Chubb Group, Axis, Premium Assignment Corporation, PR Newswire, Ritz Carlton, Sage Software, Inc., Schultz & Associates, U.S. Secretary of State, Sprint, State of Maine, State of Washington, State of California, State Board of Equalization, Storage USA, Sun Microsystems, T-Mobile, Tennessee Department of Revenue, Comptroller of Public Accounts, United Healthcare, Recall Secure Destruction, Utah State Tax Commission, U-Haul, Trial Graphix, XO Communications, Virginia Department of Taxation, Vision Service Plan, Wisconsin Department of Revenue, Yellow Pages, Zee Medical Services, Adobe, Microsoft Corporation, Helix, Kinkos, KPMG, Lexis Nexis, Kelly Temporary Services, Ira/Keough Services, Kentucky State Treasurer, Louisiana Department of Revenue, Commission of Taxation, New York Life Funding, Newspaper Agency Corp., State of New Jersey, NYS Corporation Tax, Office Max, Ohio Department of Taxation, Pennsylvania Department of Revenue, Pepsi Cola, Arch Wireless, Comptroller of Maryland, Massachusetts Department of Revenue, Metropolitan Life Insurance Co., Microsoft Licensing, Inc., Michigan Department of Treasury, Minnesota Department of Revenue, Missouri Department of Revenue, The Nasdaq Stock Market, National Economic Research Association, Nevada Department of Taxation, State of New Hampshire, New Jersey Sales and Use Tax, NYC Department of Finance, Ours Information Services, and David Wood Personnel.

m. Berger Singerman represents, from time to time, privately held as well as public companies in out of court and restructuring matters (the “Non-Debtors Clients”). Several creditors of the Debtors may be creditors of the Non-Debtors Clients. Berger

Singerman's representation of the Non-Debtors Clients does not impair Berger Singerman's disinterestedness or its ability to represent the Debtors in these cases.

5. On October 31, 2004, The SCO Group, Inc. entered into an engagement agreement, amending the original engagement agreement entered into in February 2003 (the "Engagement Agreement") with Boies, Schiller & Flexner, LLP, Kevin McBride, and Berger Singerman (the "Law Firms"). The agreement governed the relationship between The SCO Group, Inc. and the Law Firms in connection with their representation of The SCO Group, Inc. in litigation against International Business Machines Corp., Novell, Inc. and Red Hat, Inc. (collectively, the "SCO Litigation"). A copy of the Engagement Agreement is attached as Exhibit 1 and was referenced in The SCO Group, Inc.'s most recent 10-k filing. In sum, the Engagement Agreement provided for the payment of contingency fees to the Law Firms upon any amount the Debtors or its stockholders may receive as a result of a settlement, judgment or a sale of The SCO Group, Inc. With the Debtors' consent, in connection with the representation of the Debtors' in their Chapter 11 cases, Berger Singerman terminated its interest in the Engagement Agreement and agreed to waive any fees it may be entitled to now or in the future arising from any settlement reached or judgment in favor of The SCO Group, Inc. from the SCO Litigation. Berger Singerman was not paid in the one year preceding the filing of these Chapter 11 cases for services rendered under the Engagement Agreement; the last payment received by Berger Singerman in connection with the Engagement Agreement was on November 24, 2004. Thereafter, Berger Singerman was retained by the Debtors to provide prepetition services in connection with these Chapter 11 cases. On September 4, 2007 and September 12, 2007, Berger Singerman received retainers of \$50,000 and \$375,000, respectively, in connection with these

Chapter 11 cases. Prior to the Petition Date, Berger Singerman applied \$100,000.00 toward pre-petition fees, leaving \$275,000.00 as a retainer for post-petition services.

6. As set forth above, prior to the termination of the Engagement Agreement, Berger Singerman was counsel along with the law firm of Boies Schiller & Flexner (“BSF”) in connection with the SCO Litigation. Berger Singerman has also worked with BSF in other matters not related to the Debtors. In addition to the working relationship with BSF, certain attorneys at Berger Singerman have a friendships with attorneys at BSF.

7. I understand that the Debtors intend to retain Pachulski Stang Ziehl & Jones LLP (“Pachulski”) as co-bankruptcy counsel. Berger Singerman has worked, and is working, with Pachulski on numerous matters not related to the Debtors. In addition to the working relationship with Pachulski, certain attorneys at Berger Singerman have a friendships with attorneys at Pachulski.

8. I understand that the Debtors intend to retain Dorsey & Whitney (“Dorsey”) as corporate and regulatory counsel. Berger Singerman has worked with Dorsey on numerous matters not related to the Debtors. In addition to the working relationship with Dorsey, certain attorneys at Berger Singerman have a friendships with attorneys at Dorsey.

9. I understand that the Debtors intend to retain Mesirow Financial Services (“Mesirow”) as their financial advisors. Berger Singerman has worked, and is working, with Mesirow on numerous matters not related to the Debtors. In addition to the working relationship with Mesirow, certain attorneys at Berger Singerman have a friendships with professionals at Mesirow.

10. I understand that the Debtors intend to retain Epiq Bankruptcy Solutions, LLC (“Epiq”) as their notice and claims agent. Berger Singerman has worked with Epiq on matters not related to the Debtors. In addition to the working relationship with Epiq, certain attorneys at Berger Singerman have a friendships with professionals at Epiq.

11. Berger Singerman submits that none of the foregoing representations or connections constitutes any conflict of interest or in any way impairs its disinterestedness in these cases.

12. Other than as set forth in this declaration, Berger Singerman neither holds nor represents any interest adverse to the Debtors and is a “disinterested person” within the scope and meaning of Section 101(14) of the Bankruptcy Code.

13. Neither I nor our firm has or will represent any other entity in connection with these cases, and neither I nor our firm will accept any fee from any other party or parties in these cases, except the Debtors-in-Possession, unless otherwise authorized by the Court.

14. The professional fees and costs incurred by Berger Singerman in the course of its representation of the Debtors in these cases shall be subject in all respects to the application and notice requirements of 11 U.S.C. §§ 327, 330 and 331 and Bankruptcy Rules 2014 and 2016.

15. The current hourly rates for the attorneys at Berger Singerman range from \$250.00 to \$475.00. The current hourly rates of Paul Steven Singerman and Arthur J. Spector, the shareholders who will be principally responsible for Berger Singerman’s representation of the Debtors, are \$475.00 and \$450.00 respectively. The current hourly rates for the associate attorneys who will work on these cases range from \$250.00 to \$370.00. The current hourly rates

for the legal assistants and paralegals at Berger Singerman range from \$75.00 to \$160.00.

Berger Singerman typically adjusts its hourly rates annually on January 1st.

16. There is no agreement of any nature, other than the shareholder agreement of our firm, as to the sharing of any compensation to be paid to the firm. No promises have been received by Berger Singerman nor any member, or associate thereof as to compensation in connection with these cases other than in accordance with the provisions of the Bankruptcy Code.

17. One attorney in our firm owns 50 shares of common stock valued at less than \$40.00, which is not a disqualifying interest or makes the firm other than disinterested.

18. No attorney in our firm is or has served as an officer, director or employee of the Debtors within two years before the Petition Date.

19. No attorney in our firm is in control of the Debtors or is a relative of a general partner, director, officer or person in control of the Debtors.

20. No attorney in our firm is a general or limited partner of a partnership in which the Debtors are also a general or limited partner.

21. No attorney in our firm is or has served as an officer, director or employee of a financial advisor that has been engaged by the Debtors in connection with the offer, sale or issuance of a security of the Debtors, within two years before the Petition Date.

22. No attorney in our firm has represented a financial advisor of the Debtors in connection with the offer, sale or issuance of a security of the Debtors within three years before the filing of the petitions.

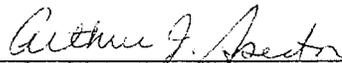
23. No attorney in the firm has any other interest, direct or indirect, that may be affected by the proposed representation.

24. Except as forth herein, no attorney in our firm has had or presently has any material connection with the captioned Debtors, the Debtors' creditors, any other party in interest or its attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee, on any matters in which the firm is to be engaged, except that I, our law firm, and our attorneys (i) may have appeared in the past, and may appear in the future, in other cases in which one or more of said parties may be involved; and (ii) may represent or may have represented certain of the Debtors' creditors in matters unrelated to these cases.

25. This concludes my Declaration.

28 U.S.C § 1746 Declaration

I declare under penalty of perjury that the foregoing is true and correct. Executed
on September 14, 2007.



ARTHUR J. SPECTOR