

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.)	

**DEBTORS' MOTION FOR AN ADMINISTRATIVE ORDER UNDER 11 U.S.C.
§§ 105(a) AND 331 ESTABLISHING PROCEDURES FOR INTERIM MONTHLY
COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS
AND REIMBURSEMENT OF EXPENSES OF COMMITTEE MEMBERS**

The SCO Group, Inc. and the SCO Operations, Inc. (collectively, "SCO" or the "Debtors") hereby move (the "Motion") the Court for entry of an administrative order ("Administrative Order") establishing procedures for monthly compensation and reimbursement of expenses (collectively, the "Compensation") for professionals retained in these chapter 11 cases (the "Professionals"). 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).

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, Linton, UT 84042.

Background

2. 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.

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

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

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

6. 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.

7. For a detailed description of the Debtors and their operations, the Debtors respectfully refer 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

8. The Debtors seek the entry of an Administrative Order pursuant to sections 105(a) and 331 of the Bankruptcy Code establishing procedures for the payment of fees and reimbursement of expenses for Professionals retained by the estates pursuant to Court order. Section 331 of the Bankruptcy Code allows courts discretion in determining the frequency of disbursements of professional fees and expenses. The Debtors request that the Court exercise its discretion and allow monthly Compensation for Professionals in these cases.

9. The Debtors have filed, or will soon file, applications to retain Berger Singerman, P.A. and Pachulski Stang Ziehl & Jones LLP as their bankruptcy co-counsel, Boies Schiller & Flexner, LLP as their special litigation co-counsel, Dorsey & Whitney, LLP as their special corporate counsel and Mesirow Financial as their financial advisor. With the likely involvement of additional Professionals, the professional fee application and review process could be exceptionally burdensome on the Debtors, the Professionals, and the Court. Implementation of compensation procedures (the "Compensation Procedures") will provide an efficient structure for disbursing Compensation to the Professionals and will allow all parties to these cases to monitor the monthly accrual of Compensation for each Professional.

10. Except as otherwise provided in an order entered by the Court authorizing the retention of a particular professional, the Debtors propose that the Court permit the Professionals to seek monthly payment of Compensation in accordance with the following Compensation Procedures:

a. On or about the 25th day of each calendar month, beginning with October 2007, each of the Professionals seeking interim compensation shall file with the Court

an application (the "Monthly Fee Application") pursuant to section 331 of the Bankruptcy Code, for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred during the immediately preceding month (the "Monthly Compensation Period") and serve a copy of such Monthly Fee Application on: (i) the Debtors, The SCO Group, Inc. and SCO Operations, Inc., 355 South 520 West, Suite 1000, Lindon, Utah 84041, Attention: Ryan Tibbitts, General Counsel; (ii) proposed co-counsel for the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attention: Laura Davis Jones, Esq.; (iii) proposed co-counsel for the Debtors, Berger Singerman, P.A., 350 East Las Olas Blvd., Ste. 1000, Fort Lauderdale, FL 33301, Attention: Arthur J. Spector, Esq.; (iv) Office of the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801; and (v) counsel to any Official Committee of Unsecured Creditors appointed in these cases (subsequent to its appointment in these cases) (collectively, the "Notice Parties") (collectively, the "Notice Parties"). All Monthly Fee Applications shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), applicable Third Circuit law, the Local Rules of this Court, and the Guidelines established by the Office of the U.S. Trustee. Each Notice Party will have 20 days after filing and service of a Monthly Fee Application to object to such application (the "Objection Deadline"). Upon the expiration of the Objection Deadline, each Professional may file a certificate of no objection or a certificate of partial objection with the Court, whichever is applicable, after which the Debtors are authorized to pay each Professional an amount (the "Actual Payment") equal to the lesser of (i) 80% of the fees and 100% of the expenses requested

in the Monthly Fee Application (the “Maximum Payment”), and (ii) 80% of the fees and 100% of the expenses not subject to an objection pursuant to subparagraph (b) below.

b. If any Notice Party objects to a Professional’s Monthly Fee Application, it must file with the Court and serve on the affected Professional and each of the Notice Parties a written objection (the “Objection”), which must be filed with the Court and received by the affected Professional and the Notice Parties on or before the Objection Deadline. Thereafter, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution of the Objection within 20 days after service of the Objection, the affected Professional may either: (i) file a response to the Objection with the Court, together with a request for payment of the difference, if any, between the Maximum Payment and the Actual Payment made to the affected Professional (the “Incremental Amount”); or (ii) forgo payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the Objection if requested by the parties.

c. Each Professional may submit the first Monthly Fee Application on or about October 20, 2007, and such Monthly Fee Application shall be for the period from the Petition Date through September 30, 2007.

d. Beginning with the period ending December 31, 2007, at three-month intervals or at such other intervals convenient to the Court (the “Interim Fee Period”), each Professional shall file with the Court and serve on the Notice Parties a request for interim Court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses sought in the Monthly Fee Applications filed

during the Interim Fee Period (an "Interim Fee Application"). The Interim Fee Application must include a summary of the Monthly Fee Applications that are the subject of the request and any other information requested by the Court or required by the Local Rules of this Court. Each Professional must file and serve its Interim Fee Application within 45 days of the conclusion of the Interim Fee Period for which the request seeks allowance of fees and reimbursement of expenses. The first Interim Fee Application shall cover the time between the Petition Date through and including December 31, 2007, and shall be filed on or before February 15, 2008. Any Professional who fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the Compensation Procedures until such time as the Interim Fee Application is submitted.

e. The Debtors shall request a hearing on the pending Interim Fee Applications at least every six months. The Debtors, however, may request that a hearing be held every three months or at such other intervals as the Court deems appropriate.

f. The pendency of an objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from the future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.

g. Neither (i) the payment of or the failure to pay in whole or in part monthly interim compensation and reimbursement of expenses nor, (ii) the filing of or failure to file an objection will bind any party in interest or the Court with respect to the allowance of interim or final applications for compensation and reimbursement of expenses of the Professionals. All fees and expenses paid to the Professionals are subject to disgorgement until final allowance by the Court.

11. The Debtors further request that (i) only the Notice Parties be entitled to receive both the fee applications and the notice of hearing thereon (the "Hearing Notice") and (ii) all other parties who have filed a request for service pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure be entitled to receive only the Hearing Notice.² Such notice should reach the parties most active in these cases and will save the expense of undue duplication and mailing of lengthy fee applications.

12. The Debtors further request that each member of any Committee appointed in these cases (once appointed) be permitted to submit statements of expenses (excluding fees and expenses of the Committee member's counsel) and supporting vouchers to counsel for the Committee, who will collect and submit such requests for reimbursement in accordance with the foregoing procedure for monthly and interim compensation and reimbursement of Professionals.

13. The Debtors will include all payments made to Professionals in accordance with the compensation procedures in their monthly operating reports identifying the amount paid to each of the Professionals.

14. The procedures requested in this Motion will relieve the burden on the Court imposed by alternative interim compensation procedures that require monthly court orders, while preserving all rights of objection, enabling the parties to closely monitor costs of administration, and enabling Professionals to maintain a level cash flow.

² If any party that has received only a Hearing Notice requests a copy of any of the fee applications, the Debtors will furnish that party with the requested copies at the Debtors' expense.

Basis for Relief

15. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title.

11 U.S.C. § 331.

16. In addition, section 105(a) of the Bankruptcy Code provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

17. Procedures comparable to those proposed in the Motion have been established in other Chapter 11 Cases in this District. *See, e.g., In re Mortgage Lenders Network USA, Inc.*, Case No. 07-10146 (PJW) (Bankr. D. Del. 2007); *In re Global Home Products, LLC, et al.*, Case No. 06-10340 (KG) (Bankr. D. Del. 2006); *In re Easy Gardener Products, LLC, et al.*, Case No. 06-10396 (KG) (Bankr. D. Del. 2006); *In re JL French Automotive Castings, Inc.*, Case No. 06-10119 (MFW) (Bankr. D. Del. 2006); *In re Pliant Corporation, et al.*, Case No. 06-10001 (MFW) (Bankr. D. Del. 2006). *In re Nellson Nutraceutical, Inc.*, Case No. 06-10072 (PJW) (Bankr. D. Del. Feb. 22, 2006). Such procedures are needed to avoid having Professionals fund the cases.

Notice

18. 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. Following the first day hearing in

this case, this Motion will be served on (a) creditors holding the 20 largest unsecured claims against the Debtors on a consolidated basis as identified in Debtors' petitions, or their legal counsel (if known); and (b) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

19. No prior request for the relief sought in this Motion has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court authorize the Compensation Procedures and enter the Administrative Order establishing procedures for monthly compensation and reimbursement of expenses for professionals retained in the Debtors' chapter 11 cases, and such other relief as is necessary and just.

Dated: September 14, 2007

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