

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

**DECLARATION OF STUART H. SINGER, ON BEHALF OF  
BOIES, SCHILLER & FLEXNER, LLP, AS PROPOSED SPECIAL LITIGATION  
COUNSEL FOR THE DEBTORS, NUNC PRO TUNC TO THE PETITION DATE**

1. I am Stuart H. Singer. I am an attorney and partner in the law firm of Boies, Schiller & Flexner, LLP (“BSF”). My firm maintains offices for the practice of law in a number of locations throughout the United States; my office is located at 401 East Las Olas Blvd., Ste. 1200, Fort Lauderdale, FL 33301. 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(e), 328 and 330, for Approval of Employment of Boies, Schiller & Flexner LLP as Special Litigation Counsel to the Debtors Nunc Pro Tunc to Petition Date* (the “Application”).

2. I make this Declaration based on my personal knowledge, and review of business records of BSF.

3. To the extent that any information disclosed herein requires supplementation, amendment or modification upon BSF’s completion of further analysis or as additional information becomes available to it, a supplemental declaration will be submitted to the Court.

4. The Debtors have requested that BSF advise and assist the Debtors in connection with the continuation of the “SCO Litigation” The SCO Litigation consists of the following

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<sup>1</sup> 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.

pending matters: *The SCO Group, Inc. v. International Business Machines Corp.*, Case No. 2:03cv0294DAK, pending in the United States District Court for the District of Utah; *The SCO Group, Inc. v. Novell, Inc.*, Case No. 2:04cv139DAK, pending in the United States District Court for the District of Utah; *Red Hat, Inc. v. The SCO Group, Inc.*, Case No. 03-772-SLR, pending in the United States District Court for the District of Delaware; *The SCO Group, Inc. v. Autozone, Inc.*, Case No. 2:04-cv-237, pending in the United States District Court for the District of Nevada; *The SCO Group, Inc. v. DaimlerChrysler Corporation*, Case No. 04-056587-CKB, pending in the State of Michigan, Circuit Court for the County of Oakland; *Wayne R. Gray v. Novell, Inc., The SCO Group, Inc. and X/Open Company, Ltd.*, Case No. 8:06-cv-01950-JSM, pending in the United States District Court for the Middle District of Florida (the “Gray Litigation”); and the *SuSE Linux GmbH v. The SCO Group, Inc.*, Ref. 14320FM, pending before the International Court of Arbitration (the “SuSE Arbitration”).

5. BSF was retained in fall 2002 to provide advice on certain matters for The Debtors. Beginning in March 2003, BSF represented Debtors as lead litigation counsel in the SCO Litigation. On October 31, 2004, the Debtors entered into a revised engagement agreement, (the “Engagement Agreement”) with BSF, Kevin McBride, and Berger Singerman (the “Law Firms”). The agreement governed the relationship going forward between the Debtors and the Law Firms in connection with their representation of SCO Group, Inc. in the SCO Litigation, except with respect to the SuSE Arbitration and Gray Litigation. The Engagement Agreement provided for the payment of certain amounts that were due, the payment of certain fixed amounts, payment of certain amounts for each quarter for the six quarters following entry of the Engagement Agreement and for payment of a contingency fee 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 Debtors. The Law Firms were responsible for the payment of other firms, such as local counsel. The Debtors were responsible for payment of expenses. A true and correct copy of the Engagement Agreement is attached hereto as Exhibit A.

6. In the SuSE Arbitration, BSF was retained on the basis it would charge 50% of its customary rate for fees, and that all expenses, including payment of the arbitrators, and Swiss counsel, would be paid by Debtor. In the Gray Litigation, which is unrelated to the other matters, BSF was retained at its regular hourly rates, and Debtor would pay for expenses.

7. BSF has consented to continue to provide such services to the Debtors on the terms set forth in the Engagement Agreement (with one modification noted below) with respect to the matters covered thereunder, and on the same basis it had represented Debtor pre-petition with respect to the SuSE Arbitration and Gray Litigation. For example, under the contingency fee provisions of the Engagement Agreement, Debtors would pay the Law Firms 33% of any recovery up to \$350 million “less all hourly fees paid at any time to the Three Original Firms.” BSF has consented to be engaged to continue providing professional services in these matters on the terms set forth in the Engagement Agreement, except as the sole remaining of the three Law Firms continuing to provide services, it requests that it be entitled to the full contingency fee payable to the Law Firms (except for such amount, approximately 7.5%, to which Kevin McBride currently holds interest).

8. Prior to the Petition Date, BSF paid fees to Hatch, James, and Dodge (Utah local counsel) and Dorsey & Whitney (with respect to intellectual property assistance only), and will continue to be responsible for such fees, for work authorized to be conducted in connection with the SCO Litigation. Upon disclosure and any necessary court approval, BSF may seek to share

part of its contingency interest with the other firms that it is required to compensate under the terms of the Engagement Agreement.

9. BSF represents no interest adverse to the Debtors or their estates with respect to the matters upon which BSF is to be employed. BSF is currently representing the Debtors with respect to each of these matters, and there has been no suggestion that BSF represents any interests adverse to the Debtors in connection with these matters. BSF is a creditor with respect to certain amounts for fees and expenses outstanding at the time SCO filed its Chapter 11 petition. In the one-year preceding the Petition Date, according to BSF records, BSF has received payments from SCO in the amount of \$887,523.55.

10. In addition to the foregoing, BSF may have performed services in the past and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are parties in interest in the Debtors' chapter 11 cases. As part of its customary practice, BSF is retained in cases, proceedings and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants and parties in interest in these chapter 11 cases. BSF does not perform services for any such person in connection with these chapter 11 cases.

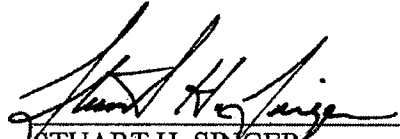
11. BSF hereby discloses that it has not received any payment for services to be rendered by BSF in connection with these bankruptcy cases other than set forth herein. No promises have been received by BSF or any member or associate thereof as to compensation in connection with these cases other than in accordance with the provisions of the Bankruptcy Code.

12. Other than as disclosed herein, neither I, nor any partner or associate or member of BSF, insofar as I have been able to ascertain, has any connection with the Debtors, the United States Trustee, or any person employed in the office of the United States Trustee.

13. 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  
October 12, 2007.

  
STUART H. SINGER