

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

Objection Deadline: October 30, 2007 at 4:00 p.m. (prevailing Eastern time)
Hearing: November 6, 2007 at 11:00 a.m. (prevailing Eastern time)

**MOTION OF THE DEBTORS SEEKING APPROVAL OF THE RETENTION,
EMPLOYMENT AND COMPENSATION OF CERTAIN PROFESSIONALS UTILIZED
BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS**

The above-captioned debtors-in-possession (collectively, the “Debtors”) seek approval to employ and compensate certain professionals utilized in the ordinary course of the Debtors’ businesses (the “Motion”). In support of this Motion, the Debtors respectfully state as follows:

Jurisdiction and Background

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. The statutory predicates for the relief sought herein are sections 105(a), 327, 328 and 330 of title 11 of the United States Code (the “Bankruptcy Code”).

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.

3. On September 14, 2007, the Debtors commenced these cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. Parties and the Court are referred to the *Declaration of Darl C. McBride, Chief Executive Officer of the Debtors, in Support of First Day Motions* (the “McBride Declaration”) filed on the Petition Date and incorporated herein by reference for the factual background relating to the Debtors’ business and their commencement of these Chapter 11 Cases.

The Debtors’ Ordinary Course Professionals

5. The Debtors customarily retain the services of various attorneys, accountants, actuaries, consultants, and other professionals to represent them in matters arising in the ordinary course of their businesses, unrelated to these Chapter 11 Cases (each an “Ordinary Course Professional” and collectively, the “Ordinary Course Professionals”). A list of the Ordinary Course Professionals utilized or expected to be utilized by the Debtors is attached as Exhibit A hereto.²

6. In contrast, the Debtors have filed (or will file) individual retention applications for any professionals that the Debtors seek to employ in connection with the conduct of these Chapter 11 Cases (the “Chapter 11 Professionals”). The Chapter 11 Professionals will be permitted to be compensated and reimbursed only in accordance with procedures to be

² As discussed more fully below, the Debtors reserve the right to amend such list in the future in their sole discretion, pursuant to the procedures set forth herein.

approved by this Court, and with the terms of the orders approving each Chapter 11 Professional's employment.

7. The Ordinary Course Professionals will not be involved in the administration of these Chapter 11 Cases. Rather, they will provide services in connection with the Debtors' ongoing business operations or services ordinarily provided by in-house counsel to a corporation. As a result, the Debtors do not believe that the Ordinary Course Professionals are "professionals" as that term is used in section 327 of the Bankruptcy Code, whose retention must be approved by this Court.³ Nevertheless, out of an abundance of caution, the Debtors seek an order authorizing the retention and payment of all Ordinary Course Professionals during the pendency of these Chapter 11 Cases.

8. The Debtors anticipate employing, among others, certain of the Ordinary Course Professionals listed on Exhibit A to perform ongoing services during the pendency of these Chapter 11 Cases. In particular, attorneys performing litigation-related services for the Debtors are among the Ordinary Course Professionals listed on Exhibit A. Although litigation will be stayed upon the commencement of the Chapter 11 Cases, the Debtors, out of an abundance of caution, seek authority to retain certain of the Ordinary Course Professionals that provide litigation support (as well as other professionals) should circumstances render continued litigation support necessary during the pendency of these Chapter 11 Cases.

³ See, e.g., In re That's Entertainment Mkt'g Group, Inc., 168 B.R. 226, 230 (N.D. Cal. 1994) (only the retention of professionals whose duties are central to the administration of the estate require prior court approval under section 327 of the Bankruptcy Code); In re Madison Mgmt. Group, Inc., 137 B.R. 275, 283 (Bankr. N.D. Ill. 1992) (same); In re Sieling Assocs. Ltd. P'ship, 128 B.R. 721, 723 (Bankr. E.D. Va. 1991) (same); In re Johns-Manville Corp., 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1989) (only those professionals involved in the actual reorganization effort, rather than debtor's ongoing business, require approval under section 327 of the Bankruptcy Code).

Relief Requested

9. By the Motion, pursuant to sections 105(a), 327, 328 and 330 of the Bankruptcy Code, the Debtors seek entry of an order by this Court authorizing them to (a) retain and employ the Ordinary Course Professionals on an “as needed” basis without the submission of separate, formal retention applications for each Ordinary Course Professional, and (b) establish procedures to compensate the Ordinary Course Professionals under sections 328, 330 and 331 of the Bankruptcy Code for postpetition services rendered and expenses incurred.

Basis for Relief

10. The Debtors cannot continue to operate their businesses as debtors in possession unless they retain and pay for the services of the Ordinary Course Professionals listed on Exhibit A. The work of the Ordinary Course Professionals, albeit ordinary course, is directly related to the preservation of the value of the Debtors’ estates, even though the amount of fees and expenses incurred by the Ordinary Course Professionals represents only a small fraction of that value.

11. The operation of the Debtors’ businesses would be severely hindered if the Ordinary Course Professionals were delayed in performing their work on behalf of the Debtors while the Debtors (i) submitted to this Court an application, affidavit and proposed retention order for each Ordinary Course Professional; (ii) waited until such order was approved before such Ordinary Course Professional continued to render services; and (iii) withheld payment of the normal fees and expenses of the Ordinary Course Professionals until they complied with the compensation procedures applicable to Chapter 11 Professionals.

12. Further, a number of Ordinary Course Professionals are unfamiliar with the fee application procedures employed in bankruptcy cases. Some Ordinary Course Professionals might be unwilling or unable to assume the administrative and cost burden of such procedures, and may therefore be unwilling to work with the Debtors if these requirements are imposed, forcing the Debtors to incur additional and unnecessary expenses to retain other professionals without such background and expertise and at potentially higher rates. The uninterrupted services of the Ordinary Course Professionals are vital to the Debtors' continuing operations and their ultimate ability to reorganize. More importantly, the cost of preparing and prosecuting these retention applications and fee applications would be significant, and such costs would be borne by the Debtors' estates.

13. Moreover, a requirement that the Ordinary Course Professionals each file retention pleadings and follow the usual fee application process required of the Chapter 11 Professionals would unnecessarily burden the Clerk's office, this Court and the U.S. Trustee's office with unnecessary fee applications while significantly adding to the administrative costs of these cases without any corresponding benefit to the Debtors' estates. This Motion proposes a procedure to alleviate such a burden.

14. Although some of the Ordinary Course Professionals may hold unsecured claims against the Debtors in respect of prepetition services rendered, the Debtors do not believe that any of the Ordinary Course Professionals have an interest materially adverse to the Debtors, their estates, their creditors, or other parties in interest, and thus none would be retained who do not meet, if applicable, the special counsel retention requirement of section 327(e) of the

Bankruptcy Code. By this Motion, the Debtors are not requesting authority to pay prepetition amounts owed to Ordinary Course Professionals.

Proposed Retention Procedure

15. The Debtors propose that they be permitted to continue to employ and retain the Ordinary Course Professionals. Pursuant to the requirement imposed by Bankruptcy Rule 2014 and in order to provide the interested parties and this Court with appropriate comfort and assurances, each Ordinary Course Professional will be required to file with this Court, and to serve upon (i) counsel for the Debtors: (a) 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.; and (b) Berger Singerman, P.A., 350 East Las Olas Blvd., Ste. 1000, Fort Lauderdale, FL 33301, Attention: Arthur J. Spector, Esq., (ii) Office of the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, (iii) counsel to any Official Committee of Unsecured Creditors appointed in these cases (subsequent to its appointment in these cases) (collectively, the “Notice Parties”), a disclosure declaration of such proposed professional (the “Declaration,” a form of which is attached as Exhibit B hereto) on the later of: (i) thirty (30) days after entry of an order of this Court granting the Motion; or (ii) prior to the date such Ordinary Course Professional provides any services to the Debtors. Such Declaration shall set forth the following information: (a) a description of the effort(s) that were taken to search for connections with parties in interest; (b) a description of the proposed scope of services to be provided by the Ordinary Course Professional; (c) the rate(s) proposed to be charged for the services; (d) all information otherwise required to be disclosed pursuant to

Federal Rule of Bankruptcy Procedure 2014; and (e) to the extent that the Ordinary Course Professional was not providing services as of the Petition Date, the date on which such services began postpetition. The Debtors will not make any payments to any Ordinary Course Professionals who have failed to file such a Declaration.

16. The Debtors further request that the Notice Parties will have ten (10) days from the date of the filing and service of the Affidavit (the “Objection Period”) to object to the retention of the Ordinary Course Professional in question. Any such objection must be timely filed with this Court and served upon the Ordinary Course Professional, the Debtors, and the Notice Parties. If an objection is filed and cannot be resolved and/or withdrawn within twenty (20) days after service of such objection, this Court shall adjudicate the matter at a hearing scheduled by the Debtors at a mutually convenient time.⁴ If no timely objection is filed and received, or if an objection is withdrawn, the Debtors will be authorized to retain the Ordinary Course Professional on a final basis without further order of this Court.

17. The Debtors request that they be authorized to compensate additional Ordinary Course Professionals employed and retained by the Debtors that are not currently listed on Exhibit A hereto, from time to time as necessary, without the need to file individual retention applications or have a further hearing by filing with this Court one or more supplements to Exhibit A (a “Supplemental Notice”) and serving a copy of the Supplemental Notice upon the Notice Parties. The Debtors propose that, as with the Ordinary Course Professionals set forth on

⁴ If, after a hearing, the retention of an Ordinary Course Professional is not approved, such professional may still apply to this Court, pursuant to sections 330 and 331 of the Bankruptcy Code, for compensation for all work performed on behalf of the Debtors from the Petition Date through the date of an order denying such retention.

Exhibit A, each additional Ordinary Course Professional be required to file and serve upon the Court and the Notice Parties a Declaration on the later of: (a) thirty (30) days after the Supplemental Notice is filed; or (b) prior to the date such Ordinary Course Professional provides any services to the Debtors. The Notice Parties then would be given ten (10) days after service of each required Declaration to object to the retention of such professional. Any objection will be handled pursuant to the procedures discussed above. If no objection is submitted, or the objection is withdrawn, the Debtors will be authorized to retain the professional as an Ordinary Course Professional on a final basis without further order of this Court.

Proposed Payment Procedure

18. The Debtors seek authority to pay, without formal application to and order from this Court, one hundred percent (100%) of the fees and expenses of each Ordinary Course Professional upon submission to, and approval by, the Debtors of an appropriate billing statement setting forth in reasonable detail the nature of the postpetition services rendered and expenses actually incurred; provided, however, that such interim fees do not exceed the maximum authority under the authorized caps established herein. Further, the Debtors will not pay any fees and expenses to an Ordinary Course Professional unless (i) the professional has filed its Declaration, (ii) the Objection Period has expired, and (iii) no timely objection is pending. If a timely objection is received, no payment will be made until such objection is (a) resolved and withdrawn, or (b) otherwise approved by the Court.

A. Monthly Payment Caps Proposed By The Debtors.

19. The Debtors propose that they be permitted to pay, without formal application to this Court by any one Ordinary Course Professional, fees not exceeding the monthly cap listed on Exhibit A (each a “Cap” and collectively the “Caps”), as well as all actual expenses, unless otherwise authorized by this Court.

20. If in any given month the fees for any one Ordinary Course Professional exceeds the monthly cap listed on Exhibit A, such Ordinary Course Professional shall be required to apply for approval by the Court of all such Ordinary Course Professional’s fees for such month under sections 330 and 331 of the Bankruptcy Code; provided, however, that such Ordinary Course Professional shall be entitled to an interim payment of up to the Cap, or in the case of a supplemental Ordinary Course Professional, the monthly cap set forth in any Supplemental Notice filed by the Debtors, against the invoices for such month ultimately allowed by the Court.

21. The Debtors propose to except from such monthly limitations any contingent fee amounts received by Ordinary Course Professionals from recoveries realized on the Debtors’ behalf. In other words, the limitations would apply only to direct disbursements by the Debtors.

22. As a routine matter prior to the commencement of these cases, the Debtors carefully reviewed all billing statements received from the Ordinary Course Professionals to ensure that the fees charged were reasonable and that the expenses incurred were necessary.

This type of review will continue postpetition and, coupled with the proposed monthly payment caps, will protect the Debtors' estates against excessive and improper billings.

B. The Debtors Propose To File Periodic Statements Of Payments Made.

23. The Debtors further propose to file a payment summary statement with this Court not more than thirty (30) days after the last day of March, June, September and December of each year these Chapter 11 Cases are pending, or such other period as this Court directs, and to serve such statement upon the Notice Parties. The summary statement will include the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the statement period; and (c) a brief statement of the type of services rendered.

Authority for the Requested Relief

24. Numerous courts, including courts in this district, have routinely granted the same or similar relief to chapter 11 debtors in other chapter 11 cases. See, e.g., In re Mortgage Lenders Network USA, Inc., Case No. 07-10146 (Bankr. D. Del. February 5, 2007); In re Global Home Products LLC, et al., Case No. 06-10340 (Bankr. D. Del. April 10, 2006); In re Pliant Corp., Case No. 06-10001 (Bankr. D. Del. Jan. 4, 2006); In re Nobex Corp., Case No. 05-20050 (Bankr. D. Del. Dec. 22, 2005); In re FLYi, Inc., Case No. 05-20011 (Bankr. D. Del. Dec. 1, 2005); In re Federal Mogul Global, Inc., et al., Case No. 01-10578 (Bankr. D. Del. Oct. 1, 2001); In re Trans World Airlines, Inc., Case No. 01-00056 (Bankr. D. Del. Jan. 26, 2001); In re United Artists Theatre Co., Case No. 00-3514 (Bankr. D. Del. Nov. 14, 2000); In re NRG

Energy, Inc., Case No. 03-13024 (Bankr. S.D.N.Y. May 20, 2003); In re Allegiance Telecom, Inc., Case No. 03-13057 (Bankr. S.D.N.Y. May 15, 2003); In re Conseco, Inc., Case No. 02-B-49672 (Bankr. N.D. Ill. Dec. 17, 2002); In re Worldcom, Inc., Case No. 02-13533 (Bankr. S.D.N.Y. Sep. 4, 2002).

25. The Debtors and their estates will be well served by authorizing the retention of the Ordinary Course Professionals because of such professionals' past relationship with, and understanding of, the Debtors and their operations. It is in the best interest of all of the parties and the creditors to avoid any disruption in the professional services rendered by the Ordinary Course Professionals in the day-to-day operations of the Debtors' businesses.

Notice

26. Notice of this Motion has been or will be given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; (ii) the creditors holding the 20 largest unsecured claims against the Debtors' estates (on a consolidated basis); and (iii) any party which has filed a request for notices with this Court prior to the date of this Motion. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as this Court deems appropriate.

Dated: October 16, 2007

PACHULSKI STANG ZIEHL & JONES LLP



Laura Davis Jones (Bar No. 2436)
James E. O'Neill (Bar No. 4042)
Rachel Lowy Werkheiser (Bar No. 3753)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier No. 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
Email: ljones@pszjlaw.com
joneill@pszjlaw.com
rwerkheiser@pszjlaw.com

and

BERGER SINGERMAN, P.A.
Paul Steven Singerman
Arthur J. Spector
Grace E. Robson
200 South Biscayne Blvd., Suite 1000
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

and

350 E. Las Olas Boulevard, Suite 1000
Fort Lauderdale, FL 33301
Telephone: (954) 525-9900
Facsimile: (954) 523-2872
Email: singerman@bergersingerman.com
aspector@bergersingerman.com
grobson@bergersingerman.com

Co-Counsel for the Debtors and Debtors-in-Possession