

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

**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 SCO Group, Inc. and SCO Operations, Inc. (collectively, "SCO" or the "Debtors"), pursuant to 11 U.S.C. § 327(a), Fed. R. Bankr. P. 2014(a) and 2016, and Del. Bankr. L.R. 2014-1 and 2016-1, file this *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") seeking approval of the employment of the law firm of Berger Singerman, P.A. ("Berger Singerman"), to represent the Debtors as general counsel in this case. In support of this Application, the Debtors rely upon the *Declaration of Darl C. McBride, Chief Financial Officer, In Support of First Day Pleadings* (the "First Day Declaration") and the *Declaration of Arthur J. Spector in Support of 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 the Debtors Nunc Pro Tunc to the Petition Date*, and respectfully represent 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. The address for both Debtors is 355 South 520 West, Lindon, UT 84042.

### **Jurisdiction**

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding. 28 U.S.C. § 157(b)(2)(A).

### **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 operating their businesses and managing their affairs 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 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 Bert B. Young, Chief Financial Officer, in Support of First Day Pleadings* filed contemporaneously herewith and incorporated herein by reference.

### **Relief Requested and Basis Therefor**

8. The Debtors believe that it is in the best interest of the estate to retain Berger Singerman as general counsel in this case. By separate application, the Debtors have also requested that the Court approve the retention of Pachulski Stang Ziehl & Jones LLP (“Pachulski”) as bankruptcy co-counsel. Berger Singerman has discussed with Pachulski a division of responsibility and will make every effort to avoid duplication.

9. The Debtors believe that the attorneys of Berger Singerman are qualified to practice in this Court and are qualified to advise the Debtors on their relations with, and responsibilities to, the creditors and other interested parties.

10. The professional services that Berger Singerman will render include, but are not limited to, the following:

- a. To give advice to the Debtors with respect to its powers and duties as debtors-in-possession and the continued management of their business operations;
- b. To advise the Debtors with respect to their responsibilities in complying with the United States Trustee’s Operating Guidelines and Reporting Requirements and with the rules of the Court;
- c. To prepare motions, pleadings, orders, applications, adversary proceedings, and other legal documents necessary in the administration of these cases;
- d. To protect the interests of the Debtors in all matters pending before the Court; and
- e. To represent the Debtors in negotiations with their creditors and in the preparation of a plan.

### Authority for Relief

11. A debtor-in-possession, with the Court's approval, is permitted to employ one or more attorneys "that do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a).

12. To the best of the Debtors' knowledge, except as disclosed in the *Declaration of Arthur J. Spector in Support of 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 the Debtors Nunc Pro Tunc to the Petition Date* (the "Spector Declaration"), neither Arthur J. Spector ("Spector") nor Berger Singerman has any connection with the creditors or other parties in interest or their respective attorneys. As set forth in the Spector Declaration, to the best knowledge of Spector, neither Spector nor Berger Singerman represents any interest adverse to the Debtors.

13. Attached to this Application is the Spector Declaration containing a verified statement as required under Rule 2014 of the Federal Rules of Bankruptcy Procedure and demonstrating that under these circumstances Spector and Berger Singerman are disinterested as required by Section 327(a) of the Bankruptcy Code.

14. Berger Singerman will apply for compensation and reimbursement of costs, pursuant to Sections 330 and 331 of the Bankruptcy Code, at its ordinary rates, as they may be adjusted from time to time, for services rendered and costs incurred on behalf of the Debtors.

### Notice

15. 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.

WHEREFORE, the Debtors respectfully request entry of an order approving the Debtors' employment of Berger Singerman, P.A. as general counsel to the Debtors in these cases *nunc pro tunc* to the petition date pursuant to the terms set forth herein, and granting the Debtors such other and further relief as this Court deems just and proper.

Dated: September 14, 2007

THE SCO GROUP, INC.

By: Darl C. McBride  
Darl C. McBride  
Chief Executive Officer

SCO OPERATIONS, INC.

By: Darl C. McBride  
Darl C. McBride  
Chief Executive Officer