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.	)	

DEBTORS' MOTION TO APPROVE SETTLEMENT OF CLAIM WITH AMICI, LLC PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019

The above-captioned debtors and debtors in possession (collectively, the "Debtors") by and through their undersigned counsel and pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, hereby move (the "Motion") for entry of an order approving the compromise and settlement (the "Settlement Agreement") between the Debtors and Amici, LLC ("Amici") regarding proof of claim #168 filed by Amici (the "Proof of Claim"). In support of the Motion, the Debtors state as follows:

1. The Debtors filed for bankruptcy protection on September 14, 2007. A claims bar date was set for April 21, 2008. On April 21, 2008, Amici filed the Proof of Claim which asserts an unsecured claim in the amount of $440,011.13 for services invoiced from January 24, 2005 through July 1, 2005.

2. Following good faith, arms-length negotiations, the Debtors and Amici reached an agreement that resolves a potential dispute with respect to the Proof of Claim.

3. The Debtors and Amici have agreed to reduce the amount of the Proof of Claim as set forth in the e-mail exchange between Debtors' general counsel and Amici, a true and correct copy of which is attached hereto as Exhibit A.

[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.

SETTLEMENT AND COMPROMISE

4. The Settlement Agreement resolves all of the disputes between the Debtors and Amici (the "Parties") amicably and without the concomitant significant costs associated with litigating such matters.

5. The essence of the Settlement reached between the Parties is that Amici will agree to reduce its claim from $440,011.13 to $150,000.00. In return, the Debtors agree not to object or otherwise contest Amici's $150,000.00 allowed claim.

LEGAL ANALYSIS

6. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides that, after notice and a hearing, a court may approve a proposed compromise or settlement of a controversy. The settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged and "generally favored in bankruptcy." In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006). See also In re Penn Central Transportation Co., 596 F.2d 1102 (3d Cir. 1979) ("administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims"), quoting In re Protective Committee for Independent Stockholders of TMT Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968).

7. The decision to approve a settlement "is within the sound discretion of the bankruptcy court." World Health Alternatives, 344 B.R. at 296. See also In re Neshaminy Office Building Assocs., 62 B.R. 798, 803 (E.D. Pa. 1986), cited with approval in Meyers v. Martin (In re Martin), 91 F.3d 389 (3d Cir. 1996). The bankruptcy court should not substitute its judgment for that of the debtor. See Neshaminy Office Building, 62 B.R. at 803. The responsibility of the court "is not to decide the numerous questions of law or fact raised . . . but

rather to canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983)(quoting Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972)). See also World Health Alternatives, 344 B.R. at 296 (stating that "the court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.") (internal citations and quotations omitted).

8. In determining the fairness and equity of a compromise in bankruptcy, the United States Court of Appeals for the Third Circuit has stated that it is important that the bankruptcy court "apprise[ ] itself of all facts necessary to form an intelligent and objective opinion of the probabilities of ultimate success should the claims be litigated, and estimated the complexity, expense and likely duration of such litigation, and other factors relevant to a full and fair assessment of the [claims]." In re Penn Central Transportation Co., 596 F.2d 1127, 1153 (3d Cir. 1979). See also In re Marvel Entertainment Group, Inc., 222 B.R. 243 (D. Del. 1998) (quoting In re Louise's Inc., 211 B.R. 798, 801 (D. Del. 1997) (describing "the ultimate inquiry to be whether 'the compromise is fair, reasonable, and in the interest of the estate.'").

9. The Third Circuit has enumerated four factors that should be considered in determining whether a settlement should be approved: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." In re Martin, 91 F.3d at 393. Accord Will v. Northwestern Univ. (In re Nutraquest, Inc.), 434 F.3d 639, 644 (3d Cir. 2006).

10. In passing on proposed settlements, the standard that courts applied under the former Bankruptcy Act is the same standard as courts should apply under the Bankruptcy Code. In re Carla Leather, Inc., 44 B.R. 457, 466 (Bankr. S.D.N.Y. 1984), aff'd, 50 B.R. 764 (S.D.N.Y.

1985). As stated by the Supreme Court in Protective Committee, supra, under the Act, to approve a proposed settlement, a court must have found that the settlement was "fair and equitable" based on an –

> Educated estimate of the complexity, expense, and likely duration of . . . litigation, the possible difficulties of collecting on any judgment which might be obtained and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

390 U.S. at 424. See also In re Justice Oaks II, Ltd., 898 F.2d 1544, 1549 (11th Cir. 1990); In re Lion Capital Group, 49 B.R. 163 (Bankr. S.D. N.Y. 1985); Drexel v. Loomis, 35 F.2d 800 (8th Cir. 1929); Matter of Marshall, 33 B.R. 42 (Bankr. D. Conn. 1983).

11. Applying the foregoing standards, the Debtors believe that the Settlement satisfies that four-part test relating to Rule 9019. The Debtors also believe that based upon the likelihood of success in litigation, and the expense, inconvenience and delay that would be caused by litigating, litigation would not be in the best interests of the estates. Therefore, it is the Debtors' belief, in exercising its business judgment, that after full and careful consideration of the issues and the merits of any litigation, the terms of the Settlement is in the best interests of the estate.

WHEREFORE, the Debtors respectfully request that this Court enter an order: (i) granting the Motion; (ii) approving the Settlement Agreement in the form attached hereto as Exhibit "A; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: June 9, 2009

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