

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re	:	Chapter 11
The SCO GROUP, INC., <i>et al.</i> , ¹	:	Case No. 07-11337 (KG)
Debtors.	:	(Jointly Administered)
	:	Hearing Date: 8/23/10 @ 3:00 p.m. ET
	:	Objection Deadline: 8/16/10 @ 4:00 p.m. ET
	:	

**MOTION OF THE CHAPTER 11 TRUSTEE PURSUANT TO SECTIONS 105 AND
363(b)(1) OF THE BANKRUPTCY CODE FOR AN ORDER AUTHORIZING THE
ENGAGEMENT OF KING & McCLEARY, LLC TO PERFORM
CERTAIN TAX RETURN SERVICES**

Edward N. Cahn, Esq. (the “Chapter 11 Trustee” or “Trustee”), in his capacity as Chapter 11 Trustee for The SCO Group, Inc. and SCO Operations, Inc. (collectively, the “Debtors”), hereby moves (this “Motion”) this Court for entry of an order, pursuant to sections 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”), authorizing the Trustee to engage King & McCleary, LLC (“King & McCleary”) to perform certain tax return preparation services pursuant to the terms of an engagement letter dated as of August 2, 2010 (the “Engagement Letter”). A copy of the proposed Engagement Letter is attached hereto as “**Exhibit A.**” In support of this Motion, the Trustee respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these proceedings and this Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C.

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.

§ 157(b)(2). The statutory predicates for the relief sought herein are sections 105 and 363(b)(1) of the Bankruptcy Code.²

Background

2. On September 14, 2007 (the “Petition Date”), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases are being jointly administered.

3. On August 25, 2009 this Court approved the appointment of Edward N. Cahn, Esquire as Chapter 11 trustee in these cases [Docket No. 900]. No official committee of unsecured creditors has been appointed to date. The Trustee has been performing his duties and operating the Debtors as authorized by Bankruptcy Code sections 1106 and 1108.

4. The Trustee seeks to engage King & McCleary pursuant to the terms of the Engagement Letter, for the express and limited purpose of preparing The SCO Group, Inc.’s consolidated federal and state tax returns for the years 2008 and 2009 (the “Tax Services”).

Relief Requested

5. The Trustee seeks Court approval, pursuant to Bankruptcy Code sections 105 and 363(b)(1), to engage King & McCleary for purposes of providing the Tax Services as more fully set forth in the Engagement Letter.

Basis for Relief

6. Bankruptcy Code section 363(b)(1) provides in pertinent part that “[t]he trustee, after notice and a hearing, may use...other than in the ordinary course of business, property of the estate[.]” 11 U.S.C. § 363(b)(1). Further, Bankruptcy Code section 105(a)

² A motion seeking the relief requested herein may not be necessary since, arguably, the preparation of tax returns would be in the ordinary course of the Debtors’ business. *See* 11 U.S.C. §363(c)(1). Out of an abundance of caution, as deemed necessary, the Trustee hereby seeks relief under Bankruptcy Code sections 105 and 363(b).

provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

7. Based upon the status of these chapter 11 cases and the state of the Debtors’ businesses, the Trustee believes that the engagement of King & McCleary is necessary in order to bring the Debtors into compliance with applicable non-bankruptcy law. Specifically, the Trustee does not believe that the Debtors have the necessary staff to perform the Tax Services internally.³

8. As set forth in the Engagement Letter, King & McCleary will prepare consolidated federal and state tax returns for 2008 and 2009 and will charge the Debtors’ estates \$15,000 for each of those years. Therefore, in the aggregate, King & McCleary will charge these estates \$30,000, plus out-of-pocket expenses related to the Tax Services. The Debtors’ retention of King & McCleary will likely result in a 50% reduction in fees previously paid by the Debtors’ estates for the Tax Services.

9. Because the Tax Services are necessary, and the costs incurred by the Debtors’ estates in connection therewith are reasonable, the Trustee respectfully requests that this Court authorize the Trustee to engage King & McCleary for the express and limited purpose of providing the Tax Services.

10. No previous request for the relief sought in this Motion has been made to this Court.

³ Indeed, the Debtors previously retained an outside accounting firm, Tanner LC, to perform similar tax related services for prior years in these cases.

Notice

11. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; and (b) all parties that have requested notice pursuant to Bankruptcy Rule 2002. The Trustee submits that no other or further notice need be provided.

WHEREFORE, the Trustee respectfully requests entry of an order in substantially the form attached hereto: (i) authorizing the Trustee to engage King & McCleary pursuant to the terms of the Engagement Letter and (ii) granting the Trustee such other and further relief as this Court may deem just, proper and necessary.

Dated: August 9, 2010

BLANK ROME LLP

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