

**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. :
: **Hearing Date: September 24, 2010 at 9:30 a.m. ET**
: **Objection Deadline: August 31, 2010 at 4:00 p.m.**

**MOTION OF THE CHAPTER 11 TRUSTEE TO APPROVE THE FURTHER
EXPANSION OF THE SCOPE OF RETENTION OF TANNER LC TO AUDIT
THE DEBTORS' 401(K) PLAN FOR THE YEAR ENDED DECEMBER 31,
2009 IN ACCORDANCE WITH ERISA RULES AND REGULATIONS FOR
THE DEBTORS *NUNC PRO TUNC* TO MARCH 31, 2010**

Edward N. Cahn, Esq. (the “**Chapter 11 Trustee**” or “**Trustee**”), in his capacity as Chapter 11 Trustee for The SCO Group, Inc. (“**SCO Group**”) and SCO Operations, Inc. (“**SCO Operations**,” and together with SCO Group, the “**Debtors**”), hereby moves (this “**Motion**”) this Court for entry of an order, pursuant to sections 327(a) and 328 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), approving the expansion of the scope of retention and employment of Tanner LC (“**Tanner**”), as accountants for the Debtors’ estates *nunc pro tunc* to March 31, 2010 to audit the Debtors’ 401(k) plan for the year ended December 31, 2009 in accordance with ERISA rules and regulations. In support of this Motion, the Trustee respectfully represents as follows:

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.

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. § 157(b)(2). The statutory predicates for the relief sought herein are Bankruptcy Code sections 327(a) and 328, Bankruptcy Rules 2014(a), 2016 and 5002.

Background

Chapter 11 Cases

2. On September 14, 2007 (the “**Petition Date**”), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (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.

Tanner Retention

4. On December 5, 2007, this Court entered its Order authorizing the Debtors to retain Tanner as accountants to (i) perform an audit of the Debtors’ consolidated financial statements for their fiscal year ending October 31, 2007 and (ii) assist the Debtors’ review of their financial statements for information to be included in SCO Group’s 10-Q’s to be filed with the Securities and Exchange Commission for the fiscal quarters ending January 31, 2008, April 30, 2008 and July 31, 2008 [Docket No. 259] (the “**First Retention Order**”). In support of Tanner’s retention, the Debtors submitted the declaration of Kent M. Bowman (the “Bowman

Declaration”). Tanner represents that the Bowman Declaration remains accurate as of the date of this filing.

5. On February 5, 2008, this Court entered its Order extending the Debtors’ retention of Tanner to include the preparation of the Debtors’ consolidated federal and state income tax returns for the fiscal year ending as of October 31, 2007 [Docket No. 330] (the “**Second Retention Order**”).

6. On June 9, 2008, this Court entered its Order extending the Debtors’ retention of Tanner to include the audit of the Debtors’ 401(k) plan for the year ended December 31, 2007 [Docket No. 488] (the “**Third Retention Order**”).

7. On November 20, 2008, this Court entered its Order extending the Debtors’ retention of Tanner to include an audit of the Debtors’ consolidated financial statements for the fiscal year ending as of October 31, 2008, as well as quarterly financial statements for fiscal year 2009 [Docket No. 614] (the “**Fourth Retention Order**”).

8. On January 28, 2009, this Court entered its Order extending the scope of Tanner’s retention to include the preparation of consolidated federal income and state income tax returns for the SCO Group and stand-alone state income tax returns for SCO Operations, each for the fiscal year ending as of October 31, 2008 for the Debtors [Docket No. 678] (the “**Fifth Retention Order**”).

9. On October 23, 2009, this Court entered its Order extending the scope of Tanner’s retention to include the audit of the Debtors’ 401(k) plan for the year ended December 31, 2008 [Docket No. 938] (the “**Sixth Retention Order**”).

10. On or about March 31, 2010, the Debtors executed an engagement letter (the “Engagement Letter”), subject to this Court’s approval, to further extend the scope of

Tanner's retention to include the audit of the Debtors' 401(k) plan for the year ended December 31, 2009 (the "Services"). The Engagement Letter is attached hereto as Exhibit "A".

Relief Requested

11. By this Motion, the Trustee requests this Court's approval of the extension of the scope of Tanner's employment as accountants for the Debtors' estates *nunc pro tunc* to March 31, 2010 to include the Services in accordance with the Engagement Letter.

12. Tanner's requested compensation for the Services rendered to the Debtors' estates includes an estimated \$12,500, based upon individual hourly rates, plus travel and out-of-pocket expenses such as, but not be limited to, travel, photocopying, delivery service, postage, and vendor charges incurred in providing the Services.

13. The Debtors' 401(k) plan expressly provides that the expenses of administering such plan and the compensation of all employees, agents, or counsel of such plan's administrator, including accounting fees, shall be paid by such plan or by the Debtors if the Debtors elect to do so. (Debtors 401(k) Plan, Section 9.1). It is contemplated that upon entry of this Court's order approving the expanded retention of Tanner, approximately \$5,000 of Tanner's fees shall be paid from Debtors' 401(k) Plan pursuant to Section 9.1 thereof. Any remaining amount will be paid out of the Debtors estates' subject to paragraph 21 below.

14. Tanner intends to apply to the Court for the allowance of compensation for professional services rendered and reimbursement of expenses incurred in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules. Tanner has agreed to accept as compensation such sums as may be allowed by the Court. Tanner understands that interim and final fee awards are subject to approval by this Court.

15. As reflected in the Bowman Declaration attached to the First Tanner Application, and as confirmed by the Trustee's inquiry of Tanner, Tanner is not a prepetition creditor of the Debtors' estates.

16. The Trustee has been advised by the Debtors that Tanner is qualified to perform the services described herein and in the Bowman Declaration previously filed with the Court, and that the expansion of the scope of Tanner's retention is necessary in order to comply with non-bankruptcy law.

Authority for Relief

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

18. To the best of the Trustee's knowledge and based upon the Bowman Declaration and the Trustee's inquiry related thereto, Tanner is a "disinterested person" as that term is defined in Bankruptcy Code section 101(14).

19. To the best of the Trustee's knowledge and based upon the Bowman Declaration, (i) Tanner does not hold or represent any interest adverse to the estates and that Tanner is "disinterested" as that term is defined in 11 U.S.C. § 101(14); and (ii) the Tanner professionals working on this matter do not have any connection with the creditors, other parties-in-interest or their respective attorneys, the United States Trustee of the District of Delaware or of any known employee in the office thereof, or any United States Bankruptcy Judge of the District of Delaware.

20. Tanner has represented that it has not provided, and will not provide, any professional services to any of the creditors, other parties-in-interest, or their respective attorneys or accountants with regard to any matter related to these chapter 11 cases.

21. Tanner will apply for compensation and reimbursement of costs, pursuant to Bankruptcy Code sections 330 and 331 for services rendered and costs incurred on behalf of the Debtors consistent with the terms of the Engagement Letter.

Notice

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

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

WHEREFORE, the Trustee respectfully requests that the Court enter an order, substantially in the form attached hereto, (i) granting this Motion, (ii) approving the expanded scope of Tanner's retention and employment as accountants for the Debtors' estates to perform the services described herein in accordance with the Engagement Letter *nunc pro tunc* to March 31, 2010, and (iii) granting such other and further relief as is just, proper and necessary.

Dated: August 13, 2010

BLANK ROME LLP

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