

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DEBTORS' APPLICATION, PURSUANT TO 11 U.S.C. §§ 327(e), 328 AND 330, FOR APPROVAL OF EMPLOYMENT OF DORSEY & WHITNEY, LLP, AS SPECIAL COUNSEL TO THE DEBTORS *NUNC PRO TUNC* TO PETITION DATE

The above-captioned Debtors (collectively, the “Debtors”), move this Court, pursuant to 11 U.S.C. §§ 327(e), 328 and 330, for the entry of an order approving the Debtors’ employment of the law firm of Dorsey & Whitney, LLP (“Dorsey”), *nunc pro tunc* to Petition Date (as defined below), to serve as special corporate and securities counsel to the Debtors (the “Application”). The Debtors rely upon the *Declaration of Nolan S. Taylor in Support of Debtors’ Application, Pursuant to 11 U.S.C. § 327(e), 328 and 330, for Approval of Employment of Dorsey & Whitney, LLP as Special Counsel to the Debtors Nunc Pro Tunc to the Petition Date* (the “Declaration”), attached hereto as Exhibit A, and respectfully represent the following:

Jurisdiction

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

¹ The last four digits of the taxpayer identification number for The SCO Group, Inc. is 2823. The last four digits of the taxpayer identification number for SCO Operations, Inc. is 7393. The address for both Debtors is 355 South 520 West, Lindon, Utah 84042.
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Background

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

3. The Debtors have continued in the possession of their property and have continued to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. Parties 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.

Relief Requested and Basis Therefor

5. The Debtors believe that it is in the best interest of their estates to retain Dorsey, as special counsel in these cases.

6. For over four years prior to the filing of these cases, Dorsey represented the Debtors as general outside corporate counsel in a variety of capacities on numerous matters. More specifically, Dorsey provided services and advice in connection with general corporate transactional and finance, corporate governance, securities and regulatory matters, labor and employment, employee benefits, litigation, and intellectual property.

7. Dorsey will provide the following services, among others, to the Debtors:
 - a. To advise and counsel the Debtors with respect to their responsibilities in complying with the requirements of regulatory authorities and general corporate matters;
 - b. To give advice with respect to continued compliance with securities matters, specifically with respect to the Debtors' continued compliance with the Securities Act of 1933 and the Securities and Exchange Act of 1934, including, without limitation, the preparation and filing of quarterly and annual reports required by federal law that will be necessary during the pendency of these cases;
 - c. To give advice with respect to general corporate governance, transactional, finance, labor and employment, and other related general outside counsel matters; and
 - d. To assist lead bankruptcy counsel as may be needed to protect the interests of these estates in all matters pending before the Court.

8. The Debtors believe the employment of Dorsey is necessary and in the best interest of the Debtors' estates.

9. Dorsey has represented the Debtors for a significant period of time prior to the Petition Date in connection with general outside counsel matters, including corporate, securities and regulatory, labor and employment, litigation, and intellectual property matters. As a result, Dorsey is intimately familiar with the facts, law, parties and counsel involved in these matters, and has already devoted numerous hours in addressing these issues. In addition, Dorsey has extensive experience and knowledge in these fields and is well qualified to advise the Debtors. Dorsey's familiarity and experience in these particular matters are invaluable to the Debtors in their reorganization efforts. Furthermore, Dorsey was part of a team of law firms that represented the Debtors in connection with certain litigation and intellectual property matters that represent a significant asset of these estates. Accordingly, it was natural that the Debtors

requested Dorsey to continue to act as special counsel to the Debtors in connection with these matters.

10. To the best of the Debtors' knowledge, and except as may be disclosed in the accompanying Declaration, which is attached hereto as Exhibit A, Dorsey does not have any connection with the Debtors, their creditors or any other party in interest, or their respective attorneys, accountants and other professional persons, the United States Trustee or any person employed by the office of the United States Trustee.

11. As set forth more fully in the Declaration, Dorsey had unbilled fees and expenses owed by the Debtors totaling \$53,128.46 (the "Unbilled Claim") and other expenses already billed to the Debtors totaling \$1,622.39 (the "Unpaid Claim"). Prior to the Petition Date, Dorsey received a retainer of \$100,000.00 (the "Retainer") to secure its prepetition services and expenses. Due to the speed of events that occurred in the days prior to the Petition Date, Dorsey apparently was unable to issue an invoice for the Unbilled Claim and apply such invoice against the Retainer. Accordingly, Dorsey has requested and the Debtors hereby seek the authority to apply the Unbilled Claim against the Retainer and then apply the remainder of the Retainer against the first fees and expenses approved for payment pursuant to the orders of this Court relating to the allowance and payment of professional fees. With respect to the expenses owed under the Unpaid Claim, Dorsey has agreed to waive any right to receive a distribution under such claim. The Unbilled Claim and Unpaid Claim are interests which are not adverse to the Debtors, or to the estates with respect to the matters on which Dorsey is to be employed.

12. Subject to this Court's approval, and in accordance with applicable bankruptcy law, the Debtors desire to employ Dorsey at its standard hourly rate in effect at the time the services are rendered and shall be reimbursed for its cash disbursements and for such reasonable and necessary expenses as the firm customarily billed the Debtors, including the payment of certain experts or consultants hired in connection with such services.

13. Dorsey has agreed to work cooperatively with the Debtors' professionals to avoid duplicative and/or competing efforts and to support the Debtors' professionals as may be needed and requested given Dorsey's historical knowledge of the company.

14. This Court may approve the Debtors' employment of an attorney for a specific purpose, other than to represent the trustee in conducting the case, if in the best interest of their estates, and if such attorney does not represent or hold any interest adverse to the Debtors or to their estates with respect to the matter on which such attorney is to be employed. 11 U.S.C. § 327(e). In addition, this Court may authorize any reasonable compensation arrangements for such professionals, including contingency compensation arrangements. 11 U.S.C. § 328(a).

15. Except as set forth in the Declaration, and to the best of the Debtors' knowledge, the members and professionals of Dorsey do not represent or hold any interest adverse to the Debtors or their estates with respect to the matter on which it is to be employed nor does it hold an interest adverse to the estates.

16. It is therefore respectfully submitted that the retention of Dorsey is in the best interest of the Debtors, their estates and creditors.

17. No prior request to employ Dorsey or other special corporate and securities counsel has been made to this or any other court.

Notice

18. Notice of this Application 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.

WHEREFORE, the Debtors respectfully request the entry of an Order approving the Debtors' employment of Dorsey as special counsel to the Debtors, *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: October __, 2007

Respectfully submitted,

THE SCO GROUP, INC.

By: 
Darl C. McBride
Chief Executive Officer

SCO OPERATIONS, INC.

By: 
Darl C. McBride
Chief Executive Officer