

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. ) Related Docket No. \_\_\_\_\_

**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT, (B) ESTABLISHING  
SALE AND BIDDING PROCEDURES, AND (C) APPROVING THE FORM AND  
MANNER OF NOTICE OF SALE**

The Court having considered the *Emergency Motion Of The Debtors For An Order (A) Approving Asset Purchase Agreement, (B) Establishing Sale And Bidding Procedures, And (C) Approving The Form And Manner Of Notice Of Sale* (the "Motion") filed by the debtors in possession (collectively, the "Debtors"), any responsive pleadings filed in connection with the Motion, the record and representations of counsel at the November 6, 2007 hearing on the Motion; and the Court having determined that notice of the Motion was adequate and sufficient under the circumstances; and after due deliberation and sufficient cause appearing therefore; does ORDER as follows:

A. The Motion is GRANTED as follows:

1. On December 5, 2007 at 10:00 a.m. Eastern Time, the court will conduct a hearing to consider the motion (the "Sale Motion") to approve the Sale<sup>2</sup> of the Transferred Assets to the Successful Bidder. If necessary, an auction (the "Auction") to determine the

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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.

<sup>2</sup> Capitalized terms not otherwise defined shall have the meanings ascribed in the Motion.

Successful Bidder for the Transferred Assets will be held at the law offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market St., 17th Floor, Wilmington, Delaware one day prior to the Sale Hearing (i.e., December 4, 2007 at 10:00 a.m. Eastern Time).

2. The form of Asset Purchase Agreement (“APA”) (D.E. # \_\_\_ ) between the Debtors and York Capital Management (the “Proposed Purchaser”) is approved.

3. Upon execution of a confidentiality agreement, any party (other than the Proposed Purchaser) that wishes to conduct due diligence on the Debtors or their assets may be granted access to all material information that has been or will be provided to the Proposed Purchaser and other bidders.

4. If one or more Qualified Bids have been received by the Bid Deadline (defined below), the Debtors shall conduct the Auction. To qualify as a qualified bidder (“Qualified Bidder”), each prospective bidder must, no later than five business days before the Sale Hearing (the “Bid Deadline”):

- (a) Submit to the Debtors an irrevocable offer in the form of an executed asset purchase agreement (the “Modified Agreement”) without financing or due diligence contingencies, at a price that is greater than or equal to the Minimum Initial Overbid (as defined below), and on terms no less favorable than those contained in the APA. The Qualified Bidder shall also submit a marked Modified Agreement reflecting the variations the Qualified Bidder proposes to make from the APA executed by the Proposed Purchaser.
- (b) Make a good faith cash deposit in the form of a cashier's check or wire transfer into an interest bearing escrow account (the “Escrow Account”) maintained by the Debtors' counsel in an amount not less than \$1,800,000 (the same deposit posted by Proposed Purchaser), which deposit shall immediately become non-refundable and credited toward the purchase price if and when the Qualified Bidder making such deposit is declared to be the successful bidder (the “Successful Bid” and “Successful Bidder”) at the Sale Hearing.
- (c) Provide reasonably satisfactory evidence of its financial ability to (i) fully and timely perform if it is declared to be the Successful Bidder (including but not limited to adequate financial resources or financing commitments to pay the

Purchase Price and fund the Litigation Credit Facility in full), and (ii) provide adequate assurance of future performance of all contracts and leases to be assigned to it.

- (d) Disclose any connections or agreements with the Debtors, the Proposed Purchaser, any other potential, prospective bidder or Qualified Bidder, and/or any officer, director or equity security holder of the Debtors or Proposed Purchaser.
- (e) Confirm in writing its agreement to accept and abide by the terms, conditions and procedures set forth in the Bid Procedures Order.
- (f) If one or more Qualified Bidders submit a bid for the Transferred Assets, the following rules (the "Overbid Procedures") shall apply: any competing bid shall be comprised of an aggregate consideration package for the Debtors that exceeds the Proposed Purchaser's aggregate consideration of up to \$36 million by at least \$1,630,000 in cash, plus: either (A) the assumption (or payment) of the Assumed Liabilities or (B) in the event that not all of the Assumed Liabilities are assumed (or paid), cash that results in a recovery to the estates (x) greater than or (y) equal to the recovery that would have resulted had all of the Assumed Liabilities been assumed (or paid), as may be determined by the Debtors, in their reasonable discretion, in consultation with any official committee (if appointed).

(the foregoing shall be collectively referred to as the "Minimum Initial Overbid").

- (g) Each subsequent bid shall be in increments of at least \$100,000 in cash ("Bid Increments").
- (h) The Qualified Bidder making the bid that is selected as the highest and best bid by the Debtors shall be considered the Successful Bidder and the Qualified Bidder that is selected as the second highest and best bid by the Debtors shall be considered the "Back-Up Bidder." The Debtors shall inform each of the Qualified Bidders of the decision regarding the identity of the Successful Bidder and the Back-Up Bidder after the conclusion of the Auction.
- (i) If a party other than the Proposed Purchaser is the Successful Bidder at the Auction, all counterparties to executory contracts and/or unexpired leases (the "Executory Contracts") which the Debtors intend to assume and assign to the Successful Bidder will be served no later than five (5) business days after the Auction with a notice of the winning bid, including sufficient information for the counterparty to evaluate the proposed assignee's ability to comply with § 365 of the Bankruptcy Code (the "Post-Auction Notice"). A counterparty to such an executory contract who receives a Post-Action Notice may file and serve an objection to such assumption and assignment of the particular Executory Contract based solely on adequate assurance of future performance grounds until December 17, 2007. If no objection is timely filed, the Court may approve the assumption and assignment of the Executory Contracts without a hearing. If a timely objection is properly filed and served, a hearing shall be held before the

Court on December \_\_\_\_\_, 2007 at \_\_\_\_\_ .m. The Successful Bidder cannot impose additional costs upon the Debtors (or reduce the Purchase Price on account of) changes in the list of Executory Contracts being assumed and assigned to the Successful Bidder as compared to the list of Designated Contracts selected by the Proposed Purchaser.

- (j) The Successful Bidder shall close on the transaction on a date no later than the following: (a) December 31, 2007; (b) the date when the Order approving the Sale of the Transferred Assets becomes a final order, as to which no stay pending appeal has been sought or obtained on or before the Closing; or (c) entry of the Sale Order if such Sale Order contains a waiver of the 10-day stay. All sale proceeds shall be paid in U.S. funds and shall be by cashier's check payable (or wire transfer of immediately available funds) to "Berger Singerman Trust Account." The Debtors are authorized to accept the second highest bid as a back-up bid (the "Backup Bid") to the Successful Bidder's bid and shall be permitted to close on the Backup Bid in the event that the Successful Bidder does not timely close.
- (k) Qualified Bids submitted on or before the Bid Deadline, or as increased by a bidder at the Auction, shall remain open and irrevocable until the Debtors provide the Backup Bidder written notice of the Closing with the Successful Bidder. The Backup Bid shall remain open and irrevocable until the Successful Bidder closes on the Sale of the Transferred Assets. If the Successful Bidder does not close on the Sale, the Backup Bidder shall close on the Backup Bid within 5 business days after the Debtors provide written notice of the failure of the Successful Bidder to close. Acceptance of a Qualified Bid shall, in all respects, be subject to the entry of an Order by the Court that, among other things, approves the Sale to the Successful Bidder (or the Backup Bidder if the Successful Bidder fails to close) and authorizes the Debtors to consummate the sale of the Assets to the Successful Bidder (or the Backup Bidder if the Successful Bidder fails to close). The failure of the Successful Bidder or Backup Bidder to close the transaction as required shall result in the forfeiture of the Deposit as liquidated damages.

5. Within fifteen (15) business days after the entry by the Bankruptcy Court of an order approving the Sale, any deposits submitted by Qualified Bidders who are not the Successful Bidder or the Backup Bidder shall be returned, except those deposits of Qualified Bidders that forfeit their deposit pursuant to these Bidding Procedures.

6. The Debtors are authorized to reimburse up to \$50,000 of Proposed Purchaser's fees and expenses (including, without limitation, legal costs and fees) incurred or to

be incurred in connection with the consummation of the Sale (the “Guaranteed Expense Reimbursement”).

7. If either: (a) Proposed Purchaser is not the Successful Bidder, or (b) the Transferred Assets are transferred by the Debtors to any party other than Proposed Purchaser (whether pursuant to the Auction or otherwise), then Proposed Purchaser shall receive from Seller: (i) a cash breakup fee in the amount of \$780,000 (the “Breakup Fee”), and (b) reimbursement of all expenses incurred by Purchaser, in an amount up to \$300,000 (the “Alternative Transaction Expense Reimbursement”),<sup>3</sup> in both cases payable upon the earlier of consummation of a subsequent transaction to a party other than Proposed Purchaser or the entry of a final, non-appealable order confirming a Chapter 11 plan (an “Alternative Transaction”). In addition, without duplication, if the APA is terminated other than as a result of a material breach by Purchaser or the failure to be satisfied of a condition precedent to closing that is not caused by the material breach of Seller, and Seller is not obligated to pay the Breakup Fee, then Seller will nevertheless be obligated to pay the Alternative Transaction Expense Reimbursement to Purchaser up to a maximum of \$300,000. The Guaranteed Expense Reimbursement, Breakup Fee, and Alternative Transaction Expense Reimbursement<sup>4</sup> shall be treated as superpriority administrative expenses under 11 U.S.C. §§ 503 and 507(a) and paid in cash immediately when due or through the closing of an Alternative Transaction or when otherwise due and payable under the APA.

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<sup>3</sup> This amount includes the \$50,000 Guaranteed Expense Reimbursement.

<sup>4</sup> See footnote 3, *supra*.

8. Notice of the Bid Procedures and Auction shall be deemed adequate and sufficient if:

- (a) Within five business days of the entry of the this Order, the Debtors (or their agent) shall serve by first class mail, postage prepaid, copies of the: (i) Bid Procedures Order and (ii) Sale Notice, including the date, time and place of the Auction, and the time fixed for filing of objections to the Sale, upon the following entities (collectively, the "Notice Parties"):
  - i. the United States trustee;
  - ii. all creditors entitled to receive notice under Bankruptcy Rule 2002;
  - iii. all taxing authorities who have filed claims or are listed in the Debtors' schedules;
  - iv. counsel to any official committees appointed by the United States trustee;
  - v. all parties that have requested special notice pursuant to Bankruptcy Rule 2002;
  - vi. all persons or entities known to the Debtors that have asserted a lien on, or security interest in, all or any portion of the Transferred Assets; and
  - vii. all potential bidders known to the Debtors.
- (b) Within five business days of the entry of this Order, the Debtors or their authorized agent shall cause to be published a notice, substantially in the form of the Sale Notice, in the national editions of the Wall Street Journal and/or the New York Times and such other publications as the Debtors and its advisors determine will promote the marketing and sale of the Assets to other interested parties whose identities are unknown to the Debtors.
- (c) The Debtors file affidavits of service and publication of the Sale Notice prior to the Sale Hearing.

B. Provided that one or more Qualified Bids are received prior to the deadline to submit competing bids, the Debtors may thereafter establish such modified or additional bid procedures as the Debtors deem appropriate based on the circumstances; provided that such modifications and additions shall not be materially inconsistent with the Bid Procedures contained herein. The Debtors may seek adjournment of the Sale Hearing without further notice.

The Debtor shall file with the Bankruptcy Court notice of adjournment with respect to any such adjournment.

C. This Order is effective immediately upon its entry and the ten-day stay under Fed.

R. Bankr. P. 6004(h) is not applicable.

D. The Court reserves jurisdiction to interpret, enforce and implement this Order.

Dated: November \_\_\_\_, 2007

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The Honorable Kevin Gross  
United States Bankruptcy Judge