

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
The SCO GROUP, INC., <u>et al.</u> , ¹)	Case No. 07-11337 (KG)
)	(Jointly Administered)
)	
Debtors.)	Related Docket No. 74

**ORDER APPROVING THE EMPLOYMENT OF MESIROW FINANCIAL
CONSULTING, LLC AS FINANCIAL ADVISORS TO THE DEBTORS**

Upon the application of the debtors-in-possession in the above-referenced Chapter 11 cases (the "Debtors"),² for entry of an order, pursuant to sections 327(a), 328 and 1107(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532, Rules 2014 and 5002 of the Federal Rules of Bankruptcy Procedure, approving the retention and employment of Mesirow Financial Consulting, LLC ("MFC") as financial advisor to the Debtors and upon the Affidavit of James Feltman and the Supplemental Affidavit of Stephen B. Darr; and the Court being satisfied, based upon the representations made in the Application and the Feltman Affidavit, that MFC represents no interest adverse to the Debtors' estates or their creditors with respect to the matters upon which they are to be engaged, that it is disinterested as that term is defined under section 101(14) of the Bankruptcy Code as modified by section 1107(b) of the Bankruptcy Code, and that its employment is necessary and in the best interests of the Debtors' estates and their creditors; and it appearing that proper and adequate notice has been given and that no other or further notice is

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.

² Capitalized terms not identified herein shall have the meaning ascribed to them in the Application.

necessary; and after due deliberation thereon, and good and sufficient cause appearing therefore, it is hereby

ORDERED that the Debtors' application (as modified in this Order) is granted and approved in all respects *nunc pro tunc* to September 14, 2007; and it is further

ORDERED that pursuant to sections 327(a), 328 and 1107(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 5002, the Debtors are hereby authorized to employ MFC as their financial advisors and MFC's employment and retention is hereby approved, in accordance with the terms of the Engagement Letter, including the Standard Terms and Conditions for Advisory Services (collectively, the "Engagement Letter"), as modified herein, and the Application, to perform those services set forth in the Application and the Engagement Letter; and it is further

ORDERED that the Debtors' advance payment retainer in the amount of \$35,000 (the "Retainer") shall be held by MFC and applied against postpetition fees and expenses, to the extent allowed by further Order of this Court; and it is further

ORDERED that notwithstanding anything to the contrary contained in the Application or the Engagement Letter, MFC shall be compensated in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code and such Bankruptcy Rules and Local Bankruptcy Rules as may then be applicable, from time to time, and such procedures as may be fixed by order of this Court; and it is further

ORDERED that the Paragraph 6 of the Standard Terms and Conditions ("Limitation of Damages") shall be deemed deleted in its entirety; and it is further

ORDERED that the indemnification provisions of the Engagement Letter are approved subject to the following:

a. subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify, and shall indemnify MFC, in accordance with the Engagement Letter for any claim arising from, related to, or in connection with the work that MFC is engaged to perform under the Engagement Letter (the "Services"), but not for any claim arising from, related to, or in connection with MFC's postpetition performance of any services, other than the Services, unless such other postpetition services and indemnification thereof are approved by the Court;

b. notwithstanding any provisions of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify MFC, or to provide contribution or reimbursement to MFC, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen solely from MFC's gross negligence, willful misconduct, or breach of the Engagement Letter, (ii) settled prior to a judicial determination as to MFC's gross negligence, willful misconduct or breach of the Engagement Letter, but determined by the Court, after notice and a hearing, to be a claim or expense for which MFC should not receive indemnity, contribution or reimbursement under terms of the Engagement Letter as modified; and

c. if, before the earlier of (i) the entry of an order confirming a plan under chapter 11 of the Bankruptcy Code (that Order having become a final order no longer subject to appeal), or (ii) the entry of an order closing this chapter 11 case, MFC believes that it


is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter (as modified by this Order), including without limitation the advancement of defense costs, MFC must file an application thereof in this Court, and the Debtors may not pay any such amounts to MFC from the Debtors' estates before the entry of an order by this Court approving the payment. This subparagraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by MFC for indemnification, contribution or reimbursement and is not a provision limiting the duration of the Debtors' obligation to indemnify MFC; and it is further

ORDERED that notwithstanding anything to the contrary set forth in the Application or the Engagement Letter, including, without limitation, Paragraph 14 of the Standard Terms and Conditions ("Assignment"), to the extent that MFC uses subcontractors for this engagement, such subcontractors shall file affidavits disclosing their connections as required by Bankruptcy Rule 2014(a); and it is further

ORDERED that notwithstanding anything to the contrary set forth in the Application or the Engagement Letter, including without limitation, Paragraph 17 of the Standard Terms and Conditions ("Arbitration"), the Bankruptcy Court shall retain jurisdiction over disputes relating to MFC's retention in these cases; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the interpretation or implementation of this Order.

Dated: November 6, 2007


The Honorable Kevin Gross
UNITED STATES BANKRUPTCY JUDGE