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.	)	

Objection Deadline: November 28, 2007 at 4:00 p.m. (prevailing Eastern time)
Hearing: December 5, 2007 at 10:00 a.m. (prevailing Eastern time)

MOTION FOR APPROVAL OF COMPROMISE OF INCIPIENT CONTROVERSY

The above captioned Debtors seek approval of a compromise in settlement of a potential controversy between the Debtor, The SCO Group, Inc. ("Debtor") and one of its wholly-owned subsidiaries, Cattleback Intellectual Property Holdings, Inc. In support of this motion (the "Motion"), the Debtor states:

Jurisdiction and Background

1. The Court has jurisdiction over the matters subject of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The procedural predicates for the relief sought herein is Rule 9019 of the Federal Rules of Bankruptcy Procedure.

2. On September 14, 2007 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

[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.

3. For greater detail regarding the background of the Debtors' business and events leading up to the filing of these cases, the Debtors refer the Court and parties 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.

4. In June, 2007, the Debtor decided to sell U.S. Patent No. US 6,529,784 titled "Method and Apparatus for Monitoring Computer Systems and Alerting Users of Actual or Potential System Errors." On June 29, 2007, the Debtor retained a professional intellectual property marketing firm, Ocean Tomo, LLC, to help it market the patent.

5. Ocean Tomo recommended that the Debtor set up a separate company to hold and market the patent, which advice the Debtor followed.

6. Accordingly, on July 17, 2007, the Debtor formed a wholly-owned subsidiary which it called Cattleback Intellectual Property Holdings, Inc.

7. The Debtor then assigned the patent to Cattleback on July 18, 2007.

8. Inasmuch as Cattleback was always a wholly-owned subsidiary of the Debtor, it paid no consideration for the transfer.

9. Ocean Tomo marketed the patent to almost 200 companies during August, 2007, with several companies showing interest and doing due diligence.

10. From September 7 – 12, Ocean Tomo received six bids for the patent.

11. Ultimately, Ocean Tomo and Cattleback settled upon a buyer for $570,000.

12. In the meantime, while marketing efforts were underway, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code.

The Settlement

13. Creditors could argue that a transfer for no consideration made by a chapter 11 debtor shortly before its entry into chapter 11 should be avoided as a fraudulent transfer. In lieu of filing a lawsuit against its wholly-owned subsidiary, the Debtor has agreed to the following resolution of the incipient dispute.

14. Cattleback will pay to the Debtor 100% of the net proceeds of its sale of the patent and will assume any obligations, if any, incurred by the Debtor for the development and marketing of the patent.

15. The Debtor is obligated under a marketing agreement to pay Ocean Tomo $60,500 as the balance of its fee for finding a buyer for the patent. In addition, the Debtor is obligated to the inventor of the product and to several employees for bonuses approved by the Debtor pre-petition in the aggregate amount of $45,000. These expenses will be paid by Cattleback and the balance of the sale proceeds ($464,500) will be turned over to the Debtor in full and final satisfaction of any claims that the Debtor may have against it.

Standards For Approval Of Compromises

16. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides that, after notice and a hearing, a court may approve a proposed compromise or settlement of a controversy. The settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged and "generally favored in bankruptcy." In re World Health

Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006). See also In re Penn Central Transportation Co., 596 F.2d 1102 (3d Cir. 1979) ("administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims"), quoting In re Protective Committee for Independent Stockholders of TMT Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968).

17. The decision to approve a settlement "is within the sound discretion of the bankruptcy court." World Health Alternatives, 344 B.R. at 296. See also In re Neshaminy Office Building Assocs., 62 B.R. 798, 803 (E.D. Pa. 1986), cited with approval in Meyers v. Martin (In re Martin), 91 F.3d 389 (3d Cir. 1996). The bankruptcy court should not substitute its judgment for that of the debtor. See Neshaminy Office Building, 62 B.R. at 803. The responsibility of the court "is not to decide the numerous questions of law or fact raised . . . but rather to canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983)(quoting Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972)). See also World Health Alternatives, 344 B.R. at 296 (stating that "the court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.") (internal citations and quotations omitted).

18. In determining the fairness and equity of a compromise in bankruptcy, the United States Court of Appeals for the Third Circuit has stated that it is important that the bankruptcy court "apprise[ ] itself of all facts necessary to form an intelligent and objective opinion of the probabilities of ultimate success should the claims be litigated, and estimated the

complexity, expense and likely duration of such litigation, and other factors relevant to a full and fair assessment of the [claims]." In re Penn Central Transportation Co., 596 F.2d 1127, 1153 (3d Cir. 1979). See also In re Marvel Entertainment Group, Inc., 222 B.R. 243 (D. Del. 1998) (quoting In re Louise's Inc., 211 B.R. 798, 801 (D. Del. 1997) (describing "the ultimate inquiry to be whether 'the compromise is fair, reasonable, and in the interest of the estate.'").

19. The Third Circuit has enumerated four factors that should be considered in determining whether a settlement should be approved: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." In re Martin, 91 F.3d at 393. Accord Will v. Northwestern Univ. (In re Nutraquest, Inc.), 434 F.3d 639, 644 (3d Cir. 2006).

20. In passing on proposed settlements, the standard that courts applied under the former Bankruptcy Act is the same standard as courts should apply under the Bankruptcy Code. In re Carla Leather, Inc., 44 B.R. 457, 466 (Bankr. S.D.N.Y. 1984), aff'd, 50 B.R. 764 (S.D.N.Y. 1985). As stated by the Supreme Court in Protective Committee, supra, under the Act, to approve a proposed settlement, a court must have found that the settlement was "fair and equitable" based on an –

> Educated estimate of the complexity, expense, and likely duration of . . . litigation, the possible difficulties of collecting on any judgment which might be obtained and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

390 U.S. at 424. See also In re Justice Oaks II, Ltd., 898 F.2d 1544, 1549 (11th Cir. 1990); In re Lion Capital Group, 49 B.R. 163 (Bankr. S.D. N.Y. 1985); Drexel v. Loomis, 35 F.2d 800 (8th Cir. 1929); Matter of Marshall, 33 B.R. 42 (Bankr. D. Conn. 1983).

21. Applying the foregoing standards, the Debtor believes that the compromise satisfies that four-part test relating to Rule 9019. The Debtor also believes that based upon the likelihood of success in litigation, and the expense, inconvenience and delay that would be caused by litigating, litigation would not be in the best interests of the estate. Therefore, it is the Debtor's belief, in exercising its business judgment, that after full and careful consideration of the issues and the merits of any litigation, the terms of the compromise (resulting in a benefit to the estate of $464,500) is in the best interests of the estate.

This Settlement Satisfies The Above Standards

22. A transfer made for no or inadequate consideration within one year before the transferor's bankruptcy is avoidable if either: (1) the transfer was made with the actual intent to hinder, delay or defraud a creditor; or (2) if the transfer was made when the transferor was insolvent or the transfer rendered the transferor insolvent. 11 U.S.C. § 548(a). Because the Debtor could not prove either of these theories, a settlement whereby the putative defendant provides the estate 100% of the net proceeds of the market-based sale of the transferred asset and indemnifies the estate for any expenses is far above the "lowest point in the range of reasonableness" as required by Rule 9019 and applicable law.

23. Here, the plaintiff would have an insurmountable burden to prove that the transfer of an asset that the transferor was itself trying to sell at market prices but placed into a

holding company on the advice of professional marketing firm was done with the actual intent to hinder, delay or defraud its creditors. In this case particularly, where the Debtor was plainly solvent on the date of transfer and was current with all of its creditors, there is no evidence of actual intent nor any badge of fraud to substitute for such evidence that would support a recovery.

24. Nor could a putative plaintiff prevail under a constructive fraudulent transfer theory. Again, the transferor was solvent on the date of transfer, both before and after the transfer. Therefore, any settlement at all that brings any amount of money to the estate is clearly a win for the estate.

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WHEREFORE, the Debtor requests the Court to enter an order approving the compromise and granting the Debtors such other and further relief as this Court deems just and proper.

Dated: November 6, 2007

PACHULSKI STANG ZIEHL & JONES LLP

Laura Davis Jones (Bar No. 2436)
James E. O'Neill (Bar No. 4042)
Rachel Lowy Werkheiser (Bar No. 3753)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier No. 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
Email: ljones@pszjlaw.com
joneill@pszjlaw.com
rwerkheiser@pszjlaw.com

and

BERGER SINGERMAN, P.A.
Paul Steven Singerman
Arthur J. Spector
Grace E. Robson
200 South Biscayne Blvd., Suite 1000
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340
and
350 E. Las Olas Boulevard, Suite 1000
Fort Lauderdale, FL 33301
Telephone: (954) 525-9900
Facsimile: (954) 523-2872
Email: singerman@bergersingerman.com
aspector@bergersingerman.com
grobson@bergersingerman.com

Co-Counsel for the Debtors and Debtors-in-Possession