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 13, 2008 at 4:00 p.m. (prevailing Eastern time)
Hearing: November 20, 2008 at 9:30 a.m. (prevailing Eastern time)

MOTION FOR APPROVAL OF STIPULATION FOR RELIEF FROM AUTOMATIC STAY WITH RESPECT TO IPO PLAINTIFFS

The above captioned Debtors seek approval of a stipulation for relief from the automatic sty with respect to certain IPO Plaintiffs In support of this motion (the "Motion"), the Debtor states:

Jurisdiction

1. The Court has jurisdiction over the matters subject of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The procedural predicates for the relief sought herein is rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

[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. On September 14, 2007 (the "Petition Date"), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy Code").

The IPO Litigation

4. In July 2001, Claire Eff, Tracey Calhoun, Shelly Couch, Geraldine and Melvin Calhoun, Ubaldo Gallegos and Rachel Johnson (collectively, the "IPO Plaintiffs"), on behalf of themselves and all others similarly situated, those persons being the class of persons and entities who acquired shares in the form of common stock of Caldera Systems, Inc. (SCO's predecessor), commenced an action against SCO, and several underwriters relating to the March 2000 initial public offering of SCO's stock in the United States District Court for the Southern District of New York, Case No. 01 Civ. 6721 (SAS) as consolidated *In re Initial Public Offering Securities Litigation*, Master File NO. 21 MC 92 (SAS) (the "IPO Litigation").

5. The complaint (as amended) seeks unspecified damages and alleges violations of Sections 11 and 15 of the Securities Act of 1933 and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; specifically, the IPO Plaintiffs assert that the Registration Statement for SCO's initial public offering was false and misleading based upon allegations that the underwriter defendants agreed to allocate stock in SCO's initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases of stock in the aftermarket at pre-determined prices.

6. The IPO Litigation is being coordinated with approximately three hundred other nearly identical actions filed against other companies before one judge in the U.S. District Court for the Southern District of New York.

7. The IPO Plaintiffs filed claim number 20 asserting an unsecured, non-priority claim in the amount of $59,700,000 (the "Claim").

The Settlement

8. The Debtors and the IPO Plaintiffs have stipulated to relief from stay pursuant to certain terms (the "Stipulation"). A copy of the Stipulation is attached hereto as Exhibit A. The Debtors, for their part, agree that IPO Plaintiffs should be granted a modification of the automatic stay imposed pursuant to 11 U.S.C. § 362(a) to permit the IPO Plaintiffs to proceed to trial in the IPO Litigation and to prosecute the IPO Litigation to final judgment or other resolution in order to liquidate their claims against SCO.

9. The IPO Plaintiffs, for their part, agree to seek satisfaction of any judgment obtained against SCO solely from any insurance coverage available to SCO that may be applicable to the IPO Plaintiffs' claims.

10. In addition, the IPO Plaintiffs waive any distributions from SCO's bankruptcy estate on the Claim.

Standards For Approval Of Compromises

11. 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).

12. The decision to approve a settlement "is within the sound discretion of the bankruptcy court." *In re 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).

13. 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.'").

14. 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).

15. 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).

This Settlement Satisfies The Above Standards

16. Applying the foregoing standards, the Debtors believe that the compromise satisfies the four-part test relating to Rule 9019 and is fair and equitable.

17. The Debtors submit that the likelihood of success in litigation for either side is inherently unclear. In addition, the IPO Litigation is far-reaching and complex. The expense, inconvenience and delay that would be caused by this litigation would not be in the best interests of the estate.

18. Therefore, it is the Debtors' 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 is in the best interests of the estate.

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: September 30, 2008

PACHULSKI STANG ZIEHL & JONES LLP

Laura Davis Jones (Bar No. 2436)
James E. O'Neill (Bar No. 4042)
Kathleen P. Makowski (Bar No. 3648)
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
kmakowski@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