

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	:	Chapter 11
The SCO GROUP, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 07-11337 (KG)
Debtors.	:	(Jointly Administered)
	:	Hearing: September 24, 2009 @ 2:00 PM (EST)
	:	Objections: September 17, 2009 @ 4:00 PM (EST)

**APPLICATION OF CHAPTER 11 TRUSTEE FOR ENTRY OF AN  
ORDER PURSUANT TO SECTIONS 327(a), 328, 330 AND 331 OF  
THE BANKRUPTCY CODE, BANKRUPTCY RULES 2014(a) AND  
2016, AND LOCAL RULE 2014-1 AUTHORIZING THE  
EMPLOYMENT OF BLANK ROME LLP AS COUNSEL TO THE  
CHAPTER 11 TRUSTEE *NUNC PRO TUNC* TO AUGUST 25, 2009**

Edward N. Cahn, as Chapter 11 Trustee (the “Chapter 11 Trustee” or “Trustee”) for The SCO Group, Inc., et al. (collectively with the jointly administered debtors, the “Debtors”), pursuant to sections 327(a), 328, 330 and 331 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Delaware Bankruptcy Local Rules (the “Local Rules”), hereby seeks entry of an order approving this Application (the “Application”) authorizing the Trustee to retain and employ Blank Rome LLP (“Blank Rome”) as his counsel in the Debtors’ chapter 11 cases *nunc pro tunc* to August 25, 2009, the date of the Trustee’s appointment. In support of this Application, the Verified Statement of Bonnie Glantz Fatell, Esq. (the “Fatell Statement”) is attached hereto as *Exhibit “A”*. The Chapter 11 Trustee respectfully states as follows in support of this Application:

---

<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.

## **JURISDICTION**

1. This Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are 11 U.S.C. §§ 327(a), 328, 330 and 331, Bankruptcy Rule 2014(a), 2016, and Local Rule 2014-1.

## **BACKGROUND**

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

3. On September 18, 2007, this Court entered an Order Authorizing Joint Administration of Related Chapter 11 Cases: 07-11337 and 07-11338 [Docket No. 25]. The Debtors continued in the management and operation of their businesses and property as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108 until August 25, 2009 when this Court appointed a chapter 11 trustee.

4. On September 28, 2007, the Office of the United States Trustee filed its Statement that Unsecured Creditors’ Committee has not been Appointed [Docket No. 67].

5. In connection with contested motions to convert the Debtors’ chapter 11 cases to chapter 7 cases, on or about July 27, 2009, this Court directed the United States Trustee to appoint a chapter 11 trustee.

6. On August 25, 2009 (the “Appointment Date”), the Office of the United States Trustee filed its Notice of Appointment of Edward N. Cahn, Esquire as Chapter 11 Trustee

[Docket No. 898] and, on the same day, this Court entered an Order Approving Appointment of Chapter 11 Trustee [Docket No. 900].

### **RELIEF REQUESTED**

7. By this Application, the Trustee seeks authority to retain and employ Blank Rome as his counsel, *nunc pro tunc* to the Appointment Date, pursuant to Bankruptcy Code §§ 327, 328, 330, and 331, Bankruptcy Rule 2014(a) and 2016, and Local Rule 2014-1.

### **BASIS FOR RELIEF**

8. The Trustee respectfully submits that it is necessary for the Trustee to employ counsel to represent the Trustee in connection with the following non-exclusive matters:

- a) Collect and reduce to money the property of the estate for which such Trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;
- b) Be accountable for all property received;
- c) Ensure that obligations specified in 11 U.S.C. § 521(2)(B) are fulfilled;
- d) Investigate the acts, conduct, assets, liabilities, financial condition and financial affairs of the Debtors, the operation of the Debtors' business and desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;
- e) If a purpose would be served, examine proofs of claim and object to the allowance of any claim that is improper;
- f) Assist in the preparation of periodic reports and summaries of the operation of the businesses, including a statement of receipts and disbursements, and such other information as the United States Trustee or this Court requires;
- g) Make a final report and file a final account of the administration of the estate with this Court and with the United States Trustee;
- h) Appear in this Court and represent the interest of the Trustee and the estates;
- i) Provide litigation services to the Trustee;

- j) Assist the Chapter 11 Trustee in the analysis of third party litigation and liquidation of assets in accordance with the Bankruptcy Code and the Local Rules;
- k) As soon as practicable, file a statement of any investigation conducted, including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the Debtors, or to a cause of action available to the estate;
- l) As soon as practicable, file a plan under section 1121 of this title, file a report of why the Trustee will not file a plan, or recommend conversion of the case to a case under chapter 7, 12, or 13 of this title or dismissal of the case;
- m) For any year for which the debtor has not filed a tax return required by law, furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the condition of the debtor's books and records and the availability of such information;
- n) After confirmation of a plan, file such reports as are necessary or as the court orders; and
- o) Provide any other legal services to the Trustee that is appropriate, necessary and proper in these chapter 11 cases.

9. The Trustee believes that Blank Rome is well-qualified to act as its counsel. The Trustee believe that the attorneys at Blank Rome who will render legal services to the Trustee have had considerable experience in reorganization, corporate, and other matters and are capable of rendering the services set forth above. Members of the firm's bankruptcy department have represented debtors, creditors' committees and other parties in major chapter 11 cases.

10. The Trustee believes that employment of Blank Rome as counsel will benefit these estates.

11. To the best of the Trustee's knowledge, Blank Rome has no connection with any of the Debtors' creditors or any other party in interest, except as disclosed in the Fatell Statement. The Trustee is satisfied that Blank Rome represents no interest adverse to the Debtors or these estates in the matters upon which it is to be engaged, has no connections with

the Debtors, the Debtors' creditors, or any other party in interest, their respective attorneys, financial advisors and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee (other than as disclosed in the Fatell Statement), and that its employment will be in the best interests of the Debtors and these estates. The Trustee believes that Blank Rome is a "disinterested person" as defined in the Bankruptcy Code.

12. No promises have been made or received by Blank Rome nor any partner, counsel or associate thereof as to payment or compensation in connection with these chapter 11 cases. Blank Rome has no agreement with any entity to share with such entity any compensation received by Blank Rome in these cases.

13. The Trustee requests that Blank Rome be employed as counsel in accordance with Bankruptcy Code §§ 327(a) and 328 and Bankruptcy Rule 2014(a) and 2016. Blank Rome will request compensation and reimbursement of expenses upon proper application to this Court pursuant to Bankruptcy Code §§ 330 and 331, the Bankruptcy Rules, and the Local Rules and orders of this Court.

14. Subject to this Court's approval, Blank Rome will charge the Trustee for its legal services on an hourly basis in accordance with its ordinary and customary rates in effect on the date services are rendered. The attorneys and paraprofessionals presently designated to represent the Trustee and their current standard hourly rates are:

Bonnie Glantz Fatell	\$650.00 per hour
Regina Stango Kelbon	\$580.00 per hour
Stanley B. Tarr	\$395.00 per hour

15. These rates may change from time to time in accordance with Blank Rome's established billing practices and procedures. Blank Rome will maintain detailed, contemporaneous records of time and necessary expenses provided or incurred in connection

with the rendering of the legal services described above by category and nature of the services rendered.

16. The Trustee understands that other attorneys and paraprofessionals at Blank Rome may be called upon from time to time as the need and issues arise to represent the Trustee in certain aspects of their chapter 11 cases. The customary hourly rates of Blank Rome, subject to change from time to time, are \$425 to \$785 for partners, \$245 to \$485 for associates and counsel to the firm, and \$105 to \$280 for paraprofessionals.

17. In addition to the hourly rates set forth above, Blank Rome customarily and generally charges clients for the costs of support services the firm provides in connection with a representation, including, without limitation, photocopying charges, long distance telephone calls, facsimile transmissions, messengers, courier mail, secretarial and administrative overtime and temporary services, travel, computer research, lodging and catering for meetings. Some of these services are provided by Blank Rome, in which case the charges are set by Blank Rome, and others are provided by third party service providers, in which case the charges are set by the providers. All such charges for which Blank Rome seeks payment are subject to this Court's approval and/or pursuant to any administrative procedure established by order of this Court.

18. Based on the foregoing, the Trustee submits that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects. No previous request for the relief sought herein has been made to this or any other Court.

19. The Trustee requests that Blank Rome's employment be deemed effective as of the Appointment Date, in light of the continuing nature of the services which must be performed in order for Blank Rome to properly represent the Trustee and in order to avoid any prejudice

resulting from any administrative delay in the filing of this Application or the entry of an order approving this Application.

### **NOTICE OF APPLICATION**

20. In accordance with Rule 2014-1(b) of the Local Rules, the Trustee, through his counsel, has provided notice of this Application to: (a) the Debtors; (b) the Debtors' counsel; (c) the Office of the United States Trustee; and (d) creditors and parties that have requested notice pursuant to Bankruptcy Rule 2002. The Trustee submits that no other or further notice need be provided.

### **CONCLUSION**

WHEREFORE, the Trustee respectfully requests that this Court enter an order, in substantially the form attached hereto (i) approving the Application; (ii) authorizing the Trustee to retain and employ Blank Rome as its counsel as of the Appointment Date; and (iii) granting the Trustee such other and further relief as this Court may deem just and proper.

Dated: Wilmington, Delaware  
August 31, 2009

/s/ Edward N. Cahn  
**EDWARD N. CAHN, ESQ.**  
**CHAPTER 11 TRUSTEE**  
**THE SCO GROUP, INC. et al.**