

**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. : Re: Docket No. _____

**ORDER GRANTING CHAPTER 11 TRUSTEE'S APPLICATION FOR
AUTHORITY TO RETAIN AND EMPLOY OCEAN PARK ADVISORS
LLC AS FINANCIAL ADVISOR AND INVESTMENT BANKER *NUNC
PRO TUNC TO SEPTEMBER 15, 2009***

Upon the application (the "Application")² of Edward N. Cahn, Chapter 11 Trustee for the above captioned debtors (collectively, the "Debtors"), for entry of an order (the "Order") pursuant to Bankruptcy Code sections 327(a) and 328(a), Bankruptcy Rule 2014, and Local Rule 2014-1, authorizing the Trustee to employ and retain Ocean Park Advisors LLC ("OPA") as financial advisor and investment banker to the Trustee *nunc pro tunc* to September 15, 2009 on the terms set forth in the engagement letter between the Trustee and OPA, dated as of September 15, 2009 (the "Employment Agreement" a copy of which is attached to the Comer Affidavit (defined below) as Exhibit "1"); and upon consideration of the Affidavit of Bruce Comer in support of the Application (the "Comer Affidavit"); and this Court being satisfied that the relief requested herein and the employment of OPA is necessary and in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court being satisfied that

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 used herein but not defined herein shall have the meanings ascribed to such terms in the Application.

the terms of the Employment Agreement are reasonable terms for purposes of Bankruptcy Code section 328(a); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court being satisfied that notice of this Application and opportunity for a hearing on this Application was appropriate under the particular circumstances and that no other or further notice need be given; and this Court being satisfied that OPA neither holds nor represents any interest adverse to the Debtors' estates with respect to the matters upon which it is to be employed; and this Court being satisfied that OPA is a "disinterested person," as that term is defined in Bankruptcy Code section 101(14) and that OPA's retention is not prohibited by Bankruptcy Rule 2014 or 5002; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. In accordance with Bankruptcy Code sections 327(a) and 328(a), Bankruptcy Rule 2014, and Local Rule 2014-1, the Trustee is authorized to employ and retain OPA in accordance with the terms and conditions set forth in the Employment Agreement, effective *nunc pro tunc* to September 15, 2009.
3. The structure for calculation and payment of OPA's fees and expenses in these cases regarding Sell Side Services, including, without limitation, the Retainers and the Success Fee, are approved pursuant to Bankruptcy Code section 328(a).
4. Notwithstanding anything in the Employment Agreement to the contrary, OPA shall file fee applications for monthly, interim and final allowance of compensation and

reimbursement of expenses pursuant to the procedures set forth in Bankruptcy Code sections 330 and 331, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of this Court; provided, however, that OPA shall be compensated and reimbursed pursuant to Bankruptcy Code section 328(a) for its fees and expenses in connection with the Sell Side Services and OPA's fees and expenses for such Sell Side Services shall not be evaluated under the standard set forth in Bankruptcy Code section 330.

5. Notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, orders of this Court, or any guidelines regarding submission and approval of fee applications, in light of the Sell Side Services to be provided by OPA and the structure of OPA's compensation pursuant to the Employment Agreement for such Sell Side Services, OPA and its professionals shall be excused from maintaining time records as set forth in Local Rule 2016-2 and the United States Trustee Fee Guidelines in connection with the Sell Side Services to be rendered pursuant to the Employment Agreement; provided, however, that OPA shall instead present to this Court reasonably detailed descriptions of those services provided on behalf of the Trustee, the approximate time expended in providing those services and the individuals who provided professional services on behalf of the Trustee.

6. The Trustee is authorized to direct the Debtors to pay OPA's fees and to reimburse OPA for its costs and expenses as provided in the Employment Agreement and in accordance with the monthly, interim and final fee application process approved by this Court, and none of the fees payable to OPA shall constitute a "bonus" or fee enhancement under applicable law.

7. Notwithstanding anything in this Order to the contrary, the United States Trustee for the District of Delaware shall retain all rights to object to the Retainers and the Success Fee

based on the reasonableness standard provided for in section 330 of the Bankruptcy Code; provided, however, that “reasonableness” for this purpose shall be evaluated by comparing (among other things) the transaction fees payable in these cases to fees paid to other investment banking firms with similar experience and reputation offering comparable services in other similar chapter 11 cases and shall not be evaluated primarily on an hourly or length-of-case based criteria.

8. The provisions set forth in the Employment Agreement regarding the Debtors’ indemnification obligations are approved, subject during the pendency of these cases to the following:

- (a) OPA shall not be entitled to indemnification, contribution or reimbursement pursuant to the Employment Agreement for services under the Employment Agreement or otherwise, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Bankruptcy Court;
- (b) The Debtors shall have no obligation to indemnify OPA, or provide contribution or reimbursement to OPA, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from OPA’s gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith or self-dealing; or (ii) settled prior to a judicial determination as to OPA’s gross negligence, willful misconduct, breach of fiduciary duty, or bad faith or self-dealing but determined by this Court, after notice and hearing, to be a claim or expense for which OPA should not receive indemnity, contribution or reimbursement under the terms of the Employment Agreement for services under the Employment Agreement;
- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these cases, OPA 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 Employment Agreement, as modified by this Order, including without limitation the advancement of defense costs, OPA must file an application therefore in this Court, and the Debtors may not pay any such amounts to OPA before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time during which this Court shall have jurisdiction over any request for compensation and expenses by OPA for indemnification,

contribution, or reimbursement and is not a provision limiting the duration of the Debtors' obligation to indemnify OPA.

9. The Trustee is authorized, empowered and directed to take all actions necessary to implement the relief granted pursuant to this Order.

10. Notwithstanding anything in the Employment Agreement in section 8 to the contrary, during the pendency of these cases, this Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the interpretation of or implementation of the Employment Agreement or this Order.

Dated: October __, 2009

The Honorable Kevin Gross
United States Bankruptcy Judge