

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

-----	:	Chapter 11
In re	:	
	:	
The SCO GROUP, INC., <i>et al.</i> , ¹	:	Case No. 07-11337 (KG)
	:	
	:	(Jointly Administered)
Debtors.	:	Objection Deadline: October 16, 2009 at 4:00 p.m.
	:	Hearing Date: October 23, 2009 at 10:00 a.m.

**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**

Edward N. Cahn, Esq. (the "Chapter 11 Trustee" or "Trustee"), in his capacity as Chapter 11 Trustee for The SCO Group, Inc. and SCO Operations, Inc. (collectively, the "Debtors"), pursuant to sections 327 and 328 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 2014-1 of the Delaware Bankruptcy Local Rules (the "Local Rules"), files this Application for Authority to Retain and Employ Ocean Park Advisors LLC ("OPA") as Financial Advisor and Investment Banker *Nunc Pro Tunc* to September 15, 2009 (the "Application"), and hereby moves this Court for the entry of an order authorizing the Trustee to employ and retain OPA for the purpose of providing financial advisory services ("Financial Advisory Services") and investment banking services ("Sell Side Services", and together with the Financial Advisory Services, the "Services") in connection with the Debtors' chapter 11 cases in accordance with the terms of the Management and Financial Advisory Services Agreement dated as of September 15,

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.

2009 (the “Employment Agreement”). A copy of the Employment Agreement is attached to the Comer Affidavit (defined below) as Exhibit 1. In support of this Application, the Trustee incorporates the statements contained in the Affidavit of Bruce Comer (the “Comer Affidavit”), a copy of which is attached hereto as Exhibit A, and respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction to consider this 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 Bankruptcy Code sections 327 and 328, as complemented by Bankruptcy Rule 2014 and Local Rule 2014-1.

BACKGROUND

3. On September 14, 2007 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases are being jointly administered.

4. On August 25, 2009 (the “Appointment Date”) this Court approved the appointment of Edward N. Cahn, Esq. as Chapter 11 trustee in these cases [Docket No. 900]. No official committee of unsecured creditors has been established to date.

RELIEF REQUESTED

5. By this Application, the Trustee seeks authority to retain and employ OPA for the purpose of providing Financial Advisory Services and Sell Side Services in connection with the Debtors’ chapter 11 cases, effective as of September 15, 2009, pursuant to Bankruptcy Code sections 327 and 328, Bankruptcy Rule 2014, and Local Rule 2014-1.

6. In addition, the Trustee requests permission for OPA to submit fee applications to this Court with time records in connection with the Sell Side Services only in a summary format

setting forth a description of the services rendered by each restructuring professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors. Accordingly, the Trustee requests a modification or waiver of the requirements under Local Rule 2016-2 pertaining to the recording and content of time records submitted to this Court in connection with the Sell Side Services.

BASIS FOR RELIEF

7. Prior to the Petition Date, sales of the Debtors' UNIX-based products and services were declining due to financial difficulties and other factors, which culminated in the filing of these chapter 11 cases. In addition, there has been negative publicity surrounding the litigation relating to the Debtors' ownership of UNIX and related copyrights that has, to some degree, hampered the Debtors' ability to compete in the marketplace.

8. Since the Appointment Date, the Trustee has spent considerable time familiarizing himself with the Debtors' operations, financial condition and pending litigation. The Trustee has determined, in the exercise of his business judgment, that the complexity of the financial difficulties require him to employ experienced professionals to render the Services in connection with these chapter 11 cases.

9. The terms and conditions of OPA's engagement by the Trustee are governed by the Employment Agreement (except as specifically modified by the proposed Order attached hereto) which was negotiated by the Trustee and OPA. The terms of the Employment Agreement reflect the Trustee's and OPA's mutual agreement as to the substantial efforts that will be required of OPA in this engagement. Under the Employment Agreement, in consideration for the compensation contemplated thereby, OPA has agreed to provide the Trustee with the Services.

Financial Advisory Services and Proposed Compensation²

10. Some of the Financial Advisory Services that OPA may provide to the Trustee include:

- (a) Assisting the Trustee to develop and implement a restructuring plan for the Company;
- (b) Reviewing the Company's business, operations and financial results and projections;
- (c) Advising the Trustee on the Company's tactics in negotiations with stakeholders or prospective investors and assist with such negotiations;
- (d) Advising the Trustee with respect to potential Financing Transactions;
- (e) Assisting the Trustee with internal and external documentation needs on its restructuring and asset sale plans;
- (f) Attending meetings with the Trustee, Management of SCO and/or others as necessary or appropriate;
- (g) Providing testimony with respect to matters where OPA has been engaged to advise the Trustee in any proceeding before the Bankruptcy Court;
- (h) Assisting the Trustee and its counsel to generate a plan in connection with the restructuring of the debt and other obligations of the Company or liquidation of assets; and
- (i) Providing general support in the review of financial forecasts, cash analysis, liquidity analyses and any other analysis that the Trustee will need in analyzing the liquidity of the Company and its options for restructuring.

11. The Financial Advisory Services that OPA will provide to the Trustee are necessary to enable the Trustee to maximize the value of the Debtors' estates and to fulfill its chapter 11 reporting obligations. The Trustee believes that the Financial Advisory Services will not duplicate the efforts of other professionals retained by the Trustee in these chapter 11 cases because OPA (i) will provide unique services to the Trustee and (ii) will coordinate efforts with the other professionals to avoid unnecessary duplication of service.

² The description of the Financial Advisory Services to be provided to the Trustee by OPA and the terms of compensation in this section are summary in fashion. To the extent of any inconsistencies between this summary and the Engagement Agreement, the Engagement Agreement shall control.

12. As compensation for such Financial Advisory Services, OPA shall be paid hourly fees. The following schedule sets forth the current hourly rates for OPA personnel that will be involved in delivering services to the Trustee pursuant to the Employment Agreement:

Managing Director	\$400-500
Vice President	\$250-400
Associate	\$150-250
Administrative Personnel	\$90-150

13. As part of the compensation for the Financial Advisory Services, as set forth in the Employment Agreement, the Trustee has also agreed to pay a retainer to OPA in the amount of \$40,000, as an advance against any fees or expenses that may become due to OPA under the Employment Agreement. In addition to the compensation payable to OPA pursuant to the Employment Agreement, the Trustee has also agreed to the indemnification obligations set forth in the Employment Agreement. OPA and the Trustee believe that such provisions are customary and reasonable for financial advisory and investment banking engagements in chapter 11.

14. The overall compensation structure described above is comparable to compensation generally charged by financial advisory firms of similar stature to OPA and for comparable engagements, both in and out of court. To induce OPA to do business with the Trustee in bankruptcy, the compensation structure described above was established to reflect the difficulty of the extensive assignments OPA expects to undertake.

Sell Side Services and Proposed Compensation³

15. Some of the Sell Side Services that OPA may provide to the Trustee includes:

(a) Acting as the Trustee's advisor in connection with the sale of SCO's assets, including under Section 363 of the Bankruptcy Code or pursuant to an approved plan of reorganization or liquidation;

³ The description of the Sell Side Services to be provided to the Trustee by OPA and the terms of compensation in this section are summary in fashion. To the extent of any inconsistencies between this summary and the Engagement Agreement, the Engagement Agreement shall control.

(b) Determining a range of values for the Company's assets including but not limited to the business, exclusive of litigation proceeds, as well as the value of its intellectual property;

(c) Developing a sales strategy and alternative packaging for the assets across all of the SCO companies; and

(d) Assisting the Trustee in evaluating potential purchasers of the Company's assets and conducting an auction of the assets.

16. The Sell Side Services that OPA will provide to the Trustee are necessary to enable the Trustee to maximize the value of the Debtors' estates. The Trustee believes that the Sell Side Services will not duplicate the efforts of other professionals retained by the Trustee in these chapter 11 cases because OPA (i) will provide unique services to the Trustee and (ii) will coordinate efforts with the other professionals to avoid unnecessary duplication of service.

17. As compensation for such services, as set forth in the Employment Agreement, OPA shall be compensated as follows, which compensation is separate than the compensation for the Financial Advisory Services:

(1) *Sell Side Retainers.*

(a) If the Trustee requests that OPA commence providing any Sell Side Services, the Company shall within 5 business days after the date of such request (the "Sell Side Request Date") deliver to OPA a non-refundable retainer in the amount of \$30,000 (the "*Sell Side Retainer*"). If a Sale Transaction (defined below) does not close within 90 days after the Sell Side Request Date, OPA shall be entitled to an additional non-refundable retainer in the amount of \$30,000 (the "*Second Sell Side Retainer*"). Each of the Sell Side Retainer and the Second Sell Side Retainer (collectively, the "*Sell Side Retainers*") shall be fully earned upon payment thereof, whether or not a successful Sale Transaction occurs. The Sell Side Retainers will not be credited against any Success Fees (as defined below) or other amounts that may be payable to OPA under this Agreement. For the avoidance of doubt, the Sell Side Retainers are in addition to the Advance Retainer.

(b) It is understood that the Trustee may request that OPA provide Sell Side Services exclusively relating to the "Norris Transaction" (as defined below) without triggering the Company's obligation to pay a Sell Side Retainer. However, if the Trustee requests that OPA provide any

other Sell Side Services, work on any other potential transaction or solicit other potential parties (other than the "Norris Parties," as defined below), this Section 3(c)(1)(b) will no longer apply, and the Company will be obligated to pay the Sell Side Retainer(s). The "Norris Transaction" means the proposed transaction between the Company and the "Norris Parties" (as defined below) that was submitted by the Company to the Bankruptcy Court for approval prior to the date hereof, or a substantially similar transaction with the Norris Parties. The "Norris Parties" are Steve Norris and/or any investment group associated with or introduced to the Company by Steve Norris prior to the date hereof.

(2) *Success Fees.*

As we understand it, the Trustee is contemplating two separate sales processes: a sale of (or other transaction involving) a stand-alone patent (the "Patent Transaction") and one or more sales of (or other transaction involving) all or a substantial portion of the Company's other assets (each, an "Asset Transaction" and collectively with the Patent Transaction, the "Sales Transactions"). The Sales Transactions may be consummated through one or more auctions, private sales, Section 363 sales, license agreements, or any other form of sale, assignment or transfer, including any recapitalization or transfer under a confirmed plan of reorganization. OPA shall be entitled to receive success fees (the "Success Fees") for each of the Sales Transactions, calculated as follows:

(a) If the Trustee consummates the Patent Transaction, OPA will be paid, upon the closing thereof, a Success Fee equal to 15% of the "Aggregate Consideration" (as defined below) generated from the Patent Transaction; provided, however that in any case a minimum Success Fee of \$60,000 shall be paid to OPA.

(b) If the Trustee consummates an Asset Transaction, OPA will be paid, upon the closing thereof, a Success Fee equal to 2.5% of the Aggregate Consideration; provided, however, that in any case a minimum Success Fee of \$150,000 shall be paid.

(c) For purposes hereof, the term "Aggregate Consideration" means (x) the total amount of cash and the fair market value (on the date of payment) of all of the property paid and payable (including amounts paid or payable into escrow or in the future) in connection with the Sale Transaction (or any related transaction), including amounts paid and payable in respect of convertible securities, preferred equity securities, warrants, stock appreciation rights, option or similar rights, whether or not vested, plus (y) the principal amount of all indebtedness for borrowed money or other liabilities of the Company and/or other relevant

entities, as applicable, as set forth on the most recent balance sheet, or, in case of the sale of assets, all indebtedness for borrowed money or other liabilities assumed by the third party.

Aggregate Consideration shall also include the aggregate amount of any dividends or other distributions declared by the Company and/or other relevant entities, as applicable, after the date hereof, and, in the case of the sale of assets, the net value of any current assets not sold by the Company and/or other relevant entities, as applicable. Aggregate Consideration shall also include all amounts paid and payable in respect of any license, royalty, non-competition or lease agreements.

For purposes of calculating Aggregate Consideration, (i) all equity interests will be deemed transferred where a Sale Transaction is effected by the transfer of equity interests, (a) constituting more than 30% of the then outstanding equity securities of or equity interest in the relevant entity, or (b) possessing more than 30% of the then outstanding voting power of the outstanding equity securities of or equity interest in the relevant entity, and (ii) the value of securities (whether debt or equity) that are freely tradable in an established public market will be determined on the basis of the average closing price in such market for the 10 trading days prior to the closing of the Sale Transaction (the "Valuation Date"); and the value of securities that have no established public market or other property will be the fair market value of such securities or other property on such Valuation Date and any restricted stock (i.e., stock in a public company not freely tradable) received shall be valued at 85% of the public market price of such stock. Aggregate Consideration shall also be deemed to include pension liabilities and guarantees of monies borrowed assumed directly or indirectly by the third party. If the Aggregate Consideration is subject to increase by contingent payments related to future events, the portion of our fee relating thereto shall be calculated by us in good faith and paid to us upon consummation of the Sale Transaction.

(d) The \$150,000 minimum Success Fee described in paragraph (b) above applies to all Asset Transactions, taken as a whole.

(e) As an example, if the Trustee consummates:

(i) a Patent Transaction with a value of \$1 million;

- (ii) an Asset Transaction with a value of \$2 million involving the assignment of the Company's rights with respect to certain litigation; and
- (iii) an Asset Transaction with a value of \$6 million involving the sale of other assets

OPA would be entitled to (i) \$150,000 in Success Fees for the Patent Transaction, (ii) \$50,000 in Success Fees for the Asset Transaction involving the litigation and (iii) \$150,000 in Success Fees for the other Asset Transaction, for a total of \$350,000 in Success Fees for such Sale Transactions. Please note: The numbers in this example are hypothetical, and only for purposes of illustrating how Success Fees would be calculated (and are not meant to imply possible or likely values for any of the Company's assets).

18. In the event that the Trustee consummates one or more "Financing Transactions"⁴, whether on a stand alone basis or in connection with a Sale Transaction, OPA shall receive, in cash and upon the closing thereof, a success fee (a "Financing Transaction Fee") equal to 2.5% of the aggregate gross proceeds of such Financing Transaction; provided, however, that in any case a minimum Financing Transaction Fee of \$50,000 shall be paid to OPA.

19. As part of the compensation for the Services, as set forth in the Employment Agreement, the Trustee has also agreed to reimburse OPA for all out of pocket expenses incurred in conjunction with the performance of the Services, which are anticipated to include travel and costs, data processing and communications charges, courier services and other expenses of this type. In addition to the compensation payable to OPA pursuant to the Employment Agreement, the Trustee has also agreed to the indemnification obligations set forth in the Employment

⁴ "Financing Transaction" shall mean any transaction or series of transactions involving the public or private issuance or placement of debt securities, instruments or obligations of the Company (including any debtor-in-possession financing).

Agreement. OPA and the Trustee believe that such provisions are customary and reasonable for financial advisory and investment banking engagements in chapter 11.

20. The overall compensation structure described above is comparable to compensation generally charged by investment banking firms of similar stature to OPA and for comparable engagements, both in and out of court. To induce OPA to do business with the Trustee in bankruptcy, the compensation structure described above was established to reflect the difficulty of the extensive assignments OPA expects to undertake.

21. The Trustee acknowledges and agrees that OPA's restructuring expertise, as well as its capital markets knowledge, financing skills and mergers and acquisitions capabilities, some or all of which may be required by the Trustee during the term of OPA's engagement, were important factors in determining the amount of fees payable to OPA in connection with the Services, and that the ultimate benefit to the Trustee of OPA's services could not be measured merely by reference to the number of hours to be expended by OPA's professionals in the performance of such services.

22. The Trustee acknowledges and agrees that the Retainers and Success Fee have been agreed upon by the parties in anticipation that a substantial commitment of professional time and effort may be required of OPA and its professionals, and in light of the fact that such commitment may foreclose other opportunities for OPA and that the actual time and commitment required of OPA and its professionals to perform services hereunder may vary substantially from week to week or month to month, creating "peak load" issues for the firm.

23. In addition, given the numerous issues which OPA may be required to address in the performance of its services hereunder, OPA's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for OPA's services

for engagements of this nature in an out-of-court context, as well as in chapter 11, the Trustee agrees that the fee arrangements in the Employment Agreement are reasonable under the standards set forth in Bankruptcy Code section 328(a).

24. The fee and expense structure described above is consistent with OPA's normal and customary billing practices for cases of this size and complexity that require the level and scope of services outlined. OPA and the Trustee also believe that the foregoing fee and expense structure is reasonable and market-based.

25. OPA has not shared or agreed to share any compensation to be paid by the Trustee with any other person, other than other principals and employees (including any subcontractors) of OPA in accordance with Bankruptcy Code section 504.

OPA's Qualifications

26. As described more fully in the Comer Affidavit, OPA is a financial advisory firm and an investment banking firm focused on providing financial and investment banking advice and transaction execution on behalf of its clients. OPA's broad range of corporate advisory services includes services pertaining to general financial advice, corporate restructurings, mergers and acquisitions, and strategic partnerships/joint ventures.

27. The Trustee has selected OPA as its financial advisor and investment banker based upon (i) OPA's extensive experience in providing financial advisory and investment banking services to distressed and other companies, and (ii) OPA's excellent reputation for the services it has rendered to such companies.

28. The resources, capabilities, and experience of OPA in advising the Trustee are crucial to the Debtors' successful restructuring. An experienced financial advisor and investment banker such as OPA fulfills a critical need that complements the services offered by

the Trustee's other restructuring professionals and personnel. Broadly speaking, OPA will concentrate its efforts on formulating strategic alternatives, negotiating with the Debtors' creditor constituencies, and assisting the Trustee to achieve a successful outcome in these cases which may include an asset sale or other strategy. For these reasons, the Trustee requires the services of a capable and experienced investment banking and financial advisory firm such as OPA.

29. OPA will work closely with the Trustee in its review of asset disposition and restructuring alternatives, advising with respect to discussion materials, prospective buyers, coordination of the due diligence process, and packaging of information, among other items. In this capacity, OPA will advise the Trustee with respect to discussion materials, financing options, the due diligence process, and the packaging and review of information.

30. The compensation and indemnification arrangement provided for in the Employment Agreement are consistent with and typical of arrangements entered into by OPA and other financial advisor and investment banking firms in connection with rendering similar services to clients such as the Trustee. The Trustee believes that OPA is well qualified and able to represent the interests of the Debtors in a cost-effective, efficient and timely manner. OPA has indicated a willingness to act on behalf of the Trustee and to subject itself to the jurisdiction and supervision of this Court.

OPA's Disinterestedness

31. To the best of the Trustee's knowledge, information, and belief, and except and to the extent disclosed herein and in the Comer Affidavit, (a) OPA is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and holds no interest adverse to the Trustee, the Debtors, or their estates in connection with the matters for which OPA is to be retained by the Trustee; and (b) OPA has no

connection with the Debtors, their creditors, the Chapter 11 Trustee, the U.S. Trustee, this Court, or other parties in interest in these chapter 11 cases.

32. The Trustee's knowledge, information, and belief regarding the matters set forth herein are based upon, and made in reliance on, the Comer Affidavit.

***OPA's Engagement Under Section 328 is
Reasonable and Appropriate Under the Circumstances***

33. Bankruptcy Code section 328 provides, in relevant part, that a trustee "with the court's approval, may employ or authorize the employment of a professional person under section 327 on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Thus, section 328(a) permits this Court to approve the terms of OPA's engagement as set forth in the Employment Agreement regarding Services, including the Retainers, Success Fee and expense reimbursement, and the Debtors' indemnification obligations (collectively, the "Fee and Expense Structure").

34. The Fee and Expense Structure appropriately reflects the nature of the Sell Side Services to be provided by OPA and is consistent with the fee structures typically utilized by leading financial advisors and investment bankers. Similar monthly fee and transaction fee arrangements have been approved and implemented in other large chapter 11 cases in this district and elsewhere. See, e.g., In re Midway Games Inc., No. 09-10465 (KG) (Bankr. D. Del. March 30, 2009) (authorizing retention of Lazard under section 328(a)); In re Oakwood Homes Corp., No. 02-13396 (PJW) (Bankr. D. Del. July 21, 2003) (authorizing retention of Miller Buckfire Lewis Ying & Co. under section 328(a)); In re Kaiser Aluminum Corp., No. 02-10429 (JKF) (Bankr. D. Del. March 19, 2002) (authorizing retention of Lazard under section 328(a)); In re Covad Commc'ns Group, Inc., No. 01-10167 (JJF) (Bankr. D. Del. November 21, 2001) (authorizing retention of Houlihan Lokey with compensation subject to standard of review set

forth in Section 328(a)); In re Casual Male Corp., No. 01-41404 (REG) (Bankr. S.D.N.Y. July 19, 2001) (authorizing retention of Robertson Stephens, Inc., subject to section 328(a) standard of review).

35. Notwithstanding approval of its engagement under Bankruptcy Code section 328, OPA intends to apply to this Court for payment of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable orders of this Court.

Proposed Indemnification Provisions

36. The Employment Agreement provides, among other things, that the Debtors will indemnify, hold harmless, reimburse, defend and provide contribution to OPA and its affiliates and its and their respective directors, officers, members, employees, agents, and controlling persons under certain circumstances. The terms of the indemnification obligations are standard engagement provisions, both in chapter 11 cases and outside chapter 11, and reflect the qualifications and limits on such terms that are customary for OPA and other similar financial advisors as approved in this and other jurisdictions.

37. The Trustee and OPA believe that the terms of the indemnification obligations of the Debtors are customary and reasonable for financial advisory and investment banking engagements, both out-of-court and in chapter 11 proceedings. See United Artists Theatre Co. v. Walton (In re United Artists Theatre Co.), 315 F.3d 217, 234 (3d Cir. 2003) (finding indemnification agreement between debtor and financial advisor reasonable under section 328); In re Comdisco, Inc., No 02-C-1174 2002 U.S. Dist. WL 31109431 (N.D. Ill. September 23, 2002) (mem.) (affirming order authorizing indemnification of Lazard Frères & Co. LLC and Rothschild, Inc. by debtors and official committee of unsecured creditors respectively); In re

Joan & David Halpern, Inc., 248 B.R. 43, 47 (Bankr. S.D.N.Y. 2000), *aff'd*, No. 00-3601 (JSM), 2000 Bankr. WL 1800690 (S.D.N.Y. Dec. 6, 2000).

38. The terms of the Employment Agreement are similar to indemnification terms that have previously been approved by bankruptcy courts in this District and elsewhere. See In re Midway Games Inc., No. 09-10465 (KG) (Bankr. D. Del. March 30, 2009) (order authorizing retention of investment banker on terms including an indemnification agreement); In re Tweeter Home Entertainment Group, Inc., et. al., No. 07-10787 (PJW) (Bankr. D. Del. July 13, 2007) (order authorizing retention of financial advisor on terms including an indemnification agreement); In re New Century TRS Holdings, Inc., NO. 07-10416 (KJC) (Bankr. D. Del. April 5, 2007) (same); In re Oakwood Homes Corp., No. 02-13396 (PJW) (Bankr. D. Del. July 21, 2003) (same); In re PC Landing Corp., No. 02-12086 (PJW) (Bankr. D. Del. October 9, 2002) (same). Accordingly, the Trustee respectfully submits that the terms of the indemnification obligations under the Employment Agreement are reasonable and customary and should be approved in these cases.

The Requested Relief is Appropriate

39. Based on the foregoing, the Trustee submits that the relief requested is necessary and appropriate, is in the best interests of the Debtors, 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.

40. The Trustee requests that OPA's retention be deemed effective as of September 15, 2009, in light of the continuing nature of the services which must be performed in order for OPA to properly advise and assist the Trustee and in order to avoid any prejudice resulting from any administrative delay in the filing of this Application and the entry of an employment order.

NOTICE

41. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) counsel to the Debtors; and (c) all parties that have requested notice pursuant to Bankruptcy Rule 2002. The Trustee submits that no other or further notice need be provided.

WHEREFORE, the Trustee respectfully requests entry of an order in substantially the form attached hereto: (i) approving the employment and retention of OPA as financial advisor and investment banker to the Trustee pursuant to Bankruptcy Code sections 327(a) and 328(a) and pursuant to the terms and conditions reflected in the Employment Agreement, including the Debtors' indemnification obligations, *nunc pro tunc* to September 15, 2009; (ii) approving the terms of OPA's employment, including the Fee and Expense Structure pursuant to Bankruptcy Code section 328(a); and (iii) granting such other and further relief as this Court may deem just, proper and necessary.

Dated: October 2, 2009

Respectfully submitted,

BLANK ROME LLP

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