

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

In re	: Chapter 11
	:
The SCO GROUP, INC., <i>et al.</i> , ¹	: Case No. 07-11337 (KG)
	: (Jointly Administered)
Debtors.	:
	: Hearing Date: 12/30/2009 at 10:00 a.m. (ET)
-----	: Objection Deadline: 12/23/2009 at 4:00 p.m. (ET)

**APPLICATION OF CHAPTER 11 TRUSTEE FOR ORDER AUTHORIZING
RETENTION AND EMPLOYMENT OF HATCH, JAMES AND DODGE P.C. AS
SPECIAL LITIGATION COUNSEL FOR THE DEBTORS' ESTATES PURSUANT TO
11 U.S.C. §327(e), NUNC PRO TUNC TO AUGUST 25, 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"), hereby submits this application (the "Application") for entry of an order authorizing the retention and employment of the law firm Hatch, James and Dodge, P.C. ("Hatch James") as special litigation counsel for the Debtors' estates pursuant to section 327(e) of title 11 of the United States Code, 11 U.S.C. §§101, *et seq.* (the "Bankruptcy Code"), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 2014-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), *nunc pro tunc* to August 25, 2009. In support of this Application, the Trustee relies upon the *Declaration of Brent O. Hatch, Pursuant to Fed. R. Bankr. P. 2014 and Local Rule 2014-1, in Support of the Chapter 11 Trustee's Application for Order Authorizing Retention and Employment of Hatch, James and Dodge, P.C. as Special Litigation Counsel for the Debtors'*

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.

Estates Pursuant to 11 U.S.C. § 327(e), Nunc Pro Tunc to August 25, 2009 (the “Declaration”), attached hereto as Exhibit A, and respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these proceedings and this Application 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).

2. The statutory predicates for the relief sought herein are Bankruptcy Code sections 327(e) and 328, Fed. R. Bankr. P. 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, this Court approved the appointment of Edward N. Cahn, Esq. as the Chapter 11 Trustee in these cases [Docket No. 900]. No official committee of unsecured creditors has been established to date.

5. Prior to the Petition Date, Hatch James represented and advised the Debtors as local Utah counsel with respect to certain aspects of litigation pending in the United States District Court for the District of Utah, including without limitation, separate pending litigation between the Debtors and IBM, on the one hand, and the Debtors and Novell, on the other hand (collectively, the “SCO Litigation”). Since the Petition Date, the Debtors’ estates and BSF have requested, and Hatch James has agreed, to continue to represent and advise the Debtors’ estates with respect to the SCO Litigation.

6. On December 6, 2007, this Court entered an order [Docket No. 269] (the “BSF Retention Order”) granting the *Debtors’ Application, Pursuant to 11 U.S.C. §§ 327(e), 328 and 330, for Approval of Employment of Boies Schiller & Flexner LLP, as Special Litigation Counsel to the Debtors Nunc Pro Tunc to Petition Date* [Docket No. 115] (the “BSF Application”), seeking to retain and employ Boies Schiller & Flexner LLP (“BSF”) in connection with the continuing SCO Litigation and pursuant to the terms set forth in that certain Engagement Letter dated October 31, 2004 (the “Engagement Agreement”).

7. As disclosed in connection with the *Supplemental Declaration of Stuart H. Singer in Support of the Motion of the Chapter 11 Trustee for Entry of an Order Authorizing Modification to Retention Order of Boies, Schiller and Flexner LLP, Nunc Pro Tunc to August 6, 2009* (the “Supplemental Declaration”) annexed to the BSF Application, BSF has paid \$243,080.75 to Hatch James for services rendered in connection with the SCO Litigation (of which \$197,220.00 was paid prepetition). See Supplemental Declaration at ¶5(a).

8. On November 20, 2009, this Court granted the *Order Authorizing Modification of Boies, Schiller and Flexner LLP Retention Order* [Docket No. 970], modifying the terms of the Engagement Agreement pursuant to that certain Engagement/Retention Agreement (the “Revised Agreement”) executed by the Debtors on or about August 6, 2009, prior to the appointment of the Trustee.

RELIEF REQUESTED

9. By this Application, the Trustee respectfully requests that this Court enter an order, substantially in the form of the proposed order attached hereto as “Exhibit B,” granting authority for the Debtors’ estates to employ and retain Hatch James as special litigation counsel, *nunc pro tunc* to August 25, 2009, pursuant to Bankruptcy Code sections 327(e) and 328(a), Bankruptcy Rule 2014 and Local Rule 2014-1.

10. The Trustee has selected Hatch James because, among other things: (a) attorneys with Hatch James have represented the Debtors' estates since the inception of the SCO Litigation; (b) Hatch James is therefore familiar with the specific aspects of the SCO Litigation; and (c) Hatch James does not hold or represent any interest adverse to the Debtors' estates with respect to the matter on which Hatch James is to be employed.

11. As more fully set forth in the Hatch Declaration and in paragraph 13 below, the professional services that Hatch James expects to render to the Debtors' estates include, but are not limited to, providing legal advice to the Trustee with respect to the SCO Litigation, in coordination with BSF. BSF and Hatch James will continue to carefully coordinate their efforts and clearly delineate their duties to prevent any duplication of effort.

BASIS FOR RELIEF REQUESTED

12. Bankruptcy Code section 327(e) permits the employment of an attorney for a special purpose when the attorney has previously represented the debtor, if such employment is in the best interests of the debtors' estate. Specifically, section 327(e) provides that a debtor, subject to court approval:

may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

13. Moreover, Bankruptcy Rule 2014(a) requires that an application for retention include:

specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for

compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014(a).

14. The Trustee requests that this Court authorize the retention and employment of Hatch James. The Trustee believes that the retention of Hatch James as special litigation counsel in these cases in connection with the pending SCO Litigation is necessary and in the best interest of the Debtors' estates. Hatch James has been involved in the SCO Litigation from its commencement and has a record of providing the Debtors' estates and BSF with effective and efficient legal services. The Trustee believes that both the interruption and duplicative costs involved in obtaining substitute counsel at this juncture of the SCO Litigation would be extremely harmful to these estates. Hatch James will continue to provide the following services to the Debtors' estates:

- Any and all legal services requested by the Trustee and/or BSF, including, but not limited to, court appearances, retention of files belonging to the Debtors' estates and responsiveness to the inquiries of the Trustee's counsel.

15. To the best of the Trustee's knowledge, as represented in the attached Declaration, Hatch James does not have any connection with the Debtors, or any interest adverse to the Debtors or to the Debtors' estates on the matters on which it seeks to be employed. Further, Hatch James does not have any connection with the United States Trustee or any person employed by the office of the United States Trustee.

16. Subject to this Court's approval, and in accordance with applicable bankruptcy law, Hatch James will only seek from the Debtors' estates reimbursement for litigation expenses in connection with the SCO Litigation – BSF will compensate Hatch James for any legal fees pursuant to the terms of the Engagement Agreement, as modified by the Revised Agreement.

17. Based upon the foregoing, the Trustee submits that the retention and employment of Hatch James is in the best interests of the Debtors' estates and should be approved.

NOTICE

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

19. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Trustee respectfully requests that this Court enter an order granting the relief requested herein and granting such other and further relief as is just, proper and necessary.

Dated: December 11, 2009
Wilmington, Delaware

Respectfully submitted,

BLANK ROME LLP

/s/ Bonnie Glantz Fatell
Bonnie Glantz Fatell (No. 3809)
1201 Market Street, Suite 800
Wilmington, DE 19801
Telephone: (302) 425-6400
Facsimile: (302) 425-6464

Counsel for Edward N. Cahn, Chapter 11 Trustee to
the SCO Group, Inc. et al.