

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

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| In re: |) | Chapter 11 |
| SCOVILL FASTENERS INC., <i>et al.</i> , |) | Case No. 11-21650 |
| <u>Debtors.</u> ¹ |) | Jointly Administered |

**CHAPTER 7 TRUSTEE'S MOTION
FOR AN ORDER REJECTING RETIREE BENEFITS**

COMES NOW, S. Gregory Hays, as Chapter 7 Trustee (the "**Trustee**") for Debtor Scovill Fasteners Inc., *et al.* (collectively, the "**Debtors**"), by and through his proposed counsel, and files this motion (the "**Motion**") seeking the termination of retiree benefits. In support of this Motion, the Trustee states as follows.

PRELIMINARY STATEMENT

1. By this Motion, the Trustee seeks authority under section 365 of Title 11 of the United States Code (the "**Bankruptcy Code**") to terminate the benefits of retired employees, effective immediately. The Debtors' cases have been converted to cases under chapter 7 and these estates do not have sufficient assets available to pay retiree benefits. Accordingly, the Trustee requests that the Court enter an order authorizing him to reject all applicable contracts and terminate the Retiree Benefits (as that term is defined below).

¹ The last four digits of the tax identification number for each of the Debtors follow in parenthesis: (i) Scovill Fasteners, Inc. (9561); (ii) Scovill, Inc. (3634); (iii) PCI Group, Inc. (7672) and Rau Fastener Company, L.L.C. (0883). Scomex, Inc. does not have a taxpayer identification number. The mailing address of the Debtors is 1802 Scovill Drive, Clarkesville, GA 30523-6348.

JURISDICTION AND VENUE

2. This Court has jurisdiction over these cases and proceedings pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these Chapter 11 Cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BACKGROUND

3. On April 19, 2011 (the “**Petition Date**”), the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors’ cases were converted to cases under chapter 7 on July 12, 2011, and the Trustee was appointed on that date.

4. Prior to the Petition Date, Debtor Scovill Fasteners Inc. provided certain retired employees with medical and life insurance benefits. Approximately 148 of Scovill retirees receive medical benefits under a plan provided by NEBCO that serves as a supplement (the “**Medical Benefits**”) to their Medicare coverage. Scovill pays a monthly premium in the approximate amount of \$54,654.88 for the Medical Benefits. A copy of the NEBCO plan was attached to the Debtor’s prior motion to terminate retiree benefits [Docket No. 139] (the “1114 Motion”) as Exhibit A.

5. Approximately 83 of the retirees receiving Medical Benefits also receive life insurance benefits (the “**Life Insurance Benefits**,” together with Medical Benefits, the “**Retiree Benefits**”) through Policy No. 302464 held with United Healthcare.

6. An additional 171 retirees receive only Life Insurance Benefits. A copy of the Life Insurance Benefits policy (the “**Life Policy**”) is attached to the 1114 Motion as Exhibit B.

7. The Debtors may have been a party to certain other retiree benefit plans prepetition. The Trustee seeks authority in this Motion to reject all additional retiree benefit plans to which the Debtors may be a party (together with the NEBCO plan and the Life Policy, the “**Retiree Benefit Plans**”)

8. Retirees are not required to make any contributions to the Life Policy. Scovill pays a monthly premium of approximately \$412.00 for the Life Insurance Benefits. Upon the death of a retiree, the retiree’s beneficiary receives a payout from the Life Policy. The amount of this payout ranges from \$1,000.00 - 4,000.00 and is determined based on (i) the position held by the retiree, (ii) whether the retiree migrated to Scovill from an acquired company and (iii) whether the retiree was an hourly or salaried employee.

9. Prior to the conversion of these cases, the Debtors filed a motion to terminate the Retiree Benefit Plans, which was denied by the Court due to the failure of the Debtors to engage in negotiations as required by section 1114 of the Bankruptcy Code. Because these cases have been converted to chapter 7, section 1114 is no longer applicable.

GROUND FOR REQUESTED RELIEF

A. Cause Exists to Reject the Retiree Benefit Plans Pursuant to Section 365 of the Bankruptcy Code *Nunc Pro Tunc* to the Date of the Filing of this Motion.

10. Pursuant to section 365 of the Bankruptcy Code, a chapter 7 trustee, with the court’s approval, may assume or reject any executory contract or unexpired lease of

the debtor. The Retiree Benefit Plans are executory contracts that may be rejected under section 365 of the Bankruptcy Code.

11. The appropriate standard for rejecting contracts under section 365 differs from the standard under section 1114. Generally, a trustee's decision to reject an executory contract under section 365 is reviewed under the traditional "business judgment" standard. See *In re Gardinier, Inc.*, 831 F.2d 974, 975 n. 2 (11th Cir. 1987); *In re Brada Miller Freight System, Inc.*, 702 F.2d 890, 893-94 (11th Cir. 1983); *In re Balco Equities Ltd, Inc.*, 323 B.R. 85 (Bankr. S.D.N.Y. 2005); *In re Diamond Mfg. Co., Inc.*, 164 B.R. 189 (Bankr. S.D. Ga. 1994).

12. Additionally, a bankruptcy court may order that leases and executory contracts are deemed rejected on a *nunc pro tunc* basis. See, e.g., *In re Thinking Machines Corp.*, 67 F.3d 1021, 1028 (1st Cir.1995) (bankruptcy court has power to deem leases rejected on a *nunc pro tunc* basis); *In re At Home Corp.*, 292 B.R. 195, 203-04 (N.D.Cal. 2003), *aff'd* 392 F.3d 1064 (9th Cir. 2004) (holding that nonresidential real property leases were deemed rejected *nunc pro tunc* to the rejection motion filing date); *In re CCI Wireless, LLC*, 279 B.R. 590 (Bankr. D. Colo. 2002), *aff'd* 297 B.R. 133 (D. Colo. 2003) (same); *In re O'Neil Theatres, Inc.*, 257 B.R. 806 (Bankr. E.D. La. 2000) (holding that nonresidential real property leases were deemed rejected *nunc pro tunc* to the debtor's petition date).

13. The Trustee has determined that the Retiree Benefit Plans should be rejected as the estate does not have sufficient funds to make payments thereunder.

14. Accordingly, the Trustee respectfully submits that relief under Section 365 of the Bankruptcy Code is warranted in these circumstances, and that the Retiree Benefit Plans should be rejected *nunc pro tunc* to the date of this Motion.

B. The Trustee and the Debtors Have Provided the Retirees with Options for Alternative Benefit Plans

15. The Trustee, the Debtors, and the purchaser of the Debtors' assets, Global SFI Holdings, LLC, have each provided notice to the retirees who participate in the Retiree Benefit Plans regarding the impending cancellation of these plans. The retirees have been offered options to continue receiving health insurance and life insurance through a company known as AmWins.

16. The notice provided by the Trustee to the retirees is attached hereto as Exhibit A.

NOTICE

17. Notice of this Motion has been provided to (i) all parties on the Master Service List; (ii) all retirees that receive Retiree Benefits; (iii) all counsel that have appeared on behalf of any retirees; (iv) NEBCO; (v) United Healthcare; (vi) Amwins; and (vii) all former unions known to the Debtors, including their counsel.

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WHEREFORE, the Trustee respectfully requests that the Court enter an order authorizing and ordering rejection of the Retiree Benefit Plans *nunc pro tunc* to the date of the filing of this Motion, and granting such other and further relief as the Court may deem proper.

Respectfully submitted this 14th day of July, 2011.

GREENBERG TRAURIG, LLP

/s/ John D. Elrod

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July 14, 2011

RE: Continuation or Termination of Post-65 Retiree Life Insurance and Health Insurance under the Scovill Fasteners, Inc. Policies

Dear Post-65 Retirees of Scovill Fasteners, Inc. and its affiliates¹ ("Retirees"):

As you may know, all assets of Scoville Fasteners Inc. were recently sold as of June 21, 2011. Subsequently, the case converted to a Chapter 7 liquidation on July 12, 2011, and the name of the company was changed to Clarkesville Liquidation, Inc. Hays Financial Consulting, LLC has been appointed by the Chapter 7 Trustee to assist in winding down the bankruptcy estate and to manage retiree benefit issues.

The Chapter 7 estate has no funds to continue retiree benefits and, therefore, the Trustee filed a motion on July 14, 2011 to reject the retiree benefits plans. Accordingly, no payments will be made for your benefits for July 2011 and you must take action by July 31, 2011 to continue coverage under either of the plans as follows:

RETIREE HEALTHCARE PLAN:

We have been advised that you previously received correspondence indicating that, effective July 1, 2011, Global SFI Holdings, LLC d/b/a Scovill Fasteners offered to continue your current healthcare coverage with United American Insurance Company, administered by AmWINS/NEBCO. *However, you must now personally pay the full cost of your coverage.* We have been advised that your health insurance plan will remain in effect with no break in coverage if your payment for July 2011 is received no later than July 31, 2011. Additionally, we have been advised that if you choose to change your coverage to the Option B Plan sent to you earlier via U.S. mail, you must make that election change no later than July 31, 2011 or, assuming you pay for the coverage, you will continue under your current plan. You should have already received an invoice from AmWINS for the July premium. All payments for healthcare coverage must be sent to:

¹ Scovill Fasteners, Inc.'s affiliates include Scovill, Inc., PCI Group, Inc., Rau Fastener Company, L.L.C., and Scomex, Inc.



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NEBCO
P.O. Box 71051
Charlotte, NC 28272

Please include your invoice number or name in the reference section of your check. **If payment is not received by July 31, 2011, your healthcare coverage will be terminated.**

RETIREE LIFE INSURANCE:

For those Retirees currently covered under the United Healthcare life insurance plan sponsored by Scovill Fasteners, Inc., your coverage terminated effective July 1, 2011. However, if you wish to convert your coverage to an individual plan, you may do so by completing the enclosed "Individual Life Conversion Request for Information" form. **Note that you must call United Healthcare at 1-888-999-4767 no later than July 31, 2011 to avoid cancellation of the policy.** At that time, they will provide you with a quote for your personal coverage. As long as you call by July 31, 2011 and make appropriate arrangements with United Healthcare, we have been advised that there will be no break in your life insurance coverage. After completing Part B of the Individual Life Conversion Request for Information form, please mail or fax the form to:

HRMP
Life Conversion Facility
5 Hutchinson Drive
Danvers, MA 01923

Fax: 1-978-762-4767

Should you have any further questions concerning these matters, please contact Kathy Malek at (404) 926-0053 or kmalek@haysconsulting.net.

Regards,

Kathryn A. Malek
Hays Financial Consulting, LLC
On behalf of the Chapter 7 Trustee of Scovill Fasteners, Inc.

Enclosures