

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION**

**IN RE:** : **Chapter 7**  
:   
**SCOVILL FASTENERS, INC., et al.,** : **Case No. 11-21650-reb**  
:   
**DEBTORS.** : **Jointly Administered**

**UNITED STATES TRUSTEE’S LIMITED OBJECTION TO CHAPTER 7 TRUSTEE’S  
MOTION FOR AN ORDER REJECTING RETIREE BENEFITS**

COMES NOW the United States Trustee, in furtherance of the administrative responsibilities imposed by 28 U.S.C. §586(a), and asserts the following limited objection to the motion of the Chapter 7 Trustee, filed July 14, 2011 (the “Motion”) [Doc. No. 210], for authorization under 11 U.S.C. § 365 to terminate certain retiree benefits effective *nunc pro tunc* as of the date of filing of the Motion.

The United States Trustee does not object to the Trustee’s request for authorization to reject the contracts for the retiree benefits but does object to the request that such relief be granted *nunc pro tunc* to the date of filing of the Motion, on the ground that neither section 365 nor any other provision of the Bankruptcy Code provides a basis for such retroactive relief.

The decisions cited by the Trustee as support for this request are inapposite in that they dealt with requests by debtors to reject leases of nonresidential real property where the property was effectively in the possession of the landlord. The Court held in *In re Thinking Machines Corp.*, 67 F.3d 1021, 1028 (1<sup>st</sup> Cir. 1995), that an order authorizing the retroactive rejection of such a lease “may be appropriate as long as it promotes the purposes of section 365(a).” The Trustee has not shown how the equities of the present case militate in favor of retroactive relief or how retroactive

termination of the retiree benefits would promote the purposes of section 365(a). *Compare In re At Home Corp.*, 292 B.R. 195, 204 (N.D.Cal. 2003) (debtor did not occupy premises, and landlord did not request formal surrender of premises or contend that it was prevented from re-letting premises); *In re CCI Wireless, LLC*, 279 B.R. 590, 595 (D.Co. 2002) (debtor had vacated most or all of premises before or shortly after filing of petition); *In re O'Neil Theatres, Inc.*, 257 B.R. 806, 808 (Bankr. E.D. La. 2000) (landlord had affirmatively rejected lease prior to commencement of case by locking and exercising control over premises).

In contrast to these cases dealing with the rejection of commercial leases for properties effectively in the possession of the landlords, no facts have been alleged in the present case which would suggest that continuation of the contractual obligations sought to be rejected (i.e., payment of the retiree benefits) would confer an undue advantage on the other parties to the contracts or would otherwise be inequitable.

WHEREFORE, the United States Trustee respectfully requests the Court to deny the Trustee's request to terminate the retiree benefits retroactively to the date of filing of the Motion.

Respectfully submitted,

/s/ James H. Morawetz  
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**CERTIFICATE OF SERVICE**

I certify that I am over the age of 18 and that on this date I electronically filed the foregoing Notice of Appearance with the Clerk of Court using the CM/ECF system, which will cause electronic notification of such filing to be sent to the following:

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This the 20th day of July, 2011.

/s/ James H. Morawetz  
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