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[Home](#) > Memorandum of Decision Re: Stub Rent

Monday, December 17, 2001

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

AUTOMATIONSOLUTIONS INTERNATIONAL, LLC,
11951

No. 01-

[Debtor](#) ⁱ(s).

Memorandum re Stay Relief

The debtor filed its [Chapter 11](#) ⁱ petition August 3, 2001. At that time, it had not paid its August rent to landlord URO Investments. The debtor made its first rent payment in September, 2001, and has been making monthly payments thereafter. The landlord seeks either relief from the [automatic stay](#) ⁱ unless the debtor immediately pays the "stub rent" from August 3 to August 31. The parties agree that this is a legal issue and there is no factual dispute. The court disagrees with the landlord that § 365(d)(3) mandates immediate payment of the "stub rent" as a matter of law. Over the years, commercial lessor interests have been successful in having numerous protections written into the [Bankruptcy Code](#) ⁱ. Given all these protections, the argument that there is an additional protection not clearly set forth in the Code is not persuasive. Section 365(d)(3) requires the debtor to timely perform all obligations "arising from and after the order for relief." The court interprets this as requiring the debtor to make the postpetition rent payments as they become due. The court agrees with the landlord that it has an administrative expense [claim](#) ⁱ for all post-petition use of its premises. However, it is unknown at this time if there will be any unpaid postpetition rent. For instance, if the lease is rejected as of the fifteenth day of a month, half

of the last rent payment would be credited to the "stub rent," meaning that only 13 day's postpetition rent was unpaid. If the lease is rejected on the third day of a month, no "stub rent" would be due at all. The landlord has not yet made a motion for an allowance of any administrative claim. When such claim is allowed, it is a matter of discretion when it is to be paid. *In re Verco Industries*, 20 B.R. 664, 665 (9th Cir.BAP 1982). Grounds for lifting the stay would exist only if the debtor failed to pay the claim when the court ordered it to be paid. In the meantime, failure to pay the "stub rent" is not grounds for relief. For the foregoing reasons, the landlord's motion for relief from the stay will be denied, without prejudice to renewal on 24 hour's notice if the debtor fails to make a timely postpetition rent payment. Counsel for the debtor shall submit an appropriate form of order which counsel for the landlord has approved as conforming to this decision.

Dated: December 17, 2001

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

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