

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
FANSTEEL INC., <i>et al.</i> , ¹)	Case No. 02-10109 (JJF)
)	(Jointly Administered)
Debtors.)	
)	Objection Deadline: February 11, 2002 at 4:00 p.m.
)	Hearing Date: February 14, 2002 at 12:30 p.m.
)	

**NOTICE OF MOTION FOR ADMINISTRATIVE ORDER UNDER
11 U.S.C. §§ 105(A) AND 331 ESTABLISHING PROCEDURES FOR
INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES
FOR PROFESSIONALS AND COMMITTEE MEMBERS**

TO: Parties required to receive notice pursuant to Del. Bankr. LR 2002-1.

On January 15, 2002, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the *Motion for Administrative Order Under 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Committee Members* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Court"), seeking to establish procedures for the monthly compensation of professionals and committee members, if any. A true and correct copy of the Motion is attached hereto.

¹ The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., American Sintered Technologies, Inc., and Fansteel Schulz Products, Inc.
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Add: Red Eye Mail Center

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Objections and other responses to the Motion, if any, must be in writing and be filed with the Bankruptcy Court, and served on (i) counsel for the Debtors: Jeffrey S. Sabin, Esquire, Schulte, Roth & Zabel LLP, 919 Third Avenue, New York, New York, 10022; and Laura Davis Jones, Esquire, Pachulski, Stang, Ziehl, Young & Jones P.C., 919 North Market Street, Suite 1600, P.O. Box 8705, Wilmington, Delaware 19899-8705; (ii) the Office of the United States Trustee, David Buckbinder, Esquire, J. Caleb Boggs Federal Building, 844 King Street, Suite 2313, Lock Box 35, Wilmington, Delaware 19801; (iii) counsel to the Official Committee of Unsecured Creditors (if any); and (iv) counsel for the postpetition lenders: Jeffrey N. Rich, Esquire, Kirkpatrick & Lockhart LLP, 1251 Avenue of the Americas, New York, New York 10022, on or before February 11, 2002 at 4:00 p.m. prevailing eastern time.

IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF DEMANDED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

IN THE EVENT THAT ANY OBJECTION OR RESPONSE IS FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, A HEARING ON THE MOTION WILL BE HELD ON FEBRUARY 14, 2002 AT 12:30 P.M. EASTERN TIME BEFORE THE HONORABLE JOSEPH J. FARNAN, JR., UNITED STATES DISTRICT COURT JUDGE FOR THE DISTRICT OF DELAWARE, 844 N. KING STREET, 6TH FLOOR, COURTROOM 6A, WILMINGTON, DELAWARE.

Dated: January 22, 2002

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[Proposed] Co-Counsel for the Debtors and
Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
FANSTEEL INC., et al., ¹)	Case No. 02-_____ ()
)	(Jointly Administered)
Debtors.)	
)	
)	

**MOTION FOR ADMINISTRATIVE ORDER UNDER
11 U.S.C. §§ 105(a) AND 331 ESTABLISHING PROCEDURES
FOR INTERIM COMPENSATION AND REIMBURSEMENT
OF EXPENSES FOR PROFESSIONALS AND COMMITTEE MEMBERS**

The debtors and debtors in possession (the “Debtors”) in the above-captioned cases hereby move the Court for entry of an administrative order under 11 U.S.C. §§ 105(a) and 331 establishing procedures for interim compensation and reimbursement of expenses for professionals and committee members (the “Motion”). In support of this Motion, Debtors respectfully state as follows:²

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue of these proceedings and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., American Sintered Technologies, Inc., and Fansteel Schulz Products, Inc.

²The facts and circumstances supporting this Motion are set forth in the Affidavit of Gary L. Tessitore, President and Chief Executive Officer of Fansteel, Inc., in Support of First Day Motions, filed contemporaneously herewith.

3. The statutory predicates for the relief requested herein are Sections 105(a), and 331 of title 11 of the United States Code (the "Bankruptcy Code").

Background

4. Fansteel and the other eight Debtors (each a direct or indirect wholly-owned subsidiary of Fansteel) have been engaged for over 70 years in the business of manufacturing and marketing specialty metal products with today's operations being conducted at ten manufacturing facilities (five of which are owned by Fansteel) in nine states. Collectively, Debtors have approximately 1,250 employees, substantially all on a full time basis, including approximately 365 employees that are working under collective bargaining agreements with four different unions. Each Debtor is operated separately, with separate employees, separate operations and separately maintained books and records.

A. Pre-Petition Unsecured Lenders

5. Prior to the Petition Date, The Northern Trust Company ("NTC"), as agent for itself and M&I Bank ("M&I"), had extended to Fansteel a \$30 million unsecured revolving facility (the "Pre-Petition Credit Facility"), which provided for up to \$20 million in revolving advances for working capital and up to \$10 million in letters of credit. Fansteel is the only borrower under the Pre-Petition Credit Facility and none of the other Debtors has any obligations thereunder; however, under the Pre-Petition Credit Facility, Fansteel agreed not to permit any of its direct or indirect subsidiaries (including all of the other Debtors) to incur indebtedness or to pledge any of their assets, subject to certain exceptions. As of the Petition Date, there was approximately \$8.5 million outstanding under the Pre-Petition Credit Facility in addition to \$6.5

million in outstanding letters of credit, which includes a \$3.7 million letter of credit in favor of the NRC.³

B. Causes Leading to the Bankruptcy Filings

6. The operations of Debtors' respective businesses have involved compliance with state and federal environmental laws, including the Atomic Energy Act. The Debtors' bankruptcy cases are an outgrowth of the discontinuation of one of Fansteel's operations that was conducted from the 1950s through 1989 at a site owned and operated by Fansteel in Muskogee, Oklahoma (the "Muskogee Site"). At the Muskogee Site, Fansteel, in accordance with a license obtained from the U.S. Nuclear Regulatory Commission (the "NRC") in 1967, processed tantalum ore for further processing at Fansteel's plant in North Chicago. Tantalum naturally occurs with other metals, including uranium and thorium, each of which is radioactive, and the processing of tantalum results in, among other things, radioactive residues and soils. Fansteel, in accordance with applicable regulations promulgated by the NRC, is required, upon discontinuance of its business to remediate these residues and soils.

7. In 1989, Fansteel discontinued its operations at the Muskogee Site. Notwithstanding such discontinuation, Fansteel has remained at all times in compliance with its NRC license, and has maintained the Muskogee Site in a manner that protects the health and safety of its employees and the public. Following its discontinuation of operations at the Muskogee Site, Fansteel developed a method to reprocess the residues at the Muskogee Site and to remediate the contaminated soils, and obtained the approval of the NRC for various aspects of

³ There is a second letter of credit in favor of the NRC in the amount of approximately \$750,000, which is not issued pursuant to the Pre-Petition Credit Facility.

such reprocessing and remediation. Unfortunately, due to operational problems in the plant and the significant decline in the price of tantalum during the second and third quarters of 2001, operation of the reprocessing facility was determined to be uneconomic, requiring Fansteel, as a matter of generally accepted accounting principals, in its financial statements for the quarter ended September 30, 2001, to write off the costs that Fansteel had expended in designing and building the reprocessing plant (approximately \$32 million), and to take an immediate reserve for the reasonably anticipated costs of remediating the radioactive residues and soils that remain on the Muskogee Site without regard to any reprocessing (an approximately \$57 million reserve).

8. Fansteel's plight was further aggravated by the actions of NTC and M&I. In mid October 2001, Fansteel promptly informed NTC of the prospective write-off and reserve required with respect to the Muskogee Site, and requested waivers of any events of default arising under the Pre-Petition Credit Facility as a result thereof, as well as an amendment of the loan documents governing the Pre-Petition Credit Facility in order either to allow Fansteel sufficient additional availability under the Pre-Petition Credit Facility or to allow Fansteel's subsidiaries to borrow funds on a secured basis which, in either case, would have provided the Debtors with sufficient liquidity to avoid a bankruptcy filing. However, NTC refused these requests and, on November 19, 2001, accelerated the Pre-Petition Credit Facility, froze all of the Debtors' accounts that were maintained at NTC and M&I and set-off amounts owed under the Pre-Petition Credit Facility against those accounts. As a result of the freeze and such set-off, the Debtors no longer had access to the funds necessary to operate their respective businesses and a bankruptcy filing became inevitable.

Relief Requested

9. Pursuant to Sections 105(a) and 331 of the Bankruptcy Code, Debtors request that the Court establish procedures for compensating and reimbursing Court-approved, retained professionals on a monthly basis similar to those recently established in other large chapter 11 cases in this District. Such an order will streamline the professional compensation process and enable the Court and all other parties to more effectively monitor the professional fees incurred in these chapter 11 cases. Further, it will avoid forcing the professionals to finance these bankruptcy cases while awaiting final approval of their fees and expenses.

10. Briefly stated, the requested procedures would permit each retained professional subject to these procedures to present to Debtors, the United States Trustee, counsel to the debtor in possession lenders, counsel to any official committee of creditors appointed by the United States Trustee (the "Committee") to serve in these chapter 11 cases, and certain other interested parties an application for interim approval and allowance of fees for services rendered and expenses incurred by each retained professional during the immediately preceding month.

11. Specifically, Debtors propose that, except as otherwise provided in an order of the Court authorizing the retention of a particular professional, the professionals retained pursuant to an order of the Court in these cases (collectively, the "Professionals") be permitted to seek interim payment of compensation and reimbursement of expenses in accordance with the following procedures (collectively, the "Compensation Procedures"):

a. No earlier than the 25th day of each calendar month, each Professional seeking interim compensation shall file an application (the "Monthly Fee

Application”) with the Court pursuant to Section 331 of the Bankruptcy Code for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred during the immediately preceding month (the “Compensation Period”).

b. Each Monthly Fee Application shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), applicable Third Circuit law and the Local Rules of this Court and shall be served upon all parties set forth on the service list attached hereto as Exhibit “A” (the “Notice Parties”).

c. Each Notice Party shall have twenty (20) days after service of a Monthly Fee Application to object to such application (the “Objection Deadline”). Upon the expiration of the Objection Deadline, each Professional may file a certificate of no objection or a certificate of partial objection with the Court, whichever is applicable, after which Debtors are authorized to pay each Professional an amount (the “Actual Interim Payment”) equal to the lesser of (i) 80 percent of the fees and 100 percent of the expenses requested in the Monthly Fee Application (the “Maximum Payment”) or (ii) 80 percent of the fees and 100 percent of the expenses not subject to an objection.

d. If any Notice Party objects to a Professional’s Monthly Fee Application, it must file a written objection with the Court and serve it on the Professional and each of the Notice Parties so that it is received on or before the Objection Deadline. Thereafter, the objecting party and the Professional may attempt to resolve the objection on a consensual basis. If the parties are unable to reach a resolution of the objection within 20 days after service of the objection, then the Professional may either (i) file a response to the objection with the

Court, together with a request for payment of the difference, if any, between the Maximum Payment and the Actual Interim Payment made to the affected Professional (the "Incremental Amount"); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the objection, if requested by the parties.

e. Beginning with the period ending on March 31, 2002, and at three month intervals or such other intervals convenient to the Court ("Interim Period"), each Professional shall file with the Court and serve upon the Notice Parties, pursuant to Section 331 of the Bankruptcy Code, an interim application for allowance of compensation and reimbursement of expenses, of the amounts sought in the Monthly Fee Applications filed during such period (the "Interim Fee Application"). The Interim Fee Application must include a summary of the Monthly Fee Applications that are the subject of the request and any other information requested by the Court or required by the Local Rules. An Interim Fee Application must be filed and served within 45 days of the conclusion of the Interim Period. The first Interim Fee Application should cover the time between the commencement of these cases through and including March 31, 2002. Any Professional who fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the compensation procedures until such time as the Interim Fee Application is submitted.

f. Debtors shall request that the Court schedule a hearing on the Interim Fee Applications at least once every six months or at such other intervals as the Court deems appropriate.

g. The pendency of an objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.

h. Neither the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses, nor the filing of or failure to file an objection will bind any party in interest or the Court with respect to the allowance of interim or final applications for compensation and reimbursement of expenses of Professionals.

i. All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Court.

12. The procedures requested in this Motion will relieve the burden on the Court imposed by alternative interim compensation procedures that require monthly court orders, while preserving all rights of objection, enabling the parties to closely monitor costs of administration, and enabling Professionals to maintain a level cash flow.

13. Debtors further request that each member of the Committee be permitted to submit statements of expenses (excluding Committee member counsel fees and expenses) and supporting vouchers to counsel to the Committee, who will collect and submit such requests for reimbursement in accordance with the Compensation Procedures as if such Committee members were Professionals.

Authority for the Requested Relief

14. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of

this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title....

11 U.S.C. § 331 (2001).

15. Section 105(a) of the Bankruptcy Code provides, in relevant part, as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title . . . shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules. . . .

11 U.S.C. § 105(a) (2001).

16. Procedures comparable to those proposed in this Motion have been established in other large chapter 11 cases in this District. See, e.g., In re Waccamaw's HomePlace, Chapter 11 Case Nos. 01-0181 – 01-0184 (PJW) (Bankr. D. Del. January 17, 2001); (In re Mariner Post-Acute Network, Inc., Chapter 11 Case Nos. 00-00113 through 00-00214 (MFW) (Bankr. D. Del. January 19, 2000); In re Vencor, Inc., Chapter 11 Case Nos. 99-3199 through 99-3327(MFW) (Bankr. D. Del. September 13, 1999); In re Hechinger Inv. Co. of Del., Inc., No. 99-2261 (PJW) (Bankr. D. Del. June 22, 1999), In re PWS Holding Corp., Bruno's, Inc., et al., Case Nos. 98-212 through 98-223, Administrative Order dated February 2, 1998; and In re Montgomery Ward Holding Corp., et al., Case No. 97-1409, Administrative Order dated July 8, 1997. Such an order will permit the Court, the Office of the United States Trustee, and all other interested parties to monitor the fees incurred more effectively. Further, such

procedures are needed to avoid having professionals fund the reorganization case. In re Int'l Horizons, Inc., 10 B.R. 895, 897 (Bankr. N.D. Ga. 1981) (court established procedures for monthly interim compensation). Appropriate factors to consider include “the size of [the] reorganization cases, the complexity of the issues included, and the time required on the part of the attorneys for the Debtor in providing services necessary to achieve a successful reorganization of the Debtor.” Id. Debtors submit that the procedures sought herein are appropriate considering the above factors.

Notice

17. Notice of this Motion has been given to (i) Office of the United States Trustee and (ii) counsel to the Debtors' proposed postpetition lenders.

18. Following the initial hearings in these cases, Debtors will provide Notice of this Motion to (i) the parties holding the twenty (20) largest unsecured claims against the Debtors' estates on a consolidated basis; and (ii) any parties that request special notice in these cases.

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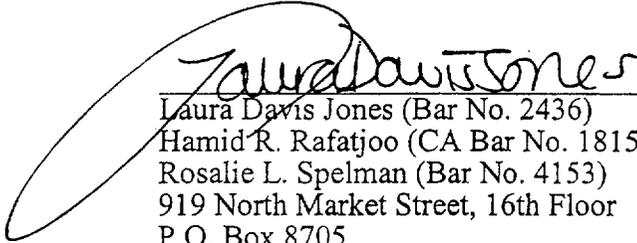
WHEREFORE, Debtors respectfully request that the Court enter an order approving interim compensation procedures on the terms and conditions set forth above, and granting such other and further relief as is just and proper.

Dated: January 14, 2002

SCHULTE, ROTH & ZABEL LLP
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[Proposed] Counsel for Fansteel Inc., et al.
Debtors and Debtors In Possession

EXHIBIT A

EXHIBIT "A"

1. **Fansteel Inc., et al.**
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2. **[Proposed] Attorneys for Debtors:**
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3. **Office of the United States Trustee**
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4. **Counsel to Postpetition Lenders:**
Robert Michaelson, Esq.
Kirkpatrick & Lockhart
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222

5. **Counsel to any official committee appointed herein**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
FANSTEEL INC., et al.,¹) Case No. 02-_____ ()
) (Jointly Administered)
Debtors.)

**ORDER UNDER 11 U.S.C. §§ 105(a) AND 331
ESTABLISHING PROCEDURES FOR
INTERIM COMPENSATION AND REIMBURSEMENT OF
EXPENSES FOR PROFESSIONALS AND COMMITTEE MEMBERS**

Upon consideration of the motion seeking entry of an administrative order under 11 U.S.C. §§ 105(a) and 331 establishing procedures for interim compensation and reimbursement of expenses for professionals and committee members (the "Motion") filed by the debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O); and due and adequate notice of the Motion having been given under the circumstances; and after due deliberation and cause appearing therefore; it is hereby

¹ The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc. Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., American Sintered Technologies, Inc., and Fansteel Schulz Products, Inc.

ORDERED that the Motion is granted; and it is further

ORDERED that, except as otherwise provided in an order of the Court authorizing the retention of a particular professional, the professionals specifically retained pursuant to an order of the Court in these cases (collectively, the “Professionals”) may seek interim payment of compensation and reimbursement of expenses in accordance with the following procedures (collectively, the “Compensation Procedures”):

a. No earlier than the 25th day of each calendar month, each Professional seeking interim compensation shall file an application (the “Monthly Fee Application”) with the Court pursuant to Section 331 of the Bankruptcy Code for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred during the immediately preceding month (the “Compensation Period”).

b. Each Monthly Fee Application shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), applicable Third Circuit law and the Local Rules of this Court and shall be served upon all parties set forth on the service list attached hereto as Exhibit “A” (the “Notice Parties”).

c. Each Notice Party shall have twenty (20) days after service of a Monthly Fee Application to object to such application (the “Objection Deadline”). Upon the expiration of the Objection Deadline, each Professional may file a certificate of no objection or a certificate of partial objection with the Court, whichever is applicable, after which the Debtors are authorized to pay each Professional an amount (the “Actual Interim Payment”) equal to the lesser of (i) 80 percent of the fees and 100 percent of the expenses requested in the Monthly Fee

Application (the "Maximum Payment") or (ii) 80 percent of the fees and 100 percent of the expenses not subject to an objection.

d. If any Notice Party objects to a Professional's Monthly Fee Application, it must file a written objection with the Court and serve it on the Professional and each of the Notice Parties so that it is received on or before the Objection Deadline. Thereafter, the objecting party and the Professional may attempt to resolve the objection on a consensual basis. If the parties are unable to reach a resolution of the objection within 20 days after service of the objection, then the Professional may either (i) file a response to the objection with the Court, together with a request for payment of the difference, if any, between the Maximum Payment and the Actual Interim Payment made to the affected Professional (the "Incremental Amount"); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the objection, if requested by the parties.

e. Beginning with the period ending on March 31, 2002, and at three month intervals or such other intervals convenient to the Court ("Interim Period"), each Professional shall file with the Court and serve upon the Notice Parties, pursuant to Section 331 of the Bankruptcy Code, an interim application for allowance of compensation and reimbursement of expenses, of the amounts sought in the Monthly Fee Applications filed during such period (the "Interim Fee Application"). The Interim Fee Application must include a summary of the Monthly Fee Applications that are the subject of the request and any other information requested by the Court or required by the Local Rules. An Interim Fee Application

must be filed and served within 45 days of the conclusion of the Interim Period. The first Interim Fee Application should cover the time between the commencement of these cases through and including March 31, 2002. Any Professional who fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the compensation procedures until such time as the Interim Fee Application is submitted.

f. Debtors shall request that the Court schedule a hearing on the Interim Fee Applications at least once every six months or at such other intervals as the Court deems appropriate.

g. The pendency of an objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.

h. Neither the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses, nor the filing of or failure to file an objection will bind any party in interest or the Court with respect to the allowance of interim or final applications for compensation and reimbursement of expenses of Professionals.

i. All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Court; and it is further

ORDERED that notice of the interim and final fee applications shall be served on (a) the Notice Parties and (b) all parties that filed a notice of appearance with the Clerk of this Court pursuant to Bankruptcy Rule 2002. The Notice Parties shall be entitled to receive both the Monthly and Interim Fee Applications and the notice of hearing thereon (the "Hearing Notice"),

and all other parties entitled to notice shall be entitled to receive only the Hearing Notice. Notice given in accordance with this paragraph is deemed sufficient and adequate and in full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of this Court; and it is further

ORDERED that each member of the Committee (if appointed) is permitted to submit statements of expenses (excluding Committee member counsel fees and expenses) and supporting vouchers to counsel to the Committee, which shall collect and submit the Committee members' requests for reimbursement in accordance with these Compensation Procedures as if such Committee members were Professionals; and it is further

ORDERED that Debtors shall include all payments to Professionals on its monthly operating reports, detailed so as to state the amount paid to each of the Professionals; and it is further

ORDERED that all time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

Dated: _____, 2002

Judge