

40-7580

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:)
FANSTEEL INC., et al.,¹) 02-CV-44 (JJF)
)
Debtor.)

Objection Deadline: February 20, 2002 at 4:00 p.m.
Hearing Date: Hearing Held Only If Necessary

**MOTION FOR ENTRY OF AN ORDER PURSUANT TO
11 U.S.C. §§ 105 AND 363 AUTHORIZING DEBTORS TO MAKE
PAYMENTS TO CONGRESS FINANCIAL CORPORATION NECESSARY FOR
DILIGENCE, NEGOTIATION, PREPARATION AND DOCUMENTATION OF A
DEBTOR IN POSSESSION FINANCING FACILITY**

The debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), by and through their undersigned counsel, submit this motion (the "Motion") for entry of an order, pursuant to 11 U.S.C. §§ 105 and 363, authorizing Debtors to pay Congress Financial Corporation ("Congress") due diligence, legal and other fees and costs in connection with the negotiation, preparation and documentation of a debtor in possession financing facility (the "DIP Facility"), as more fully described below. In support of the Motion, Debtors respectfully state as follows:

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.
27311-001\DOCS_DE:40313.1

NMS501 Add: Lisa Oye Neal Center

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. The statutory predicates for the relief requested herein are Bankruptcy Code §§ 105(a) and 363(b) and Bankruptcy Rule 9006.

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"). 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.²

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. 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 such reprocessing and remediation. Unfortunately, due to operational problems in the plant and

² 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.

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 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 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, Debtors no longer had access to the funds necessary to operate their respective businesses and a bankruptcy filing became inevitable.

C. The Congress DIP Proposal

9. Concurrent with Debtors' October and November discussions with NTC and M&I, Fansteel also pursued its options with alternate financing sources, and particularly sought proposals for debtor in possession financing from a number of lenders. However, Debtors' efforts to find debtor in possession financing were ultimately in vain. The lenders with whom Fansteel had the most detailed discussions, Foothill Capital Corporation ("Foothill") and The CIT Group/Business Credit, Inc. ("CIT"), were both concerned that the rights of the NRC under applicable laws might permit the NRC to obtain statutory liens or other rights that would be senior to the lender's right to repayment. Fansteel explored obtaining the consent of the NRC to the proposed debtor in possession financing; however, even if such consent were forthcoming, under the Hobbs Act third parties arguably would have a period of time within which to challenge the consent of the NRC. As a result, the lenders were unwilling to provide Fansteel with debtor in possession financing unless and until the NRC provided its consent and the challenge period under the Hobbs Act had expired. Given the more immediate need that Fansteel has for financing, the delay that meeting these conditions would require was unacceptable.

10. Following the commencement of their chapter 11 cases, Debtors were approached by Congress, who expressed an interest in providing a debtor-in-possession financing facility. Congress indicated that, unlike CIT and Foothill, it would not require the consent or other approval of the NRC in order to provide that facility. Furthermore, Debtors were able to negotiate terms of such facility that are competitive with the terms that CIT and Foothill were willing to provide. Thus, the Congress proposal offers Debtors the opportunity to

obtain competitive financing without the delay or uncertainty presented by the Foothill or CIT proposals.

11. Debtors have sought to keep the Official Committee of Unsecured Creditors (the "Committee") informed of the progress being made towards a Congress proposal, and to that end provided counsel for the Committee with copies of the proposal letters that Congress has provided to Debtors. Debtors have sought, and hope to obtain, the consent of the Committee to the relief being sought by this Motion.

12. Debtors' efforts in this regard have led to the submission of a letter of intent by Congress for a DIP Facility of up to \$20,000,000 (the "Letter of Intent"). A true and correct copy of the Letter of Intent is attached hereto as Exhibit A. The proposed terms of the DIP Facility are as follows:

- a. A secured revolving DIP Facility of up to \$20,000,000 to be used exclusively for working capital, based on a lending formula consisting of (i) eighty-five percent (85%) of the net amount of eligible trade accounts receivable, and (ii) sixty percent (60%) of the value of eligible raw material and eligible finished goods inventory; provided however, that the inventory-based loan amount shall not exceed \$7,000,000.
- b. The DIP Facility will include a \$5,000,000 facility for letters of credit, which shall be reserved 100% against the amount of the outstanding DIP Facility. The fees for the letters of credit shall be two and one-half percent (2.5%) per annum on the daily outstanding balance of the letters of credit.
- c. The DIP Facility shall be secured a first priority lien on substantially all of Debtors' assets, except for the real property located at Muskogee, Oklahoma and recoveries from preference and fraudulent transfer actions.
- d. The DIP Facility shall accrue annual interest at the First Union National Bank announced prime rate plus one percent (1.00%).
- e. The following fees shall apply to the DIP Facility: (i) a one time closing fee of one and one-half percent (1.50%); (ii) quarterly fees of

\$10,000; (iii) unused line fee of three-eighths of one percent (.375%); and (iv) an early termination fee of two percent (2.0%).

f. The DIP Facility shall terminate at the earliest of: (i) two (2) years after the initial funding of the DIP Facility under a financing order approving the DIP Facility; (ii) the confirmation of a plan of reorganization; or (iii) such date as may be set under financing orders approving the DIP Facility.

13. Any proposed lender will incur substantial costs and expenses prior to being in a position to provide Debtors with a firm commitment or definitive documentation for the financing requested. Accordingly, through this Motion, Debtors request authority to make a deposit and reimburse Congress's expenses incurred as a result of the due diligence for the DIP Facility. Specifically, Debtors seek authority to reimburse fees and expenses incurred by Congress on the terms and conditions set forth below:

a. Debtors will pay Congress' reasonable legal and closing expenses, including attorneys' fees and disbursements, filing and search fees, appraisal fees and field examination expenses and per diem field examination charges, whether or not the transaction closes (the "Due Diligence Expenses"). All such expenses shall be paid upon demand, together with such advance funds as Congress may from time to time request.

b. Debtors will pay Congress a deposit of \$100,000 (the "Initial Deposit") against the Due Diligence Expenses. In addition to the Initial Deposit, in accordance with the terms of the prior paragraph, Debtors will pay to Congress such estimated additional costs up to an amount of \$150,000 (the "Final Deposit" together with the Initial Deposit, the "Deposits"); provided, however, that the Final Deposit shall not be paid, in whole or in part, without the prior consent of the Committee.

c. The Deposits will be returned to the Debtors, less the cost of field examinations, legal fees and other expenses directly related to the loan application and credit review, if credit approval of the proposed DIP Facility is not obtained.

d. In the event the DIP Facility is consummated, then the Deposits, less the Due Diligence Expenses, will be retained by Congress and credited against the DIP Facility.

e. In the event the DIP Facility is approved by Congress but does not close within forty-five (45) days from the date of such approval, the Deposits will be retained by Congress as an additional fee if such failure to close is due to Debtors' decision not to enter into the DIP Facility or Debtors' failure to meet any of the conditions of the DIP Facility.

f. The Deposits will be retained by Congress if, during the due diligence period, Debtors intentionally mislead or fail to disclose material information, the disclosure of which would have a materially adverse impact on the approval of the DIP Facility.

RELIEF REQUESTED

14. In order for Congress to begin the diligence process, Congress requires that Debtors obtain authority to pay, and pay, Congress the \$100,000 Initial Deposit prior to Congress's commencement of its due diligence. In addition to the \$100,000 Initial Deposit, Debtors seek authority to pay Congress an additional deposit of \$150,000 in the event that the Due Diligence Expenses exceed the amount of the Initial Deposit; provided, however, that the \$150,000 deposit will not be paid without the prior consent of the Committee.

15. As outlined above, the Deposits, minus the actual Due Diligence Expenses, may be refunded to Debtors in the event that Congress does not obtain approval to fund the DIP Facility.

16. Given the substantial costs of due diligence review, the negotiation and documentation of the proposed financing, Debtors have determined that it is in the best interest of the estates to pay Congress the \$100,000 Initial Deposit and to comply with the other reimbursement and compensation provisions set forth above, in order to obtain the DIP Facility.

BASIS FOR RELIEF

17. Section 363(b)(1) of the Bankruptcy Code permits a debtor in possession to use property of the estate, “other than in the ordinary course of business,” after notice and a hearing. 11 U.S.C. § 363(b)(1) (2002). Additionally, Section 105(a) of the Bankruptcy Code allows this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a) (2002).

18. This Court should authorize Debtors to pay the above-described Deposits to Congress, outside the ordinary course of business, if Debtors demonstrate a sound business justification for entering into the DIP Facility. In re Delaware Hudson Ry. Co., 124 B.R. 169, 179 (Bankr. D. Del. 1991) (explaining that bankruptcy courts in the Third Circuit have adopted the “sound business purpose” test to evaluate motions brought pursuant to Bankruptcy Code § 363(b)); In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983).

19. Once Debtors articulate a valid business justification, “[t]he business judgment rule is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” In re Integrated Resources, Inc., 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992), quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985). The business judgment rule applies in chapter 11 proceedings and shields a debtor’s management from judicial second-guessing. See Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”).

20. In addition, under Section 105 of the Bankruptcy Code, this Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or

protecting the value of the Debtors' assets. E.g., In re Chinichian, 784 F.2d 1440, 1443 (9th Cir. 1986) ("Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code."). In addition, Section 363 of the Bankruptcy Code provides that if a debtor is authorized to operate its business under Section 1108 of the Bankruptcy Code, the debtor "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate."

21. Since the filing of Debtors' cases, Debtors have made numerous attempts to obtain financing. Debtors have obtained an interim loan from some insiders and are also in the process of selling some of their accounts receivable in order to fund their business operations. The DIP Facility is in an amount which will ensure Debtors' continued viability as a going concern during the pendency of these Chapter 11 cases. If Debtors are successful in obtaining the DIP Facility, Debtors' management will be able to focus their time and energy on Debtors' reorganization strategy rather than on their ability to maintain their business operations.

22. Debtors believe that the relief requested herein will allow Debtors to successfully maintain the going concern value of their businesses during the pendency of these chapter 11 cases and thereby maximize value for the benefit of their estates and their creditors. Without access to the DIP Facility, Debtors' fear that they will not be able to finance their continued business operations and may be forced to liquidate their business. In addition, it is likely that, if Congress approves the DIP Facility, Congress may provide Debtors with exit financing in connection with Debtors' plan of reorganization if Debtors meet Congress's credit criteria.

23. In addition, the Letter of Intent was negotiated based on arms-length negotiations between the parties, Debtors believe that Congress represents the best source of financing for Debtors and that the terms of the proposed DIP Facility are the best terms available

to Debtors. Thus, after careful analysis, and in the exercise of their business judgment, Debtors have determined, and respectfully submit, that, for all of the foregoing reasons, the relief requested in this Motion is in the best interests of their estates and creditors.

WHEREFORE, Debtors respectfully request that the Court enter an Order (a) authorizing Debtors to pay Congress \$100,000 as the Initial Deposit against the Due Diligence Expenses; (b) authorizing Debtors to pay Congress an additional \$150,000 as the Final Deposit, subject to the consent of the Committee, against the Due Diligence Expenses; and (c) granting Debtors such other and further relief as is just and proper.

Dated: February 12, 2002

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

EXHIBIT "A"

Congress Financial Corporation
150 South Wacker Drive, Suite 2200
Chicago, Illinois 60606-4202
312 332-0420 ext. 232
Fax 312 444-9423
<http://www.congressfinancial.com>



February 8, 2002

Revision #5

Fansteel, Inc.
One Tantalum Place
North Chicago, Illinois 60064

Attention: Gary L. Tessitore
R. Michael McEntee

Gentlemen:

You have provided us with certain information and have discussed with us the current and future needs for the financing of Fansteel, Inc. and its subsidiaries or affiliates (the "Company").

In connection therewith, we are pleased to submit our proposal to provide a secured revolving debtor-in-possession facility of up to \$20,000,000 to the Company (the "Credit Facility").

All of our loans and other credit accommodations provided to the Company shall be used exclusively for the working capital of the Company. The loans and other credit accommodations provided to the Company shall not be used to pay the Company's pre-petition lenders (other than payments on account of pre-petition trade vendors pursuant to order of the Bankruptcy Court). No portion of Chapter 11 administration expenses or priority claims, other than those directly attributable to the operation of the business of the Company, payments to professionals employed in the Chapter 11 case where payment is authorized by order of the Bankruptcy Court, and otherwise permitted by the terms of the financing order or to which we have specifically agreed, shall be funded with the loans or other accommodations under the Credit Facility and the percentages and categories of permitted allocations of such claims and expenses shall be approved by us.

We contemplate that the Credit Facility will be provided to the Company in conjunction with its Chapter 11 bankruptcy proceedings. The exact structure and terms of the proposed Credit Facility cannot be precisely stated until the completion of our field examinations and credit investigations; however, we contemplate that the Credit Facility may be structured as follows:

1. Revolving Credit Facility.

- (a) Amount: Revolving loans of up to \$20,000,000 based upon the lending formulas, and subject to the sublimits and other terms described below.
- (b) Lending Formulas:
- (i) Trade Accounts: Up to eighty-five percent (85%) of the net amount of eligible trade accounts receivable of the Company. Eligible trade accounts receivable and the net amounts thereof will be determined by us pursuant to general criteria which will be set forth in the loan documentation. Generally, eligible trade accounts receivable will exclude accounts which are unpaid more than sixty (60) days past the original due date thereof, but in any event which are unpaid more than ninety (90) days from the original invoice date thereof or which are unpaid more than one hundred twenty (120) days from the original invoice thereof (for accounts with special dating terms), accounts owed by an account debtor which has more than fifty percent (50%) of the aggregate amount thereof unpaid more than such number of days past the original invoice date thereof and/or due date, contra accounts, poor credits, employee or affiliate accounts receivable, and those other accounts which do not constitute collateral acceptable for lending purposes pursuant to criteria established by us. Eligibility for tooling receivables shall be limited to the final invoice, after customer acceptance, and is subject to the aforementioned credit criteria of lender. Foreign receivables may be considered eligible under certain circumstances on a case-by-case basis.
- (ii) Inventory: Up to sixty percent (60%) of the value of eligible raw material and eligible finished goods inventory of the Company, in each case valued at the lower of cost or market, as determined by us, with cost determined under the first-in-first-out method. Such advance rate is subject to results satisfactory to us of an appraisal of the inventory to be conducted at the expense of the Company by an independent appraiser acceptable to us. Such advance shall not exceed eighty percent (80%) of the appraised net orderly liquidation value. Eligible inventory will be determined by us pursuant to general criteria which will be set forth in the loan documentation. Generally, eligible inventory will exclude work-in-process, packaging, slow-moving or obsolete inventory, and those other items which do not constitute collateral acceptable for lending purposes pursuant to criteria established by us.
- (c) Inventory Loan Limit: The maximum amount of loans available in respect of eligible inventory shall not exceed \$7,000,000 at any time, notwithstanding the total value of eligible inventory and including for this purpose our reliance on eligible inventory to be acquired under commercial letters of credit opened by or through us under the letter of credit facility described below.

2. Letter of Credit Facility.

- (a) Amount: Letters of credit arranged through us ("LCs") of up to an aggregate amount at any time outstanding of \$5,000,000, included within the overall Revolving Credit Facility.
- (b) LC Reserves Against Availability: Reserves against the revolving loans otherwise available equal to (i) one hundred percent (100%) minus the percentage set forth above for the inventory lending formula multiplied by the cost of the goods being purchased with the LC, plus (ii) duty, freight and cost of transport within the U.S., will be required when opening LCs for the purpose of purchasing eligible inventory, provided all negotiable documents of title are consigned to the issuing bank. If the negotiable documents of title are not consigned to the issuing bank, a reserve against the revolving loans of one hundred percent (100%) of the amount of LCs opened will be required. LCs which are opened for other purposes approved by us will require reserves of one hundred percent (100%) of the amount of such LCs.
- (c) Letter of Credit Fee: Two and one-half percent (2.50%) per annum on the daily outstanding balance of the LCs payable monthly in arrears. All applicable bank and opening charges will be in addition to our fee and charged to the loan account of the Company.

3. Collateral. All obligations of the Company and any corporate guarantors to us will be secured by first and only security interests and liens upon all of the present and future pre-petition and post-petition assets of the Company, including all accounts, contract rights, general intangibles [including, without limitation, all trademarks, patents and other intellectual property, tax refunds, choses in action and other claims and recoveries (excluding recoveries of preferences and from fraudulent transfers), franchises, licenses and other rights and agreements], chattel paper, documents, instruments (including stock in subsidiaries and affiliates), inventory, machinery and equipment, real property (excluding all assets associated with the operations in Muskogee, Oklahoma), fixtures and all products and proceeds thereof, except those liens allowed by us. All of our loans and other credit accommodations shall be fully cross-collateralized by all pre-petition and post-petition assets of the Company and shall be cross-defaulted, cross-terminated and cross-guaranteed.

4. Interest Rate. The interest rate on loans will be one percent (1.00%) per annum above the rate announced from time to time by First Union National Bank, as its "prime rate" (subject to a higher rate after default for so long as it continues). Collections will be credited to the loan account of the Company on a daily basis, allowing one business day after our receipt of a wire transfer of federal funds into our payment account designated for such purpose.

5. Fees. All fees listed below are in addition to interest and other fees and charges provided for herein and may, at our option, be charged directly to any loan account(s) of the Company maintained with us.

- (a) Closing Fee: One and one-half percent (1.50%) of the Credit Facility, earned and payable in full at closing. If, upon the request of the Company, we elect to issue a commitment letter, the closing fee will be payable to us upon issuance of the commitment letter as a non-refundable commitment fee.
 - (b) Servicing Fee: \$10,000 for each quarter or part thereof during the term of the arrangements, payable quarterly in advance.
 - (c) Unused Line Fee: Three-eighths of one percent (.375%) per annum on the difference between the average monthly balance of revolving loans and LCs outstanding under the Credit Facility and \$20,000,000, payable monthly.
 - (d) Early Termination Fee: Two percent (2.00%) of the Credit Facility if the Credit Facility is terminated for any reason prior to the end of the then current term. To the extent the Credit Facility is provided as debtor-in-possession financing, we will waive any early termination fee arising from the repayment of the Credit Facility through the proceeds of any post-confirmation credit facility provided by us in connection with any confirmed plan of reorganization in such bankruptcy.
6. Term. The Credit Facility shall be for a term ending on the earliest of: (a) the twenty-fourth (24th) month after the initial loans by us to the Company under the financing orders; (b) confirmation of a plan of reorganization for the Company under Chapter 11; or (c) the last termination date set forth in the financing orders.
7. Expenses. The Company agrees to pay all reasonable legal and closing expenses, including attorneys' fees and disbursements, filing and search fees, appraisal fees and field examination expenses and per diem field examination charges, whether or not this transaction closes. We charge \$750 per person per day for our field examiners in the field and in the office, plus travel, hotel and all other out-of-pocket expenses. All such expenses shall be paid to us upon demand, together with such advance funds on account of such expenses and charges as we may from time to time request. This Section shall survive the expiration or termination of this letter.
8. Deposits. As evidence of our mutual good faith, and in consideration of our having incurred and continuing to incur certain expenses in the expectation of establishing the financing arrangements between us and the Company, we request that the Company deposit with us \$100,000 against our expenses. In addition to this initial deposit, upon receiving estimates of the cost of appraisals and initial legal documentation costs, we will require additional deposits equal to the amount of such estimates prior to commencing the appraisals and legal documentation. These amounts, together with any other deposits at any time received by us will be:
- (a) Returned to the Company, less the cost of our field examinations, legal fees and other expenses directly related to the loan application and credit review, if our credit approval of the proposed financing is not obtained;

- (b) Retained by us, and credited to the loan account of the Company, less the expenses described in paragraph (a) above, if the credit is approved and booked;
 - (c) Retained by us, as a fee in addition to expenses payable by the Company as set forth above, if our credit approval of the proposed financing is obtained and the transaction does not close within forty-five (45) days from the date of such approval, whether as a result of your election not to do business with us or a failure to fulfill any of the conditions of the proposed financing as approved by us; and
 - (d) Retained by us, as a fee in addition to expenses payable by the Company as set forth above, if at any time during the loan and credit review, the Company intentionally misleads us or intentionally fails to disclose material information which, if disclosed, would have had a material adverse impact on the loan approval.
9. Post-confirmation Financing. Nothing in this letter or in our past, present or future discussions concerning the commencement of a voluntary Chapter 11 case by the Company shall constitute a commitment or a proposal to provide post-Chapter 11 (i.e. post-confirmation financing) to the Company or any successor to the Company or its businesses. Any commitment or proposal which we might discuss in the future with you with respect to such matters must be in writing signed by us. We will consider providing the Company with a proposal for exit financing if it is determined, at our sole discretion, that the Company meets our standard credit criteria.
10. Other Information and Conditions. This proposal does not represent a commitment to lend. Our proposal is expressly subject to review of certain other information, satisfactory completion of our field examinations, credit investigations and analysis and approval by our credit committee. Such approval, if obtained at all, shall be contingent upon a closing taking place within forty-five (45) days thereafter, after which time this proposal will require reapproval by our credit committee even if we continue to work on this transaction. Such reapproval, if obtained, may result in different terms or conditions, or in a determination not to consummate the transaction. No commitment to lend shall be implied from any action by us or on our behalf. Communication to you of credit committee approval or reapproval shall not constitute a commitment to lend, unless expressly so stated in a commitment letter signed by us and you. In the event our credit committee approves the financing described herein, such approval will not be conditioned upon (i) the consent of the Nuclear Regulatory Commission (the "NRC") to the Credit Facility, the financing order or the transactions contemplated thereby, (ii) the lack of any objection, contest or appeal by the NRC to the Credit Facility, the financing order or the transactions contemplated thereby and (iii) the delivery of any legal opinion with respect to any rights (or lack thereof) that the NRC, Environmental Protection Agency or any other federal, state or local governmental agency or body may have or assert arising from, relating to or otherwise with respect to the Company's property in Muskogee Oklahoma and any remediation, decommissioning or decommissioning funding obligations with respect thereto; provided, that appropriate notice shall have been given to the NRC and any other applicable governmental authority or body, the financing order shall have been entered and any objection by the NRC or any other applicable governmental authority or body shall have been overruled.

In addition, subject to such conditions as may be established in connection with the credit approval, we would anticipate that the closing of the Credit Facility will be subject to the satisfaction, in a manner acceptable to us, of the following:

- (a) The Company continuing to furnish us with all financial information, projections, budgets, business plans, cash flows and such other information as we reasonably request from time to time. We shall have received current agings of receivables, current perpetual inventory records and/or rollforwards of accounts and inventory through the date of closing, together with supporting documentation, and other documents and information that will enable us to accurately identify and verify the eligible collateral at or before closing in a manner satisfactory to us and including documentation with respect to inventory in transit, goods in bonded warehouses or at other third-party locations. We may require daily or weekly reporting of collateral information from the Company and/or may establish in our records a loan account for the Company prior to closing. Such actions should not be construed as a commitment to lend or to waive or modify any conditions to lending.
- (b) Satisfactory legal review of the terms of the Credit Facility and its structure by our counsel, and execution and delivery of loan documents, all in form and substance satisfactory to us. The loan documents will include, among other documents, a loan agreement, security agreements, UCC financing statements, intercreditor agreements (if applicable), agreements from certain third parties, opinion letters of counsel, the guarantee of the obligations of the Company to us by its corporate subsidiaries and affiliates. Such loan documents will contain provisions, representations, warranties, conditions, covenants and events of default satisfactory to us and our counsel.
- (c) The excess availability under the lending formulas provided for above, subject to sublimits and reserves, shall be not less than \$7,500,000 at the closing, after the payment of fees and expenses of the transaction and the application of the proceeds of the initial loans, and after deduction for past due payables and other obligations.
- (d) We will require as additional collateral, fixed assets (machinery, equipment and real estate) with a minimum lendable value of \$5,000,000, based on appraisals provided by appraisers acceptable to us. As long as no defaults exist, proceeds from the sale of fixed assets in excess of the minimum net orderly liquidation value may be utilized for working capital purposes.
- (e) The Company shall, if requested by us, deliver at its expense, environmental audits of its plants and real estate conducted by an independent environmental engineering firm acceptable to us and in form, scope and methodology satisfactory to us, confirming that (i) the Company is in compliance with all applicable environmental use laws, regulations, codes and ordinances in all material respects and (ii) there is no material potential or actual liability of the Company for any remedial action with respect to any environmental condition or any other significant environmental problems other than as identified or reserved for in the Company's public filings and the financial statements filed therewith.

- (f) No trustee, examiner, receiver or the like shall have been appointed or designated with respect to either the Company or its businesses, properties or assets and no motion shall be pending seeking any such relief.
- (g) Borrower shall comply in full with the notice and other requirements of the U.S. Bankruptcy Code in a manner acceptable to us and our counsel, and a final financing order shall have been entered by the United States District Court having exclusive jurisdiction over the Chapter 11 case of the Company (the "District Court") authorizing the secured financing under the Credit Facility on the terms and conditions contemplated by this letter and, *inter alia*, modifying the automatic stay, authorizing and granting the security interests and liens described above, and granting a super-priority administrative expense claim to us with respect to all obligations to us, subject to no priority claim or administrative expenses of the Chapter 11 case of the Company or any other entity, and any future proceeding which may develop out of any such cases, including liquidation in bankruptcy.
- (h) The District Court shall have entered a financing order at the final hearing authorizing the secured financing under the Credit Facility on the terms and conditions contemplated by this letter, granting to us the security interests and liens and super-priority administrative expense claim status described above, modifying the automatic stay and other provisions required by us and our counsel and such order shall not have been stayed, reversed or modified without our consent.
- (i) We will not require the grant of a security interest on avoidance actions provided that any recovery therefrom becomes property of the estate available to pay administrative expenses and claims arising under Bankruptcy Code § 364(c)(1) and § 507(b).
- (j) We will allow the use of proceeds from this Credit Facility for the remediation of the Muskogee, Oklahoma facility so long as excess availability is at a level satisfactory to us and no defaults exist.
- (k) No material adverse change in the business, operations, profits or prospects of the Company or in the condition of the assets of the Company shall have occurred since the date of our latest field examinations.
- (l) This transaction and the events contemplated herein must close by March 31, 2002 or forty-five (45) days from the date of our credit approvals, whichever is earlier.

The terms and conditions described in this proposal letter are intended as an outline only and this proposal letter does not purport to include or summarize all of the terms, conditions, covenants and other provisions which will be contained in the loan documents.

This letter is delivered to the Company on the condition that its existence and its contents will not be disclosed by the Company without our prior written approval except (i) as may be required to be disclosed in any legal proceeding or as may otherwise be required by law, (ii) on a confidential and "need to know" basis, to your directors, officers, employees, advisors and agents

and (iii) to the official creditors committee appointed in the Company's Chapter 11 case and the professionals retained by such committee.

Unless accepted by the Company and as so accepted, received by us by the close of business in Chicago on February 22, 2002 with the deposit referred to above, this proposal shall expire at such time.

This letter, upon acceptance by you, supersedes and replaces our letters to the Company, dated January 28, 2002, January 31, 2002, February 5, 2002 and February 7, 2002.

This letter is solely for your benefit and is not to be relied upon by any third party.

We look forward to continuing to work with you and your associates in this transaction.

Very truly yours,

**CONGRESS FINANCIAL CORPORATION
(CENTRAL)**

Douglas E. Zwiener
Vice President

ACCEPTED on this ____ day of _____, 2002:

FANSTEEL, INC.

By: _____

Title: _____

cc: William R. Davis, CEO – Congress Financial Corp. (New York)
Barry Kastner, EVP - Congress Financial Corp. (New York)
Chris Calabrese, SVP – Congress Financial Corp. (New York)
Richard A. Cini, SVP - Congress Financial Corp. (New York)
Richard A. Dickard, SVP - Congress Financial Corp. (Chicago)
Scott T. Collins, VP - Congress Financial Corp. (Chicago)
James Harrington – James Capital Corp.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:)
FANSTEEL INC., et al.,¹) 02-CV-44 (JJF)
Debtor.)

**ORDER AUTHORIZING DEBTORS TO MAKE
PAYMENTS TO CONGRESS FINANCIAL CORPORATION NECESSARY FOR
DILIGENCE, NEGOTIATION, PREPARATION AND DOCUMENTATION OF A
DEBTOR IN POSSESSION FINANCING FACILITY**

Upon consideration of the motion seeking entry of an order authorizing the above captioned debtors and debtors in possession (the “Debtors”) to make payments to Congress Financial Corporation (“Congress”) necessary for diligence, negotiation, preparation and documentation of a debtor in possession financing facility (the “Motion”); and it appearing that the relief requested is in the best interests of 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); and due and adequate notice of the Motion¹ having been given under the circumstances; and after due deliberation and cause appearing therefore; it is hereby

ORDERED that the Motion is granted; and it is further

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.

¹ Capitalized terms not defined herein shall have the same meaning ascribed to them in the Motion.

ORDERED that Debtors are authorized, but not directed, in their sole discretion and without further application to the Court, to pay to Congress \$100,000 as the Initial Deposit against the Due Diligence Expenses; and it is further

ORDERED that Debtors are authorized, but not directed, in their sole discretion, and without further application to the Court, to pay to Congress \$150,000 as the Final Deposit against the Due Diligence Expenses; provided, however, that the Final Deposit shall not be paid, in whole or in part, without the prior consent of the Committee; and it is further

ORDERED that the Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: _____, 2002

Judge Joseph J. Farnan Jr.

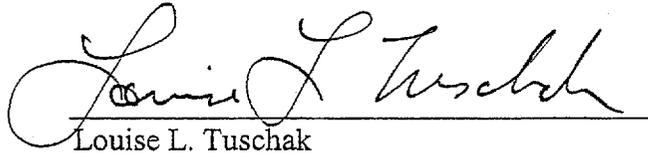
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:)
)
FANSTEEL INC., et al.,) 02-CV-44 (JJF)
)
)
Debtor.)

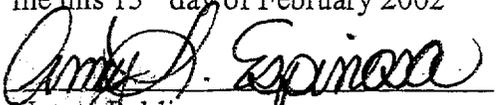
AFFIDAVIT OF SERVICE

Louise L. Tuschak being duly sworn according to law, deposes and says that she is employed by the law firm of Pachulski, Stang, Ziehl, Young & Jones P.C., and that on the 13th day of February 2002, she caused a copy of the following document(s) to be served upon the attached service lists in the manner indicated:

MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105 AND 363 AUTHORIZING DEBTORS TO MAKE PAYMENTS TO CONGRESS FINANCIAL CORPORATION NECESSARY FOR DILIGENCE, NEGOTIATION, PREPARATION AND DOCUMENTATION OF A DEBTOR IN POSSESSION FINANCING FACILITY


Louise L. Tuschak

Sworn to and subscribed before
me this 13th day of February 2002


Notary Public
My Commission Expires: 01/13/03