

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

40-9580

In re:) Chapter 11
)
FANSTEEL INC., *et al.*,¹) 02-10109 (JJF)
) (Joint Administration)
Debtors.)
) **Objection Deadline: May 1, 2002 at 4:00 p.m.**
) **Hearing Date: Only if objections are timely filed**

**NOTICE OF MOTION FOR ORDER AUTHORIZING
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

TO: ALL PARTIES REQUIRED TO BE SERVED PURSUANT TO DELAWARE LOCAL
RULE OF BANKRUPTCY 2002 - 1 (b)

PLEASE TAKE NOTICE that on or about April 11, 2002, the debtors and
debtors-in-possession (the "Debtors") filed with The United States Bankruptcy Court for the
District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court")
the **Motion For Order Authorizing Rejection of Certain Executory Contracts** (the
"Motion").

**PLEASE TAKE FURTHER NOTICE THAT RESPONSES OR
OBJECTIONS, IF ANY, TO THE RELIEF REQUESTED IN THE MOTION MUST BE IN
WRITING, FILED WITH THE BANKRUPTCY COURT, AND SERVED UPON BOTH
UNDERSIGNED COUNSEL FOR DEBTORS SO AS TO BE RECEIVED BY 4:00 P.M.,
PREVAILING EASTERN TIME, ON MAY 1, 2002.**

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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PLEASE TAKE FURTHER NOTICE THAT, IF ANY OBJECTIONS ARE
TIMELY FILED AND SERVED, A HEARING ON THE MOTION WILL BE HELD AT A
TIME AND DATE TO BE DETERMINED, BEFORE THE HONORABLE JOSEPH J.
FARNAN, JR., OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
DELAWARE. THE HEARING WILL BE HELD IN COURTROOM 6A, J. CALEB BOGGS
FEDERAL BUILDING, 844 KING STREET, WILMINGTON, DELAWARE 19801. ONLY
TIMELY FILED AND RECEIVED WRITTEN OBJECTIONS WILL BE CONSIDERED BY
THE COURT AT THE HEARING.

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

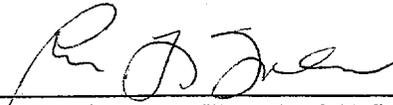
Dated: April 11, 2002

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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., <u>et al.</u> , ¹)	Case No. 02-10109 (JJF)
)	(Jointly Administered)
Debtors.)	Objection Deadline: May 1, 2002 at 4:00 p.m.
)	Hearing Date: Only if objections are timely filed

**MOTION FOR ORDER AUTHORIZING
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

The captioned debtors and debtors in possession (“Debtors”) hereby move for entry of an order (the “Motion”) authorizing the Debtors to reject certain executory contracts, including service agreements, leases of personal property, and leases of nonresidential real property, as identified on Exhibit A hereto (the “Executory Contracts”). Exhibit A lists the Executory Contracts by Debtor, counter-party, and subject matter.

The facts and circumstances supporting this Motion are set forth in the Affidavit of Gary L. Tessitore, Chief Executive Officer, filed in Support of First Day Motions. In support of this Motion, the Debtors further state as follows:

Jurisdiction

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

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.

The statutory bases for the relief requested herein are sections 105(a) and 365(a) of title 11 of the United States Code (the "Bankruptcy Code").

Background

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

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 U. S. Nuclear Regulatory Commission ("NRC").¹

B. Causes Leading to the Bankruptcy Filings

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 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.

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

¹ 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).

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

By this Motion, Debtors request entry of an order under 11 U.S.C. §365(a) rejecting the Executory Contracts listed on Exhibit A. Debtors have determined, in their business judgment, that the contracts are no longer beneficial to the estates, and that rejection of the Executory Contracts: (1) will lead towards the successful reorganization of these estates and (2) is in the best interests of the estates and their creditors.

It is well established that the Debtors may exercise their business judgment to reject executory contracts or unexpired leases that are no longer useful or necessary to the bankruptcy estate. The Bankruptcy Code provides that “the trustee, subject to the court’s approval, may . . . reject any . . . unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts utilize the business judgment standard to determine whether to approve the rejection of a contract or lease. Sharon Steel Corp. v. Nat’l Fuel Gas Distribution Corp.; (In re Sharon Steel Corp.), 872 F.2d 36, 40 (3d Cir. 1989); In re G. Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) (holding that “[i]n determining whether a debtor may be permitted to reject an executory contract, courts usually apply the business judgment test. Generally, absent a showing of bad faith, or an abuse of business discretion, the debtor’s business judgment will not be altered.”).

The relief requested in this Motion is also authorized by Bankruptcy Code section 105(a) which provides that . . . “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of Bankruptcy Code section 105(a) is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier

on Bankruptcy, 105.01, at 105-06 (15th ed. rev. 1999). Thus, section 105 essentially codifies the Bankruptcy Court's inherent equitable powers. See Management Tech. Corp. v. Pardo (In re Management Tech. Corp.), 56 B.R. 337, 339 (Bankr. D.N.J. 1985) (indicating that court's equitable powers are derived from § 105). Based thereon, the Debtors respectfully request that they be authorized to reject the Executory Contracts listed on Exhibit A.

Notice

Notice of this Motion has been given to all parties required to receive notice pursuant to Delaware Local Rule of Bankruptcy 2002-1(b). In light of the nature of the relief requested, the Debtors submit that no further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto, authorizing the rejection of the Executory Contracts listed on Exhibit A; and granting such other and further relief as the Court may deem just and proper.

Dated: April 11, 2002

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Co-Counsel for the Debtors and
Debtors in Possession

Exhibit A

EXHIBIT A

Name and Address of Other Parties	Description of Contract
Debtor: <u>Fansteel Inc.</u>	
Bluegrass Office Systems 667 E New Circle Road, Suite 3 Lexington, KY 40505	Maintenance Agreement / Copier / Lexington
Charles Machine Works, Inc. P.O. Box 66 Perry, OK 73077	Distributor Agreements / Lexington
Lawn Works, Inc. 197 Old Coach Road Nicholasville, KY 40356	Maintenance Agreement / Lawn / Lexington
Thomas Register Thomas Publishing Company 5 Penn Plaza New York, NY 10001	Advertising Program
Company: <u>Wellman</u>	
American Concrete Product 506 E. Montgomery St. Creston, IA 50801	Sand storage
Burlington Northern P.O. Box 847574 Dallas, TX 75284-7574	Land for sand storage & unloading
Pratt and Whitney Canada, Inc. 1000 Blvd Marie Victorin Longueuil, Quebec, Canada J4G 1A1	Long Term Purchase Agreement
Company: <u>Washington</u>	
Brown Truck Leasing 2525 E. Euclid, Suite 214 Des Moines, IA 50317	2001 International Single Axle Tractor

EXHIBIT A

Name and Address of Other Parties	Description of Contract
Company: <u>Escast, Inc.</u>	
Ameritech Credit Corporation dba SBC Capital Services 2000 W. Ameritech Center Drive Hoffman Estates, IL 60796	Lease / Lease of telephone system – NEC Elite 64 Port Key Service Unit
Delage Landen Financial Services PO Box 41601 Philadelphia, PA 19101-1601	Lease / Copier
Xerox Corporation PO Box 600501 Dallas, TX 75266-0501	Lease Agreement / Lease of Copier Lease Agreement
Global Imaging Systems Copay Data 1700 N. 10 th Street McAllen, TX 78501	Agreement / Copier Maintenance Agreement

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
FANSTEEL INC., et al.,¹) Case No. 02-10109 (JJF)
) (Jointly Administered)
Debtors.)

**ORDER AUTHORIZING DEBTORS TO REJECT
CERTAIN EXECUTORY CONTRACTS**

Upon the motion (“Motion”) of the debtors and debtors in possession in the captioned chapter 11 case (“Debtors”), seeking entry of an order under 11 U.S.C. § 365(a) rejecting certain (executory contracts, including leases of personal property and employment related agreements (the “Executory Contracts”));² 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 proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and after due deliberation and good cause appearing therefore; it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that any claim for rejection damages by a contracting party to any Executory Contract listed on Exhibit A to the Motion, shall be filed and served by the date that is thirty (30) days from the date of service of this order authorizing the rejection of that Executory Contract, or shall be forever barred; 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.

² Capitalized terms not otherwise defined herein shall have the same meanings set forth in the Motion.

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order

Dated: April ____, 2002

Judge Joseph J. Farnan, Jr.
United States District Court Judge