

40-7580

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.)

Objection Deadline: April 9, 2002 at 11:00 a.m.
Hearing Date: April 9, 2002 at 11:00 a.m.

EMERGENCY MOTION OF DEBTORS TO SHORTEN NOTICE OF TIME PERIOD AND TO APPROVE FORM AND MANNER THEREOF

Debtors and Debtors-in-Possession (the "Debtors") in the captioned cases, by and through their undersigned counsel, hereby move (the "Motion") this Court pursuant to Rule 2002 of the Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rules") and Section 102 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), for entry of an order providing that the notice period with respect to the attached **Emergency Motion For Entry Of An Order Pursuant To 11 U.S.C. §§ 105 And 363 Authorizing Debtors To Make Additional Payments To Congress Financial Corporation To Be Used As Legal Fees Towards Drafting Of Documentation Of A Debtor In Possession Financing Facility ("Second Congress Expenses Motion")** be shortened as set forth below.

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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1. The Debtors seek Court approval to Shorten the Notice Period for the Second Congress Expenses Motion so that counsel for Congress Financial Corporation can immediately begin to draft the documentation necessary for a Debtor in Possession financing that is on terms significantly more favorable to the Debtors than any others that Debtors have located – including the proposed sale of accounts receivable, currently scheduled to be heard by the Court on April 9, 2002 at 11:00 a.m. If Debtors are not able to get favorable financing by mid-April, they will be forced to either shut down operations, proceed with less favorable financing alternatives, or sell assets for inopportune amounts of money.

2. Service of this motion will be effected by overnight delivery or by hand delivery to local recipients.

3. Debtors request that the hearing on the Second Congress Expenses Motion be held on April 9, 2002 at 11:00 a.m., a hearing already scheduled for these cases.

4. Debtors request that written objections, if any, may be filed with the court and served upon the undersigned counsel up to, and including, the time of the hearing. Debtors further request the oral objections, if any, may be delivered at the hearing. The Debtors submit that this form of notice is proper under 11 U.S.C. §102 of Bankruptcy Rule 2002(m).

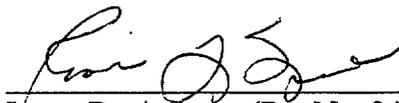
WHEREFORE, Debtors respectfully request the entry of an Order approving the timing and attached form of Notice and providing that notice of the attached Congress Motion.

Dated: April 5, 2002

SHULTE ROTH & ZABEL LLP
Jeffrey S. Sabin
Mark A. Broude
919 Third Avenue
New York, NY 10022
Telephone: (212) 756-2000
Facsimile: (212) 593-5955

and

PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.



Laura Davis Jones (Bar No. 2436)
Hamid Rafatjoo (CA Bar No. 181564)
Rosalie L. Spelman (Bar No. 4153)
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Telephone: (302) 652-4100
Facsimile: (302) 652-4400

Co-Counsel for the Debtors and
Debtors in Possession

SO ORDERED this ___ day
of _____, 2002

Honorable Joseph J. Farnan, Jr.
United States District Court
27311-001\DOCS_DE:43367.1

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.)

Objection Deadline: April 9, 2002
Hearing Date: April 9, 2002

**NOTICE OF EMERGENCY MOTION FOR ENTRY OF AN ORDER PURSUANT TO
11 U.S.C. §§ 105 AND 363 AUTHORIZING DEBTORS TO MAKE AN
ADDITIONAL PAYMENT TO CONGRESS FINANCIAL CORPORATION
TO BE USED AS A LEGAL FEE DEPOSIT TOWARDS DRAFTING
DOCUMENTATION OF A DEBTOR IN POSSESSION FINANCING FACILITY**

TO: PARTIES REQUIRED TO RECEIVE NOTICE PURSUANT TO DELAWARE
LOCAL RULE OF BANKRUPTCY 2002-1(B)

The debtors and debtors in possession (the “Debtors”) have filed a Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105 and 363 Authorizing Debtors to Make a Payments to Congress Financial Corporation To Be Used As Legal Fees Towards Drafting Documentation Of A Debtor In Possession Financing Facility (the “Motion”). Objections and other responses to the Motion, if any, may be given up to and including the time of the hearing on April 9, 2002 at

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

11:00 a.m. Written objections may be filed with the Bankruptcy Court and served on (i) counsel for the Debtors: Mark A. Broude, Esquire, and 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 Buchbinder, Esquire, J. Caleb Boggs Federal Building, 844 King Street, Suite 2313, Lock Box 35, Wilmington, Delaware 19801; and (iii) counsel to the Official Committee of Unsecured Creditors: Frances Gecker, Esquire, Freeborn & Peters, 311 South Wacker Drive, Suite 3000, Chicago, Illinois 60606; and Adam Landis, Esquire, Klett, Rooney, Lieber & Schorling, 1000 West Street, Suite 1410, Wilmington, Delaware 19801. However, any objection may also be delivered at the hearing.

A HEARING ON THE MOTION WILL BE HELD ON APRIL 9, 2002 AT 11:00 A.M.

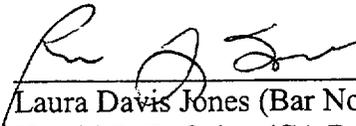
IF YOU FAIL TO RESPOND OR OBJECT IN ACCORDANCE WITH THIS NOTICE,
THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT
FURTHER NOTICE OR HEARING.

Dated: April 5, 2002

SCHULTE ROTH & ZABEL LLP
Jeffrey S. Sabin
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Co-Counsel for the Debtors and
Debtors in Possession

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**EMERGENCY MOTION FOR ENTRY OF AN ORDER PURSUANT TO
11 U.S.C. §§ 105 AND 363 AUTHORIZING DEBTORS TO MAKE
ADDITIONAL PAYMENTS TO CONGRESS FINANCIAL
CORPORATION TO BE USED AS LEGAL FEES TOWARDS DRAFTING
DOCUMENTATION OF A DEBTOR IN POSSESSION FINANCING FACILITY**

The debtors and debtors in possession in the captioned cases (collectively, “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”) up to \$75,000 to be used for legal fees incurred in connection with preparation of documents for a debtor in possession financing facility (the “Proposed DIP Facility”).² 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., Scats, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., American Sintered Technologies, Inc., and Fansteel Schulz Products, Inc.

² The terms of the Proposed DIP Facility are more fully described in the Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105 and 363 Authorizing Debtors to Make Payment to Congress Financial Corp necessary for Negotiation, Preparation and Documentation of a Debtor in Possession Financing Facility, filed February 13, 2002 [District Court Docket No. 56].

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.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. 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

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.

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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 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, which 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. On February 26, 2002, this Court entered an order (“First Congress Expenses Order”)[District Court Docket No. 78] permitting Debtors to pay Congress up to a maximum of \$250,000 in expenses for Congress to perform due diligence necessary for Congress to assess whether or not it could commit to the debtor in possession loan (“Proposed DIP Facility”).

12. Since entry of the First Congress Expenses Order, the Debtors have disbursed the \$250,000 in expenses to Congress. Of this amount, two hundred and twenty five thousand dollars (\$225,000) was used for appraisals, auditing and other non-legal fees. Twenty five thousand dollars (\$25,000) was for legal fees.

RELIEF REQUESTED

13. Congress has performed sufficient due diligence so that it is ready to commence the documentation to support the Proposed DIP Facility. Congress and the Debtors expect to seek approval by this Court for the Proposed DIP Facility by mid-April. Debtors must now request authority to pay up to an additional \$75,000.00 so that Congress’ counsel immediately can draft such documents. Debtors propose that court authority be granted so that payments up to \$75,000.00 either may be paid as legal costs are incurred or, in the alternative, may be paid on an incremental basis.

BASIS FOR RELIEF

14. 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).

15. This Court should authorize Debtors to pay the above-described legal fees to Congress, outside the ordinary course of business, if Debtors demonstrate a sound business justification for entering into the Proposed 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).

16. 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.”).

17. 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.”

18. Since the filing of Debtors’ cases, Debtors have made numerous attempts to obtain financing. Debtors obtained an interim loan from certain insiders and also have pursued sale of some of their accounts receivable in order to fund their business operations. It is the business judgment of the Debtors that both alternatives have significant drawbacks; hence, Debtors have continued to look for financing despite the availability of the insider loan and the possible accounts receivable sale.

19. If Debtors are successful in obtaining the Proposed DIP Facility, it is anticipated that Debtors will not have to look further for financing. This means that Debtors will have the necessary liquidity to continue as going concerns and that Debtors' management will be able to focus their time and energy on Debtors' reorganization strategy, rather than on the need to find acceptable financing to maintain their business operations.

20. 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 wish to pursue the next step necessary leading towards conclusion of the Proposed DIP Facility. The relief requested in this Motion – approval of the payments of up to \$75,000 to be used for legal expenses – is the next step.

21. Debtors respectfully submit that the relief requested herein: (a) will maximize the value of the estates and (b) is in the best interests of the estates and their creditors.

WHEREFORE, Debtors respectfully request that the Court enter an Order

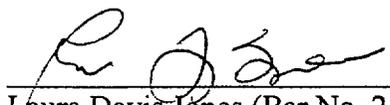
(a) authorizing Debtors to pay Congress up to \$75,000 to be applied toward legal fees in drafting documentation for the debtor in possession financing and (b) any other relief the Court deems proper to grant.

Dated: April 5, 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., et al.,¹) Case No. 02-10109 (JJF)
) (Jointly Administered)
)
Debtors.)

**ORDER AUTHORIZING DEBTORS TO MAKE ADDITIONAL
PAYMENTS TO CONGRESS FINANCIAL CORPORATION
TO BE USED AS LEGAL FEES FOR DRAFTING
DOCUMENTATION OF A DEBTOR IN POSSESSION FINANCING FACILITY**

Upon consideration of the motion seeking entry of an order authorizing the captioned debtors and debtors in possession (“Debtors”) to make payments to Congress Financial Corporation (“Congress”) necessary for diligence, negotiation, preparation and documentation of a debtor in possession financing facility (“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 Motion² 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

ORDERED that Debtors are authorized, but not directed, in their sole discretion and

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

² Capitalized terms not defined herein shall have the same meaning ascribed to them in the Motion.

without further application to the Court, to pay to Congress up to \$75,000 to be used toward legal fees for drafting legal documentation of debtor in possession financing.

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.
United States District Court Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FANSTEEL INC., *et al.*,¹

Debtors.

Chapter 11

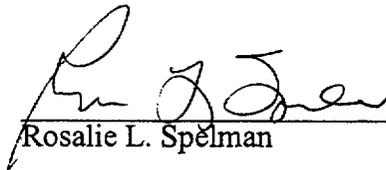
Case No. 02-10109 (JJF)
(Jointly Administered)

CERTIFICATE OF SERVICE

I, Rosalie L. Spelman, hereby certify that on the 5th day of April 2002, I caused a true and correct copy of the following document to be served on the individuals on the attached service list in the manner indicated:

1. EMERGENCY MOTION OF DEBTORS TO SHORTEN NOTICE AND TIME PERIOD AND TO APPROVE FORM AND MANNER THEREOF; and

2. NOTICE OF EMERGENCY MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105 AND 363 AUTHORIZING DEBTORS TO MAKE AN ADDITIONAL PAYMENT TO CONGRESS FINANCIAL CORPORATION TO BE USED AS A LEGAL FEE DEPOSIT TOWARDS DRAFTING DOCUMENTATION OF A DEBTOR IN POSSESSION FINANCING FACILITY



Rosalie L. Spelman

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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