

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

40-7530

In re:) Chapter 11
FANSTEEL INC., *et al.*,¹)
Debtors) 02-10109 (JJF)
) (Jointly Administered)
)
) **Objection Deadline: May 23, 2002 at 4:00 p.m. Eastern**
) **Hearing Date: TBD (Only if objections are timely filed)**

NOTICE OF DEBTORS' MOTION FOR ORDER APPROVING COMPROMISE AND SETTLEMENT WITH CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS SELF-INSURANCE PLANS

TO: ALL PARTIES REQUIRED TO RECEIVE NOTICE PURSUANT TO DEL. BANKR. L.R. 2002-1 (the "Notice Parties").

PLEASE TAKE NOTICE that on May 3, 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 **Debtors' Motion For Order Approving Compromise And Settlement With California Department Of Industrial Relations Self-Insurance Plans** (the "Motion"). The Notice Parties were served the Motion on or about May 3, 2002.

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

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.

DM5501 Adit: Robt. G. ...

UNDERSIGNED COUNSEL FOR DEBTORS SO AS TO BE RECEIVED BY 4:00 P.M.,
PREVAILING EASTERN TIME, ON MAY 23, 2002.

PLEASE TAKE FURTHER NOTICE THAT, IF ANY OBJECTIONS ARE
TIMELY FILED AND SERVED, A HEARING ON THE MOTION WILL BE HELD ON A
DATE AND TIME 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 N. 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: May 3, 2002

SHULTE ROTH & ZABEL LLP
Jeffrey S. Sabin
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and

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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.)
) Objection Deadline: May 23, 2002, 4:00 p.m. Eastern
) Hearing Date: TBD (only if necessary)
)

**DEBTORS' MOTION FOR ORDER APPROVING COMPROMISE AND
SETTLEMENT WITH CALIFORNIA DEPARTMENT OF
INDUSTRIAL RELATIONS SELF-INSURANCE PLANS**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby move the Court (the "Motion") for entry of an order approving compromise and settlement with the California Department of Industrial Relations Self-Insurance Plans. In support of this Motion, the Debtors respectfully state as follows².

Jurisdiction

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. 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). The statutory predicates for the relief requested herein are section 363 of the Bankruptcy Code and Fed. R. Bankr. P. 9019(a).

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 The 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 with the first day motions.

Background

1. On January 15, 2002 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Court has entered an order pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), directing that the Debtors' separate chapter 11 cases (the "Bankruptcy Cases") be procedurally consolidated and jointly administered by this Court.

2. The Debtors continue to manage their respective properties and operate their respective businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On January 29, 2002, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Committee") for these chapter 11 cases. No trustee or examiner has been appointed in any of the Bankruptcy Cases.

4. The Debtors maintain workers' compensation policies and programs to provide their employees with workers' compensation coverage on claims arising from or related to their employment with the Debtors. These policies protect the Debtors against costly losses.

5. The California Drop Forge plant of the Debtors' parent company, Fansteel Inc., participates in a self-insurance program for its workers' compensation liabilities in the state of California. This program is administered by the State of California Department of Industrial Relations Self-Insurance Plans (the "Department").

6. As a condition precedent to participation in the self-insurance program, the Department requires that an employer provide financial assurance in the form of a (i) surety bond, (ii) letter of credit, (iii) approved securities or (iv) cash or any combination of these four types of financial assurances.

7. Prior to the petition date, the Debtors provided the Department with financial assurance in the form of a letter of credit issued by The Northern Trust Company ("Northern Trust") in the amount of \$333,269.

8. By notice dated January 9, 2002, Northern Trust informed the Department that it had elected not to renew its Irrevocable Standby Letter of Credit No. S228275 beyond its current expiration date of April 21, 2002.

9. By letter dated January 9, 2002, the Department notified the Debtors that in order to prevent a draw by the Department on the letter of credit, the Debtors would be required to post a new form of financial assurance to the Department in the amount of \$333,269 by no later than April 12, 2002. The Debtors were unable to post the new financial assurance and the Department drew down on the letter of credit; thereafter, the Department deposited the proceeds from the letter of credit in a Certificate of Deposit account at a financial institution as required by Department self-insurance regulations.

10. By letter dated March 26, 2002, the Department informed the Debtors that pursuant to Labor Code Section 3701, the Debtors needed to increase the financial assurance posted based on the 2001 Self Insurer's Annual Report filed by debtor by an additional \$3,907 (the "Deposit") to a total of \$334,176.

11. In order to continue participation in the California self-insurance program, the Debtors must post the Deposit to the Department as additional financial assurance as may be required from time-to-time and it must pay certain assessments. These assessments include license fees, user funding fee, fraud investigation fee, CAL-OSHA hazardous employer fees, and Self Insurer's Security Fund assessments. The Debtor is current on all these assessments.

Debtors' First Day Motion

12. On January 17, 2002, the Debtors filed their Motion for Order Authorizing Debtors to Pay (i) Pre-Petition Employee Wages, Salaries, and Contributions to 401(b) and Other Employee Benefit Plans, Including Workers Compensation Plans, (ii) Reimbursement Obligations on Account of Pre-Petition Employee Business Expenses, and (iii) All Costs and Expenses Incident to the Foregoing Payments and Contributions in the Ordinary Course of Business (the "Workers' Comp Motion").

13. On January 17, 2002, this Court approved the relief requested in the Workers' Comp Motion and entered an order (the "Workers' Comp Order") that, in part, authorized the Debtors to maintain their workers' compensation programs, including payments of retroactive premiums adjustments, pre-petition premiums and other amounts due in the ordinary course of business as more particularly set forth in the motion. The facts and circumstances supporting the Workers' Comp Motion are set forth in the Affidavit of Gary L. Tessitore, President and Chief Executive Officer of Fansteel Inc., filed contemporaneously with the first day motions.

14. Pursuant to the Workers' Comp Order, the Debtors believe that they are authorized to pay the Deposit and periodic assessments and enter into the Settlement Agreement (described below) to maintain their workers' compensation programs in California.

The Settlement Agreement

15. As described with specificity in the settlement agreement, attached hereto as Exhibit A (the "Settlement Agreement")³, the Debtors and the Department have agreed to settle the outstanding claim for payment of the Deposit. Further, the parties agree that the proceeds of the letter of credit, including the Deposit, will be held at an account at a financial institution in the name of the Department in trust for the Debtors as required by Department regulations. The Department agrees that in connection with the above, it will take no further action against the Debtors and that the Debtors will be in good standing under the Department's self-insurance program statutes and regulations.

Relief Requested

16. By this Motion, the Debtors seek entry of an order, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), approving the Settlement Agreement.

17. As there are no novel issues of law presented herein, Debtors waive their right to file a brief in support of the Motion pursuant to D. Del. L.R. 7.1.2(a), incorporated by reference into the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware by Del. Bankr. L.R. 1001-1(b). Because of the nature of the relief requested in this Motion, Debtors believe that no briefing is required.

³ In the event there are inconsistencies between the Settlement Agreement and this Motion, the terms of the Settlement Agreement shall govern.

Basis For Relief Requested

18. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides that “on motion by the trustee and after a hearing, the bankruptcy court may approve a compromise or settlement.” Settlements are favored in the bankruptcy context “[t]o minimize litigation and expedite the administration of a bankruptcy estate.” In re Martin, 91 F.3d 389, 393 (3d Cir. 1996). The Supreme Court has recognized that “in administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims in which there are substantial and reasonable doubts.” In re Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968).

The U.S. Supreme Court has stated that in determining a compromise's fairness, a judge should:

form an educated estimate of the complexity, expense and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of the litigation.

Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968). The Third Circuit, applying TMT Trailer in the context of a settlement pursuant to Bankruptcy Rule 9019(a), has set forth four factors to be considered:

- (i) the probability of success in litigation;
- (ii) the likely difficulties of collection;
- (iii) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- (iv) the paramount interest of the creditors.

Martin v. Myers (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996).

19. Approval of a proposed settlement is within the “sound discretion” of the bankruptcy court. Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995). The bankruptcy court must determine whether the proposed settlement is in the “best interests of the estate.” See In the Matter of Energy Cooperative, Inc., 886 F.2d 921, 927 (7th Cir. 1989). The bankruptcy court should not substitute its judgment for that of a trustee or debtor in possession. Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985); In re Curlew Valley Assocs., 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). The bankruptcy court is not to decide the numerous questions of law or fact raised by the litigation, but rather should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness. See In re Penn Trans. Co., 596 F.2d 1102, 1114 (3d Cir. 1979); Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983), cert. denied, 464 U.S. 822 (1983).

20. The Debtors respectfully submit that the approval of the Settlement Agreement is in the best interests of the Debtors' estates and that the settlement falls well within the range of reasonableness and otherwise satisfies the factors identified herein.

Notice

21. Notice of this Motion has been given to (i) the United States Trustee; (ii) Counsel to the Official Committee of Unsecured Creditors; (iii) the Department and (iv) all parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that the notice provided is appropriate under the circumstances of these cases.

WHEREFORE, the Debtors respectfully request that this Court enter the attached Order and grant such other and further relief as this Court deems just and proper.

Dated: May 3, 2002

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Counsel for Fansteel Inc., et al.
Debtors and Debtors In Possession

EXHIBIT A

**FANSTEEL INC.
ONE TANTALUM PLACE
NORTH CHICAGO, IL 60064**

April 30, 2002

California Department of Industrial Relations
Self-Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825
Attn: Mark B. Ashcraft,
Manager

RE: Fansteel Inc. (the "Company"). Self-Insurance Program

Dear Mr. Ashcraft:

Reference is made to your letter dated March 26, 2002 wherein the California Department of Industrial Relations Self-Insurance Plans (hereinafter, the "Department") asked that the Company post an additional deposit in the amount of \$3,907 (the "Deposit") to its California Workers' Compensation Self-Insurance Program (the "Program"). The Deposit is to be added to the proceeds of The Northern Trust Company letter of credit (the "Proceeds") now in possession of the Department.

Pursuant to California Labor Code Section 3701(b) and (j), the Company must post the Deposit in order to continue its participation in the Program. To facilitate compliance discussions between the Department and the Company, (i) the Company agrees to pay the Deposit to the Department and (ii) the Department agrees to deposit the Proceeds and the Deposit into an account at a financial institution in the name the Department in trust for the Company as required by Department regulations. The Department agrees that in connection with the above, it will take no action against the Company and will deem that the Company is in good standing under the Department's self-insurance program statutes and regulations.

(Intentionally left blank)

Please sign and return a copy of this letter to the undersigned to acknowledge your agreement to the foregoing.

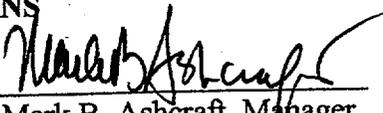
Very truly yours,

FANSTEEL INC.

By: _____
Name: R. Michael McEntee
Title: Vice President and CEO

Acknowledged and Agreed this 30 day of April, 2002:

**CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS SELF-INSURANCE
PLANS**

By: 
Mark B. Ashcraft, Manager

Please sign and return a copy of this letter to the undersigned to acknowledge your agreement to the foregoing.

Very truly yours,

FANSTEEL INC.

By: R Michael McEntee
Name: R. Michael McEntee
Title: Vice President and CEO

Acknowledged and Agreed this ____ day of _____, 2002:

**CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS SELF-INSURANCE
PLANS**

By: _____
Mark B. Ashcraft, Manager

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 APPROVING DEBTORS' MOTION FOR ORDER APPROVING
COMPROMISE AND SETTLEMENT WITH CALIFORNIA DEPARTMENT OF
INDUSTRIAL RELATIONS SELF-INSURANCE PLANS**

Upon consideration of the Debtors' Motion for Order Approving Compromise and Settlement with the California Department of Industrial Relations Self-Insurance Plans (the "Motion") for entry of an order, pursuant to section 363 of the Bankruptcy Code and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure filed by the debtors and debtors in possession herein (the "Debtors"); and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors and other parties in interest, and may be authorized pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a); and notice of the Motion having been provided to the Office of the United States Trustee, the Official Committee of Unsecured Creditors, the Department, and those parties who have requested notice pursuant to Bankruptcy Rule 2002; and it appearing that no other or further notice need be given; and after due deliberation and sufficient 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 the settlement agreement attached to the Motion as Exhibit A is approved; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: May _____, 2002

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