

40-7580

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

Objection Deadline: June 3, 2002 at 4:00 P.M. Eastern  
Hearing Date: TBD (Only if objections are timely filed)

**NOTICE OF DEBTORS' MOTION FOR AN ORDER PURSUANT  
TO BANKRUPTCY CODE SECTION 1121(d) EXTENDING  
THE PERIODS DURING WHICH THE DEBTORS HAVE  
THE EXCLUSIVE RIGHT TO FILE A PLAN  
OF REORGANIZATION AND TO SOLICIT ACCEPTANCES THERETO**

TO: ALL PARTIES REQUIRED TO RECEIVE NOTICE PURSUANT TO LOCAL RULE  
OF BANKRUPTCY PROCEDURE 2002-1(b)

On May 15, 2002 the captioned debtors and debtors-in-possession (the "Debtors")  
filed with United States Bankruptcy Court for the District of Delaware, 824 Market Street,  
Wilmington, Delaware 19801 (the "Bankruptcy Court") the **Motion For An Order Pursuant  
To Bankruptcy Code Section 1121(d) Extending The Periods During Which The Debtors  
Have The Exclusive Right To File A Plan Of Reorganization And To Solicit Acceptances  
Thereof** (the "Motion"). A true and correct copy of the Motion is attached.

RESPONSES OR OBJECTIONS, IF ANY, TO THE RELIEF REQUESTED IN  
THE MOTION MUST BE IN WRITING, FILED WITH THE BANKRUPTCY COURT, AND

<sup>1</sup> 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.

nmssd1

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SERVED UPON BOTH OF THE UNDERSIGNED COUNSEL FOR DEBTORS SO AS TO BE RECEIVED BY 4:00 P.M., PREVAILING EASTERN TIME, ON JUNE 3, 2002.

IF ANY OBJECTIONS ARE TIMELY FILED AND SERVED, A HEARING ON THE MOTION MAY BE HELD AT A 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.

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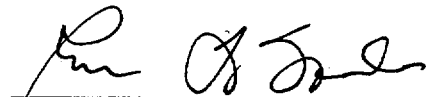
IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN  
ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF  
REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: May 15, 2002

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Co-Counsel for the Debtors and  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

Objection Deadline: June 3, 2002 at 4:00 P.M. Eastern  
Hearing Date: TBD (Only if objections are timely filed)

**DEBTORS' MOTION FOR ORDER PURSUANT TO BANKRUPTCY  
CODE SECTION 1121(d) EXTENDING THE TIME PERIODS DURING  
WHICH THE DEBTORS HAVE THE EXCLUSIVE RIGHT TO FILE A  
PLAN OF REORGANIZATION AND TO SOLICIT ACCEPTANCES THERETO**

The captioned debtors and debtors in possession (the "Debtors") hereby move (the "Motion") this Court for the entry of an order, pursuant to section 1121(d) of title 11 of the United States Code (the "Bankruptcy Code") (a) extending the time periods during which the Debtors have the exclusive right to file a plan or plans of reorganization ("Exclusive Filing Period"), and (b) extending the time during which the Debtors have the exclusive right to solicit acceptances thereto (the "Exclusive Solicitation Period" and together with the Exclusive Filing Period, the "Exclusive Periods"). In support of this Motion, the Debtors respectfully represent as follows:

**Jurisdiction**

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

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L).

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<sup>1</sup> 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. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Section 1121(d) of the Bankruptcy Code provides the basis for the relief sought in this Motion.

### **Background<sup>2</sup>**

4. Fansteel Inc. ("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 1,140 employees, substantially all on a full time basis, including approximately 427 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

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<sup>2</sup> The facts of this background are set forth in greater detail in the Affidavit of Gary L. Tessitore, Chairman of the Board, President and Chief Executive Officer In Support of the First Day Motions, filed on January 15, 2002 [Docket No. 4].

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").<sup>3</sup>

**B. Causes Leading to the Bankruptcy Filings**

6. The operations of Debtors' respective businesses have involved compliance with state and federal environmental laws, including the Atomic Energy Act. The Debtors' chapter 11 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.

7. In 1989, Fansteel discontinued its operations at the Muskogee Site. The NRC requires, after a licensee ceases principal operations, that the licensee obtain approval of a decommissioning plan ("DP") and a decommissioning funding plan ("DFP"). The DP is intended to set forth the method by which the licensee entity is to remediate its site and dispose of its radioactive material, and a DFP is intended to specify how the licensed entity is to fund the costs and expenses of decommissioning.

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<sup>3</sup> 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, with NTC and M&I.

8. Fansteel's original proposed DP, among other things, contemplated construction of a processing plant to reprocess and remediate the radioactive residues over at least a ten year period and the construction of an on-site containment cell to remediate the remaining contaminated soils. The reprocessing plant operations were projected to at least recover the cost of construction and cost for operations as a result of the anticipated revenue to be derived from the sale of the valuable metals to be recovered from the reprocessing of the residues.

9. Fansteel's proposed reprocessing plant was approved as an amendment to Fansteel's NRC license in 1997. NRC regulations require licensees to post financial assurance for all remediation and decommissioning costs and to update these proposed costs on a periodic basis. In 1997, the NRC required Fansteel to update its cost estimates at intervals not to exceed thirteen months. Fansteel had met its DFP and licensing obligations by posting letters of credit aggregating approximately \$4.7 million. The thirteen month review of the DFP was due March 27, 2002, but, due to the workload imposed by these chapter 11 cases and the uncertainty related to the cost estimates for remediating the site, Fansteel requested a time extension. The NRC has granted Fansteel until June 25, 2002, although Fansteel still will not have updated cost estimates available at that time.

10. During the time Fansteel was developing its original DP, it did not believe that there was a financially viable alternative to remediate the site other than construction of the reprocessing plant. The alternative to off-site disposal of all radioactive material was estimated to be financially prohibitive. Subsequently, the construction and start up of the plant was

plagued with numerous technical and operational difficulties significantly reducing the estimated processing capacity of the facility. Additionally, with 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 ("GAAP") 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 (by off-site disposal) the radioactive residues and soils that remain on the Muskogee Site without regard to any reprocessing, an approximately \$57 million reserve. (Given that the reserve already included amounts previously recorded on Fansteel's books, the effect of the GAAP rules was to require Fansteel to take total charge of \$84 million.)

11. 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 sufficient funds necessary to operate their respective businesses and a bankruptcy filing became inevitable.

12. On January 15, 2002 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. During the course of the first day hearings on the Debtors motions, the Court entered an Order directing the joint administration of the Debtors' cases, for procedural purposes only.

13. The Debtors continue in possession of their properties and are operating and managing their businesses as debtors and debtors in possession pursuant to Bankruptcy Code §§ 1107 and 1108.

14. No request has been made for the appointment of a trustee or examiner. On January 28, 2002, an Official Committee of Unsecured Creditors (the "Committee") was appointed by the United States Trustee (the "Trustee").

15. On March 21, 2002, the Debtors filed their respective Schedules, Summary of Schedules and Statement of Financial Affairs (the "Schedules"), listing, among other things, Fansteel's obligations to the NRC as the largest (\$52 million)<sup>4</sup> general unsecured claim.

16. The Debtors' exclusive period to file a plan or plans of reorganization under section 1121(b) of the Bankruptcy Code is currently set to expire on May 15, 2002, and the Debtors' exclusive period to solicit acceptances thereto will expire on July 15, 2002.

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<sup>4</sup> The total estimated cost for decommissioning was preliminarily estimated to be \$57 million. This estimate was made before developing a detailed revised DP. Prior to the Petition Date, Fansteel had letters of credit in favor of the NRC for \$4.5 million, which the NRC has, since the Petition Date, drawn down and put into a standby trust; thus, reducing the claim of the NRC to \$52 million.

### **Relief Requested**

17. By this Motion, the Debtors seek the entry of an order pursuant to section 1121(d) of the Bankruptcy Code: (i) extending the Debtors' exclusive period to file a chapter 11 plan or plans for an additional approximately two-hundred and thirty-nine days (239) from May 15, 2002 through and including Friday, January 10, 2003; and (ii) extending the Debtors' exclusive period to solicit acceptances for an additional approximately two-hundred and thirty-nine days (239) from July 15, 2002 through and including Tuesday, March 11, 2003.

### **Basis for Relief**

A. **Plan Exclusivity is Integral to the Congressional Policy of Rehabilitation through Consensual Plans**

18. The principal goal of chapter 11 is the successful rehabilitation of a debtor's business, which serves to, among other things, increase the pool of assets available for distribution to creditors. NLRB v. Bildisco and Bildisco, 465 U.S. 513, 527 (1984); United States v. Whiting Pools, Inc., 462 U.S. 198, 203 (1983). See also H.R. Rep. No. 595, 95th Cong., 1st Sess. 220 (1977) (hereinafter, "House Report"). The interwoven provisions of chapter 11 reflect Congressional intent that the principal means of successful rehabilitation should be a considered and consensual plan. See, e.g., Gains v. Perkins (In re Perkins), 71 B.R. 294, 297 (W.D.Tenn. 1987). Such plans reduce the administrative burden imposed upon the bankruptcy court, avoid lengthy and costly litigation, and increase the overall distribution to creditors and equity security holders. See Fortgang & Mayer, Valuation in Bankruptcy, 32 U.C.L.A. L. Rev. 1061, 1106-7 (1985).

19. To promote balanced and successful reorganizations under chapter 11, Congress gave the debtor the exclusive right for a reasonable time to propose a plan. Section 1121(b) of the Bankruptcy Code establishes an initial period of one hundred and twenty (120) days after the order for relief during which only the debtor may file a plan. 11 U.S.C. § 1121(b). If the debtor files a plan within the one-hundred and twenty (120) day period, section 1121(c)(3) extends the exclusivity period to one-hundred and eighty (180) days after the order for relief to permit the debtor to seek acceptances of such plan. 11 U.S.C. § 1121(c)(3). Section 1121(d) permits the bankruptcy court to extend these exclusivity periods “for cause.” 11 U.S.C. § 1121(d).

20. While the Bankruptcy Code does not define “cause” for an extension of the exclusivity periods, Congress contemplated that bankruptcy courts would apply the exclusivity provisions flexibly so as to promote the orderly, consensual and successful reorganization of a debtor’s affairs. See House Report, at 232; In re Cramer, Inc., 105 B.R. 433, 434 (Bankr. W.D.Tenn. 1989) (“the hallmark of § 1121 is flexibility”); Rosin v. RCN, (In re RCN), 118 B.R. 461 (W.D. Mich. 1990) (exclusivity period extended to provide maximum flexibility in reorganization proceedings); In re Texaco, Inc., 76 B.R. 322 (Bankr. S.D.N.Y. 1987). Congress recognized that, depending on the circumstances, a one-hundred and twenty (120) day exclusivity period often will not afford a debtor sufficient time to formulate a plan. See House Report, at 232 (“The court is given the power . . . to increase or reduce the 120-day period depending on the circumstances of the case. For example, if an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order

to allow the debtor to reach an agreement.” (footnotes omitted)). See also In re Timbers of Inwood Forest Assocs., Ltd., 808 F.2d 363 (5th Cir. 1987), aff’d, 484 U.S. 365 (1988).

**B. Cause Exists to Extend the Debtors’ Exclusivity Periods in this Case**

21. Courts have held that in order to facilitate this legislative intent, a debtor should be given a reasonable opportunity to negotiate an acceptable plan with creditors and to prepare adequate financial and non-financial information concerning the ramifications of any proposed plan for disclosure to creditors. See, e.g., In re McLean Indus., Inc., 87 B.R. at 833-34; In re Texaco Inc., 76 B.R. 322, 327 (Bankr. S.D. N.Y. 1987).

22. The decision to extend a debtor’s exclusive period is committed to the sound discretion of the bankruptcy court, based upon the facts and circumstances of each particular case. See, e.g., First American Bank of New York v. Southwest Gloves and Safety Equip., Inc., 64 B.R. 963, 965 (D. Del. 1986).

23. In determining whether cause exists for an extension of a debtor’s exclusive periods, courts have relied on a variety of factors, each of which may provide sufficient grounds for extending the periods. These factors include: (a) the size and complexity of the case, (b) the debtor’s progress in resolving issues facing the estate, and (c) whether an extension of time will harm the debtor’s creditors. See, e.g., In re Gibson & Cushman Dredging Corp., 101 B.R. 405-409-10 (E.D.N.Y. 1989) (listing the above-referenced factors); In re Grand Traverse Dev’p Co. Ltd. Partnership, 147 B.R. 418, 420 (Bankr. W.D. Mich. 1992); In re General Bearing Corp., 136 B.R. 361, 367 (Bankr. S.D.N.Y. 1992).

**(i) The size and complexity of these cases warrant an extension**

24. Government nuclear regulation plays a profound role in these bankruptcy cases – first, because it played a role in the accessibility of DIP financing and second, because a realistic reorganization plan cannot be developed until Fansteel develops a DP and DFP for the Muskogee Site that the NRC approves and the costs of which can be supported by the Debtors' operations.

**DIP Financing**

25. At the time of filing this Motion, Debtors are scheduled to have a final hearing before the Court on a proposed DIP facility by Congress Financial Corporation ("Congress DIP"). Prior to the Congress DIP, the financing alternatives available to Debtors were limited by concerns of potential DIP financiers that the rights of the NRC would prime their rights<sup>5</sup>.

26. Pre-bankruptcy, Fansteel explored alleviating the concerns of DIP financiers by obtaining the consent, satisfactory to lenders, of the NRC to the proposed DIP financing. It appeared unlikely that such a consent could be obtained. Furthermore, even if such consent were forthcoming, under the Hobbs Act, 28 U.S.C. §2342, 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 DIP financing until the NRC provided its consent and the challenge period under the Hobbs Act expired. Such a delay was untenable for Debtors.

27. Thus, at the beginning of these cases, the Debtors were forced by circumstances to develop a plan for two-stage financing: first, financing would be provided

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<sup>5</sup> For example, such concerns specifically were expressed by Foothill Capital Corporation and The CIT Group/Business Credit, Inc., which refused to lend without the affirmative consent of the NRC.

through a short-term loan and second, the short-term loan would be followed by a sale of accounts receivable. The plan was – purely and simply – not ideal, and born of necessity. Its chief drawback was that, ultimately, it did not realistically give Debtors additional funds with which to operate, it merely speeded up access to funds through the purchase by another entity of the Debtors' accounts receivable. With the uncertainty of eventually securing DIP financing, to provide additional funds to meet the Debtors' working capital needs and the costs of the chapter 11 cases, Fansteel immediately undertook efforts to sell assets both on its own and with the help of Lincoln Partners, an investment banking firm. While marketing efforts have been underway since the commencement of the bankruptcy, no sales are imminent at this time.

28. After these chapter 11 cases commenced, Congress approached Debtors and offered DIP financing on suitable terms. Debtors anticipate that the greater availability of funds provided through the Congress DIP will have both a real and a perceived effect on business. Debtors finally will have funds to stabilize and improve operations, a necessary first step in developing a plan of reorganization. Moreover, the approval of an adequate DIP facility (without NRC consent) will give suppliers, employees and especially customers, more confidence in the long-term future of Debtors.

#### **The NRC Unsecured Debt/Obligations**

29. As a result of the above-described decision by Fansteel to suspend operations of its Muskogee reprocessing plant and the resultant revised projected estimates of decommissioning costs, Fansteel, among other things, must now formulate a revised strategy to

satisfy its obligations, under the Atomic Energy Act and the Bankruptcy Code, to decommission the residues and soils from its prior operations.

30. Given the likelihood that the price of tantalum will remain, for the foreseeable future, far below that needed to justify “restarting” the reprocessing plant, Fansteel must now engage in a lengthy process that will require, among other things, (a) the formulation and submission to the NRC of a proposed amended DP (likely to take until December 2002), (b) the formulation and submission to the NRC, of a proposed DFP (likely to be contained in a proposed Plan of Reorganization), assuming that the NRC approves the amended DP, (c) substantial engineering work to gather data to support Fansteel’s proposed DP, and (d) the preparation and implementation of the Debtors’ revised business plans, including the possibility of one or more asset sales, and the potential effect thereof on the ability of Fansteel, as a debtor and/or as reorganized to provide a DFP at less than 100¢ on the dollar which will be acceptable to the NRC.

31. Fansteel believes that the amount of engineering work yet to be completed by Earth Science Consultants (“ESC”), its retained experts, in connection with its submission of a proposed DP is substantial and will take until approximately November 15, 2002 to complete. Submission of the completed proposed DP to the NRC is likely to occur in December 2002. Thereafter, based upon experience, Fansteel believes that it will take the NRC up to six (6) months (approximately July 2003) to review and approve any proposed amended DP and DFP.

32. It is the above-described timetable that underlies the term of the Congress DIP Loan Facility. More important, it is this timetable that constitutes the “cause” for extending the Debtors’ Exclusive Periods.

33. The process of developing a proposed amended DP is highly technical and detailed, and new technology and issues have arisen since ESC last examined Fansteel’s issues of decommissioning. Fansteel and ESC are exploring alternative remediation approaches that lessen the cost of the remediation from \$57 million that Fansteel anticipated. To develop a revised DP, the following steps must be taken:

- a. ESC and Fansteel must determine what NRC – approved criteria are best used to determine the level of clean up. Since the last DP was developed, wherein Fansteel followed the SDMP approach, the NRC has approved a dose based modeling approach that may be more appropriate for Fansteel.
- b. Once the quantity of residue material to be cleaned up is determined, ESC and Fansteel must determine what clean up techniques are most efficient and cost effective<sup>6</sup>.
- c. Fansteel and ESC must determine the buildings on site that need to be decommissioned, how they will be decommissioned and the ultimate disposal of the building material.

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<sup>6</sup> Cost factors are myriad and complex. One of the significant costs in remediation is how much radioactive material needs to be removed from the site and what condition the material is in. ESC and Fansteel are exploring methods which would allow Fansteel to more clearly pinpoint what is contaminated material and what is not, thus diminishing the amount of material that needs to be carted away. Another cost variable is whether the material to be transported is damp or dry. Depending upon the circumstances, Fansteel may want to dry damp radioactive material before it is transported.

- d. Once the amount of and method of disposal are determined, ESC and Fansteel need to determine the detailed processes to be used to clean up the site.
- e. Fansteel and ESC must develop a plan to treat contaminated groundwater for a significant period of time after remediation of the residue material.
- f. The plan must be costed out – considering such factors as the amount of material to be moved, the cost per ton for transportation and disposal, the required preparation of the material prior to disposal, and the on-site personnel necessary to implement the plan.
- g. Finally, Fansteel needs to determine if and, under what circumstances, it may operate the existing facility.

34. After Fansteel submits a new proposed DP to the NRC, Debtors' past experience is that the NRC will spend six months internally reviewing the proposed DP, discussing it and a revised DFP with the Debtors, and possibly holding public hearings on the proposed DP. Debtors, in the meantime, will proceed in developing a plan of reorganization, including the proposed DFP as to how to treat the costs of decommissioning under the proposed amended DP.

**(ii) Debtors have made progress towards solving issues**

35. The goal of these chapter 11 cases is to reorganize Debtors as viable going concerns. The lack of DIP financing has taken a toll on the Debtors that cannot be over-emphasized. Difficulty in obtaining DIP financing has meant that Debtors' management has

spent valuable time pursuing financing since approximately November 2001, when the need to file for chapter 11 protection first became a possibility. The lack of financing has meant that Debtors, during a period of significant economic recession in many industries that they serve, have had to operate only with customer collections since October 2001, thereby causing (a) substantial inefficiencies in its operations, and (b) the need to spend considerable time reassuring customers, suppliers, and employees about the long-term viability of the Debtors.

36. Since the Petition date, Debtors' management has been:

- a. **Stabilizing the Debtors' operations in bankruptcy.** This has included, among other things: (i) working towards resolution of issues with its prepetition lenders; (ii) stabilizing relationships with customers, employees and suppliers; (iii) confronting, with historically thin staffing, heavy day-to-day demands of these chapter 11 cases; and (iv) responding to the uncertainty of Fansteel's SEC regulatory requirements.
- b. **Obtaining financing.** This has involved: (i) meeting the due diligence, documentation and disclosure requirements for three different entities – the short term lender, the potential purchaser of accounts receivable, and Congress, and (ii) finalizing a DIP whose term is long enough to satisfy the timetable for developing a new proposed DP and DFP and plan of reorganization.

- c. **Moving forward with solving certain key environmental issues.** This has included beginning development of a new DP, as well as responding to issues at Debtors' North Chicago and Wellman facilities.
- d. **Marketing certain of its operations.** Debtors' management itself, as well as Debtors' investment bankers has been actively marketing certain operations of the business. For certain operations, management has (i) contacted prospective purchasers, (ii) developed an offering memorandum, (iii) followed through on indications of interest with appropriate confidentiality agreements, and (iv) supervised preparation of sales agreements. At the same time, management is re-assessing sales of specific operations as to whether such sales fit into the long-term goals of the Debtors.
- e. **Solving operational problems and improving operations.** As going concerns, Debtors continue to conduct business daily and to solve operational problems as they arise. Moreover, Debtors continue to improve operations and reduce costs at multiple locations. Since January, the Debtors have been able to run their businesses at a small loss, before the inclusion of the chapter 11-related expenses, even though the year-to-date sales of its largest and most profitable business are down 47% from last year. During this period, the Debtors' cash flow has been marginally positive.

### Creditors Will Not Be Harmed

37. A third criterion for granting an extension of the Exclusivity Periods is that the extension will not harm the creditors. Here, no creditor will be harmed by the extension because it simply is not feasible for a plan of reorganization to be proposed without a realistic assessment of the solution to the NRC issues, including an appropriate DP and DFP for the Muskogee Site.

38. Under the circumstances, Debtors' request for an extension of approximately two-hundred and thirty-nine days (239) in the respective Exclusivity Periods is a reasonable request. It is far below amounts granted by courts in other complex reorganization cases. See, e.g., In re Montgomery Ward Holding Corp., No. 97-1409 (PJW) (Bankr. D. Del.) (exclusivity extended for 21 months); In re Trans World Airlines, Inc., No. 92-115 (HSB) (Bankr. D. Del.) (exclusivity extended for approximately 20 months); In re Federated Dep't Stores, Inc., No. 1-90-00130 (Bankr. S.D. Ohio) (exclusivity extended for approximately two years); In re Pharmor, Inc., No. 92-41599 (Bankr. N.D. Ohio) (exclusivity extended for approximately three years). Here, approximately two-hundred and thirty-nine days (239) is an appropriate extension because of the timetable necessary for developing a new DP and new DFP. Debtors reserve the right to return to this Court and to request another extension on the Exclusivity Periods.

39. Finally, these cases do not bear characteristics that would justify the denial of an extension of the exclusive periods. See, e.g., Dow Corning, 208 B.R. 661, 670 (Bankr. E.D. Mich. 1997) (stating that an extension of the exclusive period should be denied if debtor appeared to be attempting to delay the administration of the bankruptcy case). The Debtors are not seeking the extensions to delay administration of their cases or to pressure creditors to accept

unsatisfactory plans. On the contrary, this request is: (a) made in good faith, (b) reasonably based upon the needs of formulating a plan, (c) intended to facilitate an orderly, efficient and cost-effective plan process for the benefit of all creditors, and (d) will result in a more efficient use of estate assets and resources.

40. The objective of these chapter 11 reorganization cases is the resolution of the Debtors' chapter 11 cases through the negotiation, formulation, development, confirmation and consummation of consensual plans of reorganization. The Debtors are taking the steps necessary to reach that goal. Accordingly, granting the extension of the Exclusive Periods requested by the Debtors is reasonable and appropriate under the circumstances of these cases.

#### Notice

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

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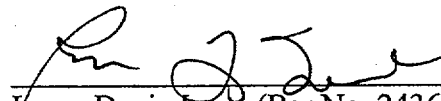
WHEREFORE, the Debtors respectfully request the entry of an Order,  
substantially in the form attached hereto, granting the relief requested herein and such other and  
further relief as this Court deems just and proper.

Dated: May 15, 2002

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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> , <sup>1</sup>	)	Case No. 02-10109 (JJF)
	)	(Jointly Administered)
Debtors.	)	

**ORDER GRANTING DEBTORS' MOTION FOR ORDER PURSUANT TO  
BANKRUPTCY CODE SECTION 1121(d) EXTENDING THE TIME PERIODS  
DURING WHICH THE DEBTORS HAVE THE EXCLUSIVE RIGHT TO FILE A  
PLAN OF REORGANIZATION AND TO SOLICIT ACCEPTANCES THERETO**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases for the entry of an order extending the Debtors' exclusive periods of time in which to file plans and solicit acceptances thereof pursuant to 11 U.S.C. § 1121(d); and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334 and that this matter is a core matter pursuant to 28 U.S.C. § 157(b)(2); and the Court having determined that the relief requested in the Motion is in the best interest of the Debtors, their estates, and their creditors; and it appearing that due notice of the Motion was given to all parties required to receive notice pursuant to Delaware Rule of Bankruptcy Procedure 2002-1(b), and that no further or other notice need be given; and sufficient cause appearing therefore, it is hereby

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the same meaning as ascribed to them in the Motion.

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted in full.

2. Pursuant to 11 U.S.C. § 1121(d), the Debtors' exclusive period for filing a chapter 11 plan or plans pursuant to 11 U.S.C. § 1121(b) is hereby extended through and including Friday January 10, 2003, and the Debtors' exclusive period for soliciting acceptances thereof pursuant to 11 U.S.C. § 1121(c) is hereby extended through and including Tuesday, March 11, 2003.

3. This Order is without prejudice to the Debtors' rights to request any further extensions of the exclusive periods for filing plans and soliciting acceptances thereof.

Dated: \_\_\_\_\_, 2002

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