

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:

FANSTEEL INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

40-7580

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

Objection Deadline: July 1, 2002 at 4:00 p.m. EST  
Hearing Date: TBD (Only If Objections Are Filed)

**NOTICE OF MOTION**

TO: ALL PARTIES REQUIRED TO RECEIVE NOTICE PURSUANT TO DEL. BANKR.  
LR 2002-1

**PLEASE TAKE NOTICE** that on or about June 18, 2002, the debtors and debtors-in-possession (the "Debtors") in the captioned case filed with United States District Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court") the attached Debtors' Motion For Order Authorizing The Debtors To Assume Aircraft Products/Grounding Liability Insurance Policy (the "Emergency Motion").

**PLEASE TAKE FURTHER NOTICE** that responses or objections, if any, to the relief requested in the Emergency Motion must be in writing, filed with the Bankruptcy

<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.

NM5501 Add: Kids Eye Mail Center

Court, and served upon both undersigned counsel for Debtors so as to be received by 4:00 p.m. Eastern Standard Time on July 1, 2002 at 4:00 p.m. EST.

**PLEASE TAKE FURTHER NOTICE** that, if any objections are timely filed and serviced, a hearing on the Emergency Motion will be held at the convenience of the Court before the Honorable Joseph J. Farnan, Jr., of the United States District Court for the District of Delaware. If a hearing is to be held, an additional notice of the time and place of the hearing will be served upon all parties required to be served by the Delaware Local Rules of Bankruptcy Procedure.

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Only timely filed and received written objections will be considered by the Court at the hearing, if a hearing is to be held.

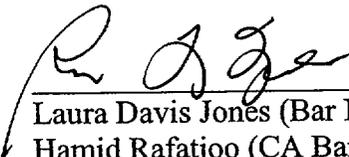
IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE EMERGENCY MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: June 18, 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: )  
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FANSTEEL INC., *et al.*,<sup>1</sup> )  
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Case No. 02-10109(JJF)

Chapter 11  
(Jointly Administered)

Objection Deadline: July 1, 2002 at 4:00 p.m. EST  
Hearing Date: TBD (Only If Objections Are Filed)

**DEBTORS' MOTION FOR ORDER  
AUTHORIZING THE DEBTORS TO ASSUME AIRCRAFT  
PRODUCTS/GROUNDING LIABILITY INSURANCE POLICY**

The captioned debtors and debtors in possession (each a "Debtor" and collectively, the "Debtors") hereby move the Court (the "Motion") for the entry of an order pursuant to section 365 of title 11 of the United States Code (as amended, the "Bankruptcy Code") authorizing the Debtors to assume a certain aircraft products/grounding liability insurance policy number APG 606528, as described in further detail below (the "Policy"). In support of this Motion, the Debtors respectfully represent as follows:

**Jurisdiction**

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue of the Debtors' bankruptcy cases and this Motion is proper in the District of Delaware pursuant to 28 U.S.C. §§ 1408 and 1409.

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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.

3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). The statutory predicate for relief is section 365 of the Bankruptcy Code.

#### **Background**

4. The Debtors' operations include the manufacture of certain critical and non-critical aircraft flight components for a variety of commercial and military aircraft that are processed at Wellman Dynamics Corp. ("Wellman"), Fansteel Schulz Products, Inc. ("Schulz"), Fansteel Inc. California Drop Forge division ("Cal Drop") and Escast, Inc. ("Escast").

5. The Wellman facility produces aluminum and magnesium castings used in a wide range of aircraft parts, aircraft engines, gear boxes, aircraft components and missiles. The Schulz facility machines aircraft parts and components used primarily in military aircraft. The Cal Drop facility manufactures forgings for a variety of aircraft parts including engine components and landing gears, primarily for commercial aircraft. The Escast facility produces investment castings that include flow control components for aircraft.

6. The Debtors maintain aircraft products/grounding liability insurance in connection with the above-described products pursuant to the Policy described below.

#### **The Policy**

7. The Policy is arranged by AON Risk Services, Inc. ("AON") on behalf of Fansteel, Inc. ("Fansteel"). The Continental Insurance Company and Federal Insurance Company are each co-insurers under the Policy (the "Insurers").

8. The Policy provides insurance for (i) Products-Completed Operations Hazard<sup>2</sup> (Policy, Section 1, Coverages A) and (ii) losses caused by Grounding<sup>3</sup>, (Policy, Section 1, Coverage B) with an "each occurrence" and "aggregate limit" of \$100,000,000 (Policy, Declarations, Item 3).

9. The annual policy premium for the Policy is \$270,000. Policy, Declaration, Item 5. The Policy allocates premiums as follows: Wellman (\$132,300); Escast (\$45,900); Drop Forge (\$45,900); and Schulz (\$45,900).

10. The Policy provides the Debtors with insurance coverage for a one-year term from December 1, 2001 to December 1, 2002. Policy, Declarations, Item 2.

11. Although the Policy may have lapsed, the Insurers have agreed to reinstate the Policy upon their receipt of full premium. Section IV, Item 2 of the Policy provides that "we [the Insurers] may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least: (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or (2) 30 days before the effective date of cancellation if we cancel for any other reason."

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<sup>2</sup> The Policy defines Products-Completed Operations Hazard to include "all bodily injury and property damage occurring away from premises you own or rent and arising out of your product or your work except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned."

<sup>3</sup> The Policy defines "Grounding" as "the complete and continuous withdrawal from all flight operations of one or more aircraft due to a mandatory order of the Federal Aviation Administration of the United States of America or an equivalent civil airworthiness authority in any other country, because of an existing, alleged or suspected like defect, fault, or condition affecting the safe operation of two or more like model aircraft."

12. As of the date of this Motion, the Debtors have not received a written notice of cancellation from the Insurers. However, the Insurers have indicated that they will terminate the Policy unless they are promptly paid. If the Policy is terminated, a single aviation products occurrence could render moot the Debtors' efforts in the chapter 11 process.

### **Relief Requested**

13. Given the critical importance of the Policy to the Debtors' reorganization efforts, the Debtors seek entry of an order authorizing the Debtors to assume the Policy, including the Debtors' right to renew thereunder, pursuant to section 365(a) of the Bankruptcy Code.

14. It is the Debtors' business judgment that assumption of the Policy is critical to the ultimate success of the Debtors' reorganization efforts.

### **Basis for Relief Requested**

15. Section 365(a) of the Bankruptcy Code expressly authorizes – subject to court approval – the assumption of any executory contract or unexpired lease by a debtor. The purpose of the statute is to enable a debtor “to maximize the value of the debtor’s estate by assuming executory contracts that benefit the estate.” Cinicola v. Scharffenberger, 248 F.3d 110, 119 (3d Cir. 2001). “Section 365 enables the trustee [or debtor] to maximize value of the debtor's estates by assuming executory contracts and unexpired leases that benefit the estate and rejecting those that do not.” In re Rickel Home Centers, Inc., 209 F. 3d 291 (3d Cir. 2000).

16. The facts and circumstances surrounding the Debtors' bankruptcy cases and the Policy readily satisfy the above-noted requirements.

**The Policy**  
**Constitutes an Executory Contract**

17. A contract is executory within the meaning of section 365 of the Bankruptcy Code if “the obligations of both the bankrupt and the other party remain so far unperformed that failure of either to complete performance would constitute a material breach excusing performance of the other.” Counties Contracting and Constr. Co. v. Constituion Life Ins. Co., 855 F.2d 1054, 1060 (3d Cir. 1988); Sharon Steel Corp. v. Nat'l Fuel Gas Distrib., 872 F.2d 36, 39-40 (3d Cir. 1989).

18. Most courts agree that an insurance policy, if not terminated pre-petition, is an executory contract. In re Am. Med. Imaging Corp. 133 B.R. 45 (Bankr. E.D. Pa. 1991) citing Aetna Cas. & Surety Co. v. Gamel, 45 B.R. 345, 348 (N.D.N.Y. 1984) (parties conceded that insurance policy was an executory contract); In re Pester Ref. Co., 58 B.R. 189, 190-91 (Bankr. S.D. Iowa 1985) ( insurance policy was an executory contract within meaning of Bankruptcy Code, and thus insured's status as a chapter 11 debtor-in-possession barred insurer from enforcing cancellation provision unless and until debtor assumed the contract); In re B. Siegel Co., 51 B.R. 159, 161- 64 (Bankr. E.D. Mich. 1985) (an insurance policy issued for a three-year term and subject to annual rate renegotiations is an "executory contract" because “the policy of insurance imposed obligations of continuing performance on both the debtor and the insurance company--the obligation of [the insurance company] to continue to provide insurance protection, and the obligation of the debtor to continue to promptly pay premiums.”); In re

Garnas, 38 B.R. 221, 223 (Bankr. D.N.D. 1984) (an individual policy that provides coverage for one year is an an executory contract); In re Gamma Fishing Co., Inc. 70 B.R. 949 (Bankr. S.D. Cal. 1987) (one-year term insurance policy created obligation for debtor to continue payments for installment premiums and for insurance broker to keep insurance policy in effect deemed to be "executory contract" within meaning of Bankruptcy Code).

19. The third circuit in Counties Contracting expressed an "inclination" that insurance contracts were generally executory, an inclination that has been adopted by subsequent bankruptcy courts in this district. See, e.g., In re Smith Corona Corp. 210 B.R. 243 (Bankr. D. Del. 1997) (insurance policy qualified as executory contract).

20. The Policy, and the Debtors' rights to renew thereunder, imposes obligations of continuing performance for both the Insurers and Fansteel. The Insurers are under a continuing obligation to provide insurance for any claims arising out of the Policy unless the Policy is terminated by the Insurers pursuant to Section IV, Item 2 of the Policy. Fansteel is obligated to pay premiums for the duration of any renewal period and is also obliged to perform its "Duties in the Event of an Occurrence, Grounding, Claim or Suit". Policy, Section IV(4). Given these ongoing obligations among the parties, the Policy, including the Debtors' right to renew, constitutes an executory contract that may be assumed under section 365 of the Bankruptcy Code.

**The Debtors' Assumption of the Policy Falls  
Within the Exercise of the Debtors Sound Business Judgment**

21. In determining whether to approve a debtor's decision to assume an executory contract, courts have consistently applied the "business judgment" test. See, e.g., Delightful Music Ltd. v. Taylor, (In re Taylor), 913 F.2d 102 (3d Cir. 1990); Group of Inst. Investors v. Chicago Milwaukee St. Paul & Pacific Rail Road Co., 318 U.S. 523, 550 (1943); Matter of Telco, Inc., 558 F.2d 1369, 1173 (10<sup>th</sup> Cir. 1977); Matter of Minges, 602 F.2d 38, 43 (2d Cir. 1979); In re Chi-Feng Huang, 23 B.R. 798, 800 (B.A.P. 9<sup>th</sup> Cir. 1982).

22. A debtor satisfies the "business judgment" test when it determines, in good faith, that assumption of an executory contract will benefit the debtor's estate and unsecured creditors. In re FCX, Inc., 60 B.R. 405, 411 (Bankr. E.D.N.C. 1986); In re Chipwich Inc., 54 B.R. 427, 430-31 (Bankr. S.D.N.Y. 1985).

23. The Debtors believe, pursuant to their business judgment, that it is in the best interest of the Debtors and their estates to assume the Policy. By assuming the Policy, the Debtors will enhance the Debtors' ongoing viability and reorganization efforts.

#### Notice

24. Notice of this Motion has been given all parties required to receive notice pursuant to Delaware Local Rule of Bankruptcy Procedure 2002-1(b). The Debtors believe that such notice is appropriate and that no further notice is necessary under the circumstances.

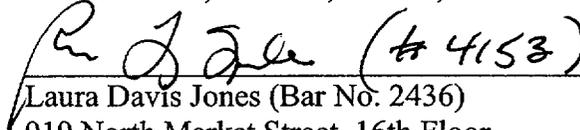
**WHEREFORE**, the Debtors respectfully request that the Court grant the Motion and enter the proposed order authorizing the Debtors to assume the Policy pursuant to section 365 of the Bankruptcy Code.

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

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 (4153)

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

**EXHIBIT A**

**AVIATION PRODUCTS-COMPLETED OPERATIONS  
AND GROUNDING LIABILITY INSURANCE**

THROUGH

**ASSOCIATED AVIATION UNDERWRITERS, INC.**

HOME OFFICE: 51 JOHN F. KENNEDY PARKWAY  
SHORT HILLS, NEW JERSEY 07078

ISSUING OFFICE: 51 JOHN F. KENNEDY PARKWAY  
SHORT HILLS, NEW JERSEY 07078

FOR

**FANSTEEL, INC.**

NUMBER ONE TANTALUM PLACE  
NORTH CHICAGO, IL 60064

ARRANGED BY:

**AON RISK SERVICES, INC.**

CNG TOWER--10TH FLOOR  
625 LIBERTY AVENUE  
PITTSBURGH, PA 15222

DEC 14 2001  
AON RISK SERVICES

COPY

# GUIDE TO THE PROVISIONS OF YOUR POLICY

This guide has been prepared to help you in reading your policy. It is not a part of the policy nor does it make reference to all the provisions that might affect your insurance. You are therefore urged to read the entire policy carefully.

<b>DECLARATIONS</b>	<b>PAGE</b>
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## **ENDORSEMENTS**

# AVIATION PRODUCTS-COMPLETED OPERATIONS AND GROUNDING LIABILITY INSURANCE POLICY

POLICY NUMBER: APG 606528

The insurance afforded by this policy is provided by separate insurers, hereinafter referred to as "the Company." The liability of these insurers is several and not joint and is specifically set out below.

## THE COMPANIES

The Continental Insurance Company      50%  
Concord, New Hampshire

Federal Insurance Company      50%  
Indianapolis, Indiana

## DECLARATIONS

Item 1. Named Insured FANSTEEL, INC.  
(AND SEE ENDORSEMENT NO. 1)  
and Address: NUMBER ONE TANTALUM PLACE  
NORTH CHICAGO, IL 60064

Item 2. Policy Period:

From: DECEMBER 1, 2001

To: DECEMBER 1, 2002

12:01 AM Standard Time at your mailing address shown under Item 1.

DECLARATIONS (Continued)

NAMED FANSTEEL, INC., ETAL.  
INSURED:

POLICY  
NUMBER: APG 606528

Item 3. In return for payment of the premium and subject to all of the terms of this policy, we agree with you to provide the insurance as stated in this policy.

LIMITS OF INSURANCE

Policy Aggregate Limit	\$100,000,000.
Coverage A: Products-Completed Operations Each <i>Occurrence</i> and Aggregate Limit	\$100,000,000.
Coverage B: <i>Grounding</i> Each <i>Grounding</i> and Aggregate Limit	\$100,000,000.

For applicable deductible see Endorsement Number N/A - **DEDUCTIBLE ENDORSEMENT**

Item 4. Form of Business:

Item 5. Premium:

Annual Policy Premium:	\$270,000.
Policy Minimum Premium:	N/A

Endorsements forming a part of this policy on its effective date: 4

DECLARATIONS (Continued)

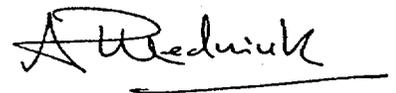
NAMED FANSTEEL, INC., ETAL.  
INSURED:

POLICY  
NUMBER: APG 606528

IN WITNESS WHEREOF, the Company has caused this policy to be executed on its behalf by Associated Aviation Underwriters, Inc., but this policy shall not be valid unless signed by a duly authorized representative of Associated Aviation Underwriters, Inc.



Leonidas G. Demas, Secretary  
Associated Aviation Underwriters, Inc.



A. J. Medniuk, President & C.E.O.  
Associated Aviation Underwriters, Inc.

\_\_\_\_\_  
Countersignature (Where Required)

\_\_\_\_\_  
For Associated Aviation Underwriters, Inc.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words **you** and **your** refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. The words **we**, **us** and **our** refer to the Company providing this insurance.

The word **insured** means any person or organization qualifying as such under SECTION II - WHO IS AN INSURED.

Other words and phrases that appear in *bold italicized* type have special meaning. Refer to SECTION V - DEFINITIONS.

## SECTION I - COVERAGES

### COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement.

(a) We will pay those sums that the insured becomes legally obligated to pay as damages because of *bodily injury* or *property damage* included within the *products-completed operations hazard* to which this insurance applies. We will have the right and duty to defend any *suit* seeking those damages. We may at our discretion investigate any *occurrence* and settle any claim or *suit* that may result. But:

(1) The amount we will pay for damages is limited as described in SECTION III - LIMITS OF INSURANCE; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A and B.

(b) This insurance applies to *bodily injury* and *property damage* only if the *bodily injury* or *property damage* is caused by an *occurrence* that takes place anywhere and during the policy period.

(c) Damages because of *bodily injury* include damages claimed by any person or organization for care, loss of services or death resulting at any time from the *bodily injury*.

#### 2. Exclusions.

This insurance does not apply to:

(a) *Bodily injury* or *property damage* expected or intended from the standpoint of the insured.

## SECTION I (Continued)

(b) **Bodily injury or property damage** for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion (b) does not apply to liability for damages:

- (1) Assumed in a contract or agreement that is an *insured contract*, provided the *bodily injury or property damage* occurs subsequent to the execution of the contract or agreement; or
- (2) That the insured would have in the absence of the contract or agreement.

(c) Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

(d) **Bodily injury** to:

- (1) An employee of the insured arising out of and in the course of employment by the insured; or
- (2) The spouse, child, parent, brother or sister of that employee as a consequence of (d)(1) above.

This exclusion (d) applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion (d) does not apply to liability assumed by the insured under an *insured contract*.

(e) **Property damage** to:

- (1) Property you own, rent, or occupy;
- (2) Property loaned to you;
- (3) Personal property in the care, custody or control of the insured.

(f) **Property damage to impaired property** or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in *your product or your work*; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion (f) does not apply to the loss of use of other property arising out of sudden and accidental physical injury to *your product or your work* after it has been put to its intended use.

## SECTION I (Continued)

- (g) Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) *Your product*;
- (2) *Your work*; or
- (3) *Impaired property*

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

- (h) *Property damage to launch vehicles* including any parts or any articles used in connection therewith; however, this exclusion (h) shall not apply if such *property damage* is caused by an *aircraft* or *aviation product* forming a part of such *aircraft*.
- (i) *Property damage to spacecraft products* including any parts or articles used in connection therewith, after such *spacecraft products* or parts or articles have been delivered to a launch site; however, this exclusion (i) does not apply to *property damage* resulting from an *aircraft* including any parts or articles used in connection therewith.
- (j) *Property damage* to any *missile* or any *military aviation product* arising out of such *missile* or *military aviation product* including any parts thereof.
- (k) *Bodily injury* or *property damage* arising out of:

- (1) *Aviation noise*;
- (2) Interference with the quiet enjoyment of property by overflight or other operation of *aviation products* in proximity thereto; or
- (3) The taking of or exercise of rights with respect to the property of others by overflight or other operation of *aviation products* in proximity thereto.

This exclusion (k) does not apply to *bodily injury* or *property damage* resulting from a crash or collision, or an emergency condition resulting in abnormal operation of any *aviation product*.

- (l) Liability arising out of the handling or use of, or the existence of any condition in any *aviation product owned by*, loaned to, or, except with respect to Coverage B, in possession or control of, or *in flight* by the insured. However, this exclusion (l) shall not apply to an *aviation product* that is *owned by* the insured pursuant to:
- (1) A conditional sales contract, chattel mortgage or similar agreement;
  - (2) A lease agreement; or
  - (3) A consignment agreement or contract of bailment when the *aviation product* is not in the possession or control of the insured.
- (m) Liability with respect to which insurance is or can be afforded under Coverage B, or to loss of use of any *aircraft* which has not been physically injured or destroyed.

## SECTION I (Continued)

### COVERAGE B - GROUNDING LIABILITY

#### 1. Insuring Agreement.

- (a) We will pay those sums that the insured becomes legally obligated to pay as damages for the loss of use of completed *aircraft* occurring after delivery to and acceptance by a purchaser or operator other than an insured, and caused by a *grounding* following an *occurrence* which results in *bodily injury* or *property damage* and arises out of the *products-completed operations hazard* to which this insurance applies. We will have the right and duty to defend any *suit* seeking those damages. We may at our discretion investigate any *occurrence* and settle any claim or *suit* that may result. But:
- (1) The amount we will pay for damages is limited as described in SECTION III - LIMITS OF INSURANCE; and
  - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A and B.

- (b) This insurance applies to loss of use of completed *aircraft* only if the last *occurrence*, which gives rise to the first *grounding* order, takes place during the policy period, irrespective of the actual date upon which the *grounding* order is issued, regardless of the duration of such *grounding*.

#### 2. Exclusions.

This insurance does not apply to:

- (a) Loss of use of any *aircraft* caused by the failure of an insured to exercise diligence and reasonable means to correct and eliminate, without cost to us, the cause of the *grounding*.
- (b) Loss of use of any *aircraft* while withdrawn from service for the primary purpose of *routine maintenance*, *minor alterations*, *current modifications* or overhaul of the *aircraft* or its component parts.
- (c) Any *military aviation product*, *launch vehicle*, *spacecraft product* or *missile*.
- (d) Costs incurred for the correction or elimination of the cause of *grounding*.
- (e) Any *aircraft* which is required by the manufacturer or by the direction of the Federal Aviation Administration of the United States of America or an equivalent civil airworthiness authority in any other country to be removed from part of or all flight operations due to its Certificate of Airworthiness being withdrawn or modified due to the safe operational life of such *aircraft* having been reached or exceeded.
- (f) *Grounding* expected or intended from the standpoint of the insured.

## SECTION I (Continued)

- (g) *Grounding* for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion (g) does not apply to liability for damages:
- (1) Assumed in a contract or agreement that is an *insured contract*, provided the last *occurrence*, which gives rise to the first *grounding* order, takes place during the policy period and after the execution of the contract or agreement; or
  - (2) That the insured would have in the absence of the contract or agreement.

### SUPPLEMENTARY PAYMENTS - COVERAGES A and B

We will pay, with respect to any claim or *suit* we defend:

1. All expenses we incur.
2. Expenses incurred by the insured for first aid for *bodily injury* to others at the time of an *occurrence* to which this insurance applies.
3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or *suit*, including actual loss of earnings up to \$100 a day because of time off from work.
5. All costs taxed against the insured in the *suit*.
6. Pre-judgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any pre-judgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

## SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:
  - (a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - (b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - (c) An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  
2. Each of the following is also an insured:
  - (a) Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, no employee is an insured for *property damage* to:
    - (1) Property owned or occupied by or rented or loaned to that employee, you or any of your partners or members (if you are a partnership or joint venture); or
    - (2) Personal property in the care, custody or control of that employee, you or any of your partners or members (if you are a partnership or joint venture).
  - (b) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
  
3. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - (a) Coverage under this provision is afforded only until the 30th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
  - (b) Coverage A does not apply to *bodily injury* or *property damage* that occurred before you acquired or formed the organization.
  - (c) Coverage B does not apply to loss of use of completed *aircraft* resulting from a *grounding* unless the last *occurrence*, which gives rise to the first *grounding* order, takes place during the policy period and after you acquire or form the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

## SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - (a) Insureds;
  - (b) Claims made or *suits* brought; or
  - (c) Persons or organizations making claims or bringing *suits*.
2. The Policy Aggregate Limit is the most we will pay for the sum of:
  - (a) Damages under Coverage A; and
  - (b) Damages under Coverage B.
3. Subject to 2. above, the Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of *bodily injury* and *property damage* included in the *products-completed operations hazard*.
4. Subject to 2. or 3. above, the Products-Completed Operations Each *Occurrence* Limit is the most we will pay under Coverage A for damages because of *bodily injury* and *property damage* included in the *products-completed operations hazard* arising out of any one *occurrence*.
5. Subject to 2. above, the *Grounding* Aggregate Limit is the most we will pay under Coverage B for the sum of all damages for the loss of use of completed *aircraft* because of all *groundings*.
6. Subject to 2. or 5. above, the Each *Grounding* Limit is the most we will pay under Coverage B for the sum of all damages for the loss of use of completed *aircraft* because of each *grounding*.

## SECTION IV - POLICY CONDITIONS

### 1. Bankruptcy.

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

### 2. Cancellation.

- (a) The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- (b) We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- (c) We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- (d) Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- (e) If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- (f) If notice is mailed, proof of mailing will be sufficient proof of notice.

### 3. Changes.

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued on our behalf by Associated Aviation Underwriters, Inc. and made a part of this policy.

### 4. Duties in the Event of Occurrence, Grounding, Claim or Suit.

In this Policy Condition 4 the words *we*, *us* and *our* refer to Associated Aviation Underwriters, Inc.

- (a) You must see to it that we are notified promptly of an *occurrence* or *grounding* that may result in a claim. Notice should include:
  - (1) How, when and where the *occurrence* or *grounding* took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the *occurrence* or *grounding*.

## SECTION IV (Continued)

(b) If a claim is made or *suit* is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or *suit* and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or *suit* as soon as practicable.

(c) You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or *suit*;
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement or defense of the claim or *suit*; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

(d) No insureds will, except at their own cost, make any payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### 5. Examination of Your Books and Records.

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### 6. Inspections and Surveys.

We have the right but are not obligated to:

- (a) Make inspections and surveys at any time;
- (b) Give you reports on the conditions we find; and
- (c) Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- (a) Are safe or healthful; or
- (b) Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization that makes insurance inspections, surveys, reports or recommendations.

## SECTION IV (Continued)

### 7. Legal Action Against Us.

No person or organization has a right under this policy:

- (a) To join us as a party or otherwise bring us into a *suit* asking for damages from an insured; or
- (b) To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative. Service of process on us may be made upon Associated Aviation Underwriters, Inc. However, we do not waive our right to commence an action in any court of competent jurisdiction or to seek a transfer to another court as permitted by law.

### 8. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover under this policy, our obligations are limited as follows:

#### (a) Primary Insurance

This insurance is primary. Our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in (b) below.

#### (b) Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### 9. Premiums.

#### (a) The first Named Insured shown in the Declarations:

- (1) Is responsible for the payment of all premiums; and
- (2) Will be the payee for any return premiums we pay.

#### (b) We will compute all premiums for this policy in accordance with our rules and rates. Policy Condition 2 above notwithstanding, computation of any premium refund due in the event of cancellation shall be subject to the Policy Minimum Premium shown in the Declarations, if any.

#### (c) The first Named Insured must keep records of the information we need for premium computation and send us copies of those records at such times as we may request.

## SECTION IV (Continued)

### 10. Representations.

By accepting this policy, you agree:

- (a) The statements in the Declarations are accurate and complete;
- (b) Those statements are based upon representations you made to us; and
- (c) We have issued this policy in reliance upon your representations.

### 11. Separation of Insureds.

Except with respect to the Limits of Insurance and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- (a) As if each Named Insured were the only Named Insured; and
- (b) Separately to each insured against whom claim is made or *suit* is brought.

### 12. State Statutes.

If the terms of this policy are in conflict with or inconsistent with the statutes of any state where this policy is in effect, we will conform to those state statutes.

### 13. Titles of Paragraphs.

The titles of the various paragraphs of this policy and amendments, if any, attached to this policy and divider tabs, if any, are inserted solely for reference and are not to be deemed in any way to limit or affect the provisions to which they relate.

### 14. Transfer of Rights of Recovery Against Others to Us.

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring *suit* or transfer those rights to us and help us enforce them.

### 15. Transfer of Your Rights and Duties Under This Policy.

Your rights and duties under this policy may not be transferred without our written consent except in the case of the death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

SECTION IV (Continued)

16. Inadvertent Errors and Omissions.

Except with respect to:

- (a) The reporting of newly acquired or formed organizations as required in SECTION II - WHO IS AN INSURED;
- (b) The reporting of contracts as required by the policy definition of *insured contract*; and
- (c) Notice of an *occurrence, grounding, claim or suit* as required by Policy Condition 4

inadvertent errors, omissions or failure to give notice to us as herein required shall not relieve us of liability under this policy, provided that any such error, omission or failure shall be corrected as soon as discovered.

## SECTION V - DEFINITIONS

1. *Aircraft* means a vehicle (except *missiles*, *launch vehicles* or *spacecraft products*) designed to be supported by the air, being borne up either by the dynamic action of the air upon the surfaces of the vehicle, or by its own buoyancy.
2. *Aviation noise* means the sounds made by an *aviation product* and the vibration associated therewith, and includes the phenomenon called sonic boom.
3. *Aviation products* means *aircraft*, *missiles*, *launch vehicles* or *spacecraft products* and any articles used in connection therewith.
4. *Bodily injury* means bodily injury, sickness, mental anguish or disease sustained by a person, including death resulting from any of these at any time.
5. *Current modification* means changes in *aircraft* which are intended to improve performance or utilization of *aircraft* but which are not necessary to the airworthiness of *aircraft*.
6. *Grounding* means the complete and continuous withdrawal from all flight operations of one or more *aircraft* due to a mandatory order of the Federal Aviation Administration of the United States of America or an equivalent civil airworthiness authority in any other country, because of an existing, alleged or suspected like defect, fault or condition affecting the safe operation of two or more like model *aircraft*. A *grounding* shall be deemed to commence from the date on which the first order becomes effective and continue until the date on which the last such order relating to the same existing, alleged or suspected like defect, fault or condition is withdrawn or becomes ineffective.
7. *Impaired property* means tangible property that cannot be used or is less useful because:
  - (a) It incorporates *your product* or *your work* that is known or thought to be defective, deficient, inadequate or injurious; or
  - (b) You have failed to fulfill the terms of a contract or agreement;if such property could be restored to use by:
  - (a) The repair, replacement, adjustment or removal of *your product* or *your work*; or
  - (b) Your fulfilling the terms of the contract or agreement.
8. *In flight* means the time commencing with the actual takeoff run of the *aircraft* until it has completed its landing roll, or if the *aircraft* is a rotorcraft, from the time the rotors start to rotate under power until the rotors cease to rotate.

## SECTION V (Continued)

9. *Insured contract* means a written contract or agreement executed during the policy period pertaining to your *aviation products* under which you assume the tort liability of another party to pay for *bodily injury* or *property damage* to a third person or organization, provided:
- (a) Such written contract or agreement is reported to Associated Aviation Underwriters, Inc. within 30 days of its execution; and
  - (b) Such written contract or agreement is not rejected by Associated Aviation Underwriters, Inc. by mailing to the first Named Insured written notice stating when, not less than 10 days thereafter, such written contract or agreement is excluded from the policy; and
  - (c) The first Named Insured agrees to pay an additional premium, if any, as determined by us.

As used in this definition, tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

10. *Launch vehicle* means a *rocket* [including, but not limited to, the Space Transportation System (STS)] used to carry or launch a probe, *spacecraft product* or the like.
11. *Military aviation products* means *aviation products* while owned by or used by or in the possession of the armed services of any government. An *aircraft* leased or chartered to the armed services of any government shall be deemed not to be a *military aviation product*.
12. *Minor alterations* means changes having no appreciable effect on the weight, balance, structural strength, powerplant operations, flight or other characteristics affecting the airworthiness of the *aircraft*.
13. *Missile* means a *rocket* (except *launch vehicles*):
- (a) After arrival of a *missile* at a launching site, such *missile* shall be deemed not to be *owned by*, loaned to, in the possession or control of, or in flight by the insured.
  - (b) When the insured removes a *missile* from the launching site, or recovers a *missile* after completion of its flight for the purpose of returning it to the premises of the insured other than a launching site, such *missile* shall be deemed to be in the possession or control of the insured until such *missile* again arrives at a launching site or the insured surrenders possession of such *missile* to a person or organization who is not an insured under this policy.
14. *Occurrence* means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
15. *Owned by* means retention of title to an *aviation product* by an insured.

## SECTION V (Continued)

16. (a) *Products-completed operations hazard* includes all *bodily injury* and *property damage* occurring away from premises you own or rent and arising out of *your product* or *your work* except:
- (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned.
- (b) *Your work* will be deemed completed at the earliest of the following times:
- (1) When all of the work called for in your contract has been completed.
  - (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
  - (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- (c) This hazard does not include *bodily injury* or *property damage* arising out of:
- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the loading or unloading of it; or
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
17. *Property damage* means:
- (a) Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - (b) Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the *occurrence* that caused it.
18. *Rocket* means a projectile, pyrotechnic device or flying vehicle propelled by a reaction engine that contains within itself, or carries along with itself, the substances necessary for its operation or for the consumption or combustion of its fuel, not normally requiring intake of any outside substance.
19. *Routine maintenance* means preservation operations including, but not limited to, the adjustment of rigging and clearances and the replacement of standard parts.
20. *Spacecraft product* means any device designed to be placed:
- (a) Into an orbit about the earth, or into a trajectory to another celestial body; or
  - (b) Into space including, but not limited to, scientific platforms or experiments, regardless of whether or not such devices are designed to be left in space or not.

## SECTION V (Continued)

21. *Suit* means a civil proceeding in which damage because of *bodily injury* or *property damage* to which this insurance applies are alleged. *Suit* includes:
- (a) An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
  - (b) Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

22. *Your product* means:

- (a) Any *aviation products*, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (1) You;
  - (2) Others trading under your name; or
  - (3) A person or organization whose business or assets you have acquired unless such person or organization has agreed to assume liability therefor; and
- (b) Containers (other than vehicles), materials, parts or equipment furnished in connection with such *aviation products*.

*Your product* includes:

- (a) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of *your product*; and
- (b) The providing of or failure to provide warnings or instructions.

23. *Your work* means:

- (a) Work or operations pertaining to *aviation products* performed by you or on your behalf; and
- (b) Materials, parts or equipment furnished in connection with such work or operations.

*Your work* includes:

- (a) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of *your work*; and
- (b) The providing of or failure to provide warnings or instructions.

## SECTION VI - GENERAL POLICY EXCLUSIONS

Other provisions of this policy may limit or exclude insurance coverage. You are therefore urged to read the entire policy carefully.

This insurance does not apply to:

### 1. Pollution.

(a) *Bodily injury* or *property damage* arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**; however, paragraph (a) does not apply to *bodily injury* or *property damage* resulting from a crash or collision, or an emergency condition resulting in abnormal operation of an *aviation product*.

(b) Any loss, cost, or expense arising out of any:

(1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of **pollutants**; or

(2) Claim or *suit* by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of **pollutants**,

unless resulting from a crash or collision, or an emergency condition resulting in abnormal operation of an *aviation product*.

As used in GENERAL POLICY EXCLUSION 1. Pollution:

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

### 2. Radioactive Contamination.

(a) Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or

(b) Any legal liability of whatsoever nature

directly or indirectly caused or contributed to by or arising from:

(1) Ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or

(2) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

## SECTION VI (Continued)

### 3. Nuclear Energy Liability.

#### (a) *Bodily injury or property damage:*

- (1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the **hazardous properties of nuclear material** and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (ii) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

(b) Expenses incurred under Medical Payments coverage with respect to *bodily injury* resulting from the **hazardous properties of nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization.

(c) *Bodily injury or property damage* resulting from the **hazardous properties of nuclear material**, if:

- (1) The **nuclear material** (i) is at any **nuclear facility** owned by, or operated by or on behalf of, an insured or (ii) has been discharged or dispersed therefrom;
- (2) The **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
- (3) The *bodily injury or property damage* arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to *property damage* to such **nuclear facility** and any property thereat.

As used in GENERAL POLICY EXCLUSION 3. Nuclear Energy Liability:

"Hazardous properties" include radioactive, toxic or explosive properties.

"Nuclear material" means source material, special nuclear material or by-product material.

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor.

"Waste" means any waste material, (a) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, and (b) resulting from the operation by any person or organization of any nuclear facility included under the first two paragraphs of the definition of nuclear facility.

## SECTION VI (Continued)

"Nuclear facility" means:

- (a) Any nuclear reactor;
  - (b) Any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste;
  - (c) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste;
- and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

### 4. Property Damage to Property of the Armed Services.

*Property damage* to property of the armed services of any government resulting from defects or deficiencies in *aviation products*, and occurring after acceptance of such *aviation products*, if such products are delivered under any contract incorporating provisions limiting liability for such *property damage* including, but not limited to, clauses 52.246-23 or 52.246-24 prescribed by the United States Code of Federal Regulations, Federal Acquisition Regulations System or their predecessor clauses 7-104.45(a) or 7-104.45(b) or any earlier type clauses.

### 5. War, Hi-Jacking and Other Perils.

*Bodily injury, property damage* or loss of use of completed *aircraft* due to:

- (a) War, invasion, acts of foreign enemies, hostilities (whether declared or not), civil war, rebellion, insurrection, martial law, military or usurped power or attempts at usurpation of power.
- (b) Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- (c) Strikes, riots, civil commotions or labor disturbances.
- (d) Any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.
- (e) Any malicious act or act of sabotage.
- (f) Confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any government (whether civil, military or de facto) or public or local authority.
- (g) Hi-jacking or any unlawful seizure or wrongful exercise of control of an *aircraft* or crew (including any attempt at such seizure or control) made by any person or persons, whether such *aircraft* or crew are *in flight* or not.

## BROAD FORM NAMED INSURED ENDORSEMENT

This endorsement modifies the insurance provided under COVERAGES A and B.

Item 1. Named Insured - of the Declarations, is amended to read as follows:

*FANSTEEL, INC.* and its present subsidiaries, including subsidiaries thereof. Subsidiaries shall mean any organization, other than a partnership or joint venture, over which *FANSTEEL, INC.* maintains ownership, majority interest or financial control.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

This endorsement is effective: DECEMBER 1, 2001

Attached to and made part of Policy No.: > APG 606528

Issued to: FANSTEEL, INC., ETAL.

Associated Aviation Underwriters, Inc.

BY: \_\_\_\_\_

Endorsement No. 1

**SPECIAL PROVISIONS ENDORSEMENT**  
**(Property Damage to Foreign Military Aviation Products)**

This endorsement modifies insurance provided under COVERAGE A.

1. Exclusion (j) of Coverage A is deleted with respect to *property damage to military aviation products* which are sold to, owned by or used by or in the possession of the armed services of any government except for the government of the United States of America.
2. The insurance afforded under paragraph 1 above does not apply to agreements or contracts, written or verbal, where any government purchasing *military aviation products* agrees to waive any right of action it may have against the insured for damage to such *military aviation products*.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

This endorsement is effective:      DECEMBER 1, 2001

Attached to and made part of Policy No.:      APG 606528

Issued to:      FANSTEEL, INC./ETAL.

Associated Aviation Underwriters, Inc.

BY: \_\_\_\_\_

Endorsement No. 2

## ELECTRONIC DATE RECOGNITION EXCLUSION

This policy does not cover any claim, damage, injury, loss, cost, expense or liability of any nature whatsoever arising from, occasioned by or in consequence of (whether directly or indirectly and whether wholly or partly):

A. the failure or inability to correctly recognize, process, distinguish, interpret or accept any change of year, date or time, including but not limited to:

- (1) the change of year from 1999 to 2000; or
- (2) the change of date from August 21, 1999 to August 22, 1999;

by any computer system, hardware, program or software, microprocessor, integrated circuit or similar device, whether the property of any Insured or of others; or

B. any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by any Insured or for any Insured or by any third party to determine, rectify or test for any potential or actual problems described in paragraph A. above.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

This endorsement is effective: DECEMBER 1, 2001

Attached to and made part of Policy No.: APG 606528

Issued to: FANSTEEL, INC.; ETAL.

Associated Aviation Underwriters, Inc.

BY: \_\_\_\_\_

Endorsement No. 3

**ELECTRONIC DATE RECOGNITION EXCLUSION  
LIMITED COVERAGE ENDORSEMENT**

In consideration of the premium charged and to the extent such coverage is afforded by the policy, the Electronic Date Recognition Exclusion shall not apply to:

- A. any of the Physical Damage coverages afforded by this policy; or
- B. any sums which the Insured shall become legally obligated to pay as damages because of *bodily injury* or *property damage* caused by an *occurrence*.

Notwithstanding paragraph B. above, this Endorsement shall not apply to:

- (1) any coverage for loss of use caused by an *occurrence* during the policy period arising out of subparagraph A. or B. of the Electronic Date Recognition Exclusion unless such loss of use also arises out of additional injury in the form of physical injury to or destruction of tangible property;  
or
- (2) any coverage for grounding; or
- (3) any coverage applying in excess of any scheduled underlying insurance.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

This endorsement is effective:    DECEMBER 1, 2001

Attached to and made part of Policy No.:    >    APG 606528

Issued to:    FANSTEEL, INC., ETAL.

Associated Aviation Underwriters, Inc.

BY: \_\_\_\_\_

Endorsement No. 4

COPY

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

**ORDER AUTHORIZING THE DEBTORS TO ASSUME AIRCRAFT  
PRODUCTS/GROUNDING LIABILITY INSURANCE POLICY**

Upon consideration of the Debtors Motion For An Order Authorizing The Debtors To Assume Aircraft Products/Grounding Liability Insurance Policy (the "Motion"); and the Court having considered the submissions and arguments of counsel, and opposition thereto, if any; and it appearing that the decision to assume the Policy<sup>2</sup> is supported by Debtors' reasonable business judgment; and it appearing that the Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having determined that granting the relief requested in the Motion is in the best interest of the Debtors, their estates, their creditors and other parties in interest; and it appearing that notice of the Motion has been given as set forth in the Motion, and that no other or further notice need be given; and for sufficient cause shown,

**IT IS HEREBY ORDERED THAT**

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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>Defined terms shall have the meanings ascribed to them in the Motion.

1. The Policy be assumed by the Debtors pursuant to section 365(a) of the Bankruptcy Code as of the date of entry of this order;

2. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

Dated: June \_\_, 2002

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