

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

40-7580

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

Objection Deadline: August 14, 2002 at 4:00 P.M. E.S.T.  
Hearing Date: TBD (Only if objections are timely filed)

**NOTICE OF APPLICATION FOR ORDER UNDER  
BANKRUPTCY CODE SECTIONS 327(a) AND 328, FED. R. BANKR.  
P. 2014, AND DEL.BANKR.LR 2014-1 AUTHORIZING EMPLOYMENT  
AND RETENTION OF EXECUTIVE SOUNDING BOARD ASSOCIATES INC. AS  
DEBTORS' RESTRUCTURING CONSULTANTS AND FINANCIAL ADVISOR**

TO: ALL PARTIES REQUIRED TO RECEIVE NOTICE PURSUANT TO  
DEL.BANKR.L.R. 2002-1(b)

On July 25, 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 Application for Entry of an Order pursuant to 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014 and Del.Bankr.LR 2014-1 of the United States Bankruptcy Court for the District of Delaware Authorizing the Employment and Retention of Executive Sounding Board Associates Inc. as the Debtors' Restructuring Consultants and Financial Advisor (the "Application"). A true and correct copy of the Application is attached.

<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.

RESPONSES OR OBJECTIONS, IF ANY, TO THE RELIEF REQUESTED IN THE MOTION MUST BE IN WRITING, FILED WITH THE BANKRUPTCY COURT, AND SERVED UPON BOTH OF THE UNDERSIGNED COUNSEL FOR DEBTORS SO AS TO BE RECEIVED BY 4:00 P.M., EASTERN STANDARD TIME, ON AUGUST 14, 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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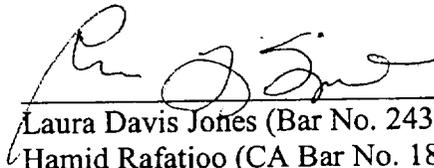
IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN  
ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF  
REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: July 25, 2002

SCHULTE ROTH & ZABEL LLP  
Jeffrey S. Sabin (JSS 7600)  
919 Third Avenue  
New York, NY 10022  
Telephone: (212) 756-2000  
Facsimile: (212) 593-5955

and

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



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Laura Davis Jones (Bar No. 2436)  
Hamid Rafatjoo (CA Bar No. 181564)  
Rosalie L. Spelman (Bar No. 4153)  
919 North Market Street, 16<sup>th</sup> Floor  
P.O. Box 8705  
Wilmington, DE 19899-8705 (Courier 19801)  
Telephone: (302) 652-4100  
Facsimile: (302) 652-4400

Co-Counsel for the Debtors and Debtors in Possession

34IN 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)  
)  
Debtor.

**APPLICATION FOR ORDER UNDER BANKRUPTCY CODE SECTIONS 327(a)  
AND 328, FED. R. BANKR. P. 2014, AND DEL.BANKR.LR 2014-1  
AUTHORIZING EMPLOYMENT AND RETENTION OF  
EXECUTIVE SOUNDING BOARD ASSOCIATES INC. AS  
DEBTORS' RESTRUCTURING CONSULTANTS AND FINANCIAL ADVISOR**

The above-captioned debtors and debtors in possession (collectively the "Debtors" ) hereby submit this application for entry of an order pursuant to 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014 and Del.Bankr.LR 2014-1 of the United States Bankruptcy Court for the District of Delaware authorizing the employment and retention of Executive Sounding Board Associates Inc. ("ESBA") as the Debtors' restructuring consultants and financial advisor (the "Application"). In support of this Application, the Debtors rely on the affidavit of William H. Henrich (the "Henrich Affidavit") attached hereto as Exhibit A. In addition, Debtors respectfully represent as follows:

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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.

### Jurisdiction

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2). The statutory predicates for relief are 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014 and Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware 2014-1 (the "Local Rules").

### Background

2. On January 15, 2002 (the "Petition Date"), the Debtors filed with this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their affairs as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, or examiner has been appointed in any of the Debtors' chapter 11 cases ("Cases"). A creditors' committee ("Committee") was appointed in these Cases on January 28, 2002.

### Debtors' Structure And Operations

3. 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 1,250 employees, substantially all on a full time basis, including approximately 365 employees that are working under collective bargaining agreements

with four different unions. Each Debtor is operated separately, with separate employees, separate operations and separately maintained books and records.

#### Pre-Petition Unsecured Lenders

4. 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”), which provided for up to \$20 million in revolving advances for working capital and up to \$10 million in letters of credit. Fansteel is the only borrower under the Pre-Petition Credit Facility and none of the other Debtors has any obligations thereunder; however, under the Pre-Petition Credit Facility, Fansteel agreed not to permit any of its direct or indirect subsidiaries (including all of the other Debtors) to incur indebtedness or to pledge any of their assets, subject to certain exceptions. As of the Petition Date, there was approximately \$8.5 million outstanding under the Pre-Petition Credit Facility in addition to \$6.5 million in outstanding letters of credit, which includes a \$3.7 million letter of credit in favor of the NRC.<sup>1</sup>

#### Causes Leading to the Bankruptcy Filings

5. The operations of Debtors’ respective businesses have involved compliance with state and federal environmental laws, including the Atomic Energy Act. The Debtors’ bankruptcy cases are an outgrowth of the discontinuation of one of Fansteel's

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<sup>1</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.

operations that was conducted from the 1950s through 1989 at a site owned and operated by Fansteel in Muskogee, Oklahoma (the "Muskogee Site"). At the Muskogee Site, Fansteel, in accordance with a license obtained from the U.S. Nuclear Regulatory Commission (the "NRC") in 1967, processed tantalum ore for further processing at Fansteel's plant in North Chicago. Tantalum naturally occurs with other metals, including uranium and thorium, each of which is radioactive, and the processing of tantalum results in, among other things, radioactive residues and soils. Fansteel, in accordance with applicable regulations promulgated by the NRC, is required, upon discontinuance of its business to remediate these residues and soils.

6. In 1989, Fansteel discontinued its operations at the Muskogee Site.

Notwithstanding such discontinuation, Fansteel has remained at all times in compliance with its NRC license, and has maintained the Muskogee Site in a manner that protects the health and safety of its employees and the public. Following its discontinuation of operations at the Muskogee Site, Fansteel developed a method to reprocess the residues at the Muskogee Site and to remediate the contaminated soils, and obtained the approval of the NRC for various aspects of such reprocessing and remediation. Unfortunately, due to operational problems in the plant and the significant decline in the price of tantalum during the second and third quarters of 2001, operation of the reprocessing facility was determined to be uneconomic, requiring Fansteel, as a matter of generally accepted accounting principals, in its financial statements for the quarter ended September 30, 2001, to write off the costs that Fansteel had expended in designing and building the reprocessing plant (approximately \$32 million), and to take an immediate reserve

for the reasonably anticipated costs of remediating the radioactive residues and soils that remain on the Muskogee Site without regard to any reprocessing (an approximately \$57 million reserve).

7. Fansteel's plight was further aggravated by the actions of NTC and M&I. In mid October 2001, Fansteel promptly informed NTC of the prospective write-off and reserve required with respect to the Muskogee Site, and requested waivers of any events of default arising under the Pre-Petition Credit Facility as a result thereof, as well as an amendment of the loan documents governing the Pre-Petition Credit Facility in order either to allow Fansteel sufficient additional availability under the Pre-Petition Credit Facility or to allow Fansteel's subsidiaries to borrow funds on a secured basis which, in either case, would have provided the Debtors with sufficient liquidity to avoid a bankruptcy filing. However, NTC refused these requests and, on November 19, 2001, accelerated the Pre-Petition Credit Facility, froze all of the Debtors' accounts that were maintained at NTC and M&I and set-off amounts owed under the Pre-Petition Credit Facility against those accounts. As a result of the freeze and such set-off, the Debtors no longer had access to the funds necessary to operate their respective businesses and a bankruptcy filing became inevitable.

#### **Relief Requested**

8. By this Application, the Debtors seek entry of an order, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014-1 authorizing the Debtors to retain ESBA for the purpose of providing restructuring and financial advisory services to the Debtors during these Cases, all in accordance with the terms of

the engagement letter between the Debtors and ESBA dated July 22, 2002 attached hereto as Exhibit B (the "Engagement Letter").<sup>2</sup>

### Basis For Relief

9. On May 21, 2002 this Court entered a Final Order Authorizing Debtors To Incur Postpetition Debt, Grant Liens And Provide Other Security And Other Relief To Congress Financial Corporation (Central) (the "DIP Order"). As a condition to the Debtors' incurrence of postpetition debt, paragraph 1(b)(ix) of the DIP Order provides that:

The Debtors agree to employ a turnaround consultant for the purposes of preparing a business plan for the Debtors' operating assets. The Debtors shall select a turnaround consultant mutually agreed upon by the Debtors and the Committee. Within (15) days after selecting a mutually agreed upon turnaround consultant, the Debtors shall obtain authorization from the Court to retain the turnaround consultant. The turnaround consultant shall submit to the Committee a business plan within four (4) months of the order retaining the turnaround consultant.

10. In line with the above paragraph, the Debtors and the Committee have interviewed several prospective turnaround consultants and determined that ESBA is best qualified.

11. ESBA is a firm of management and financial consultants operating throughout the United States since 1977. ESBA has been retained as management and financial consultants to render professional services to Debtors, creditors, creditors' committees, investors and others in numerous bankruptcy cases, including RSL Comm USA, North American Telecom, FastComm Corporation, Telephone Warehouse, Inc., Worldwide Direct, Inc., Pegasus Gold Corporation, Inc., and Brownstone Studio, Inc.

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<sup>2</sup> Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Engagement Letter.

12. ESBA has a wealth of experience in providing restructuring and financial advisory services in reorganization proceedings and has an excellent reputation for the services it has rendered in chapter 11 cases on behalf of debtors and creditors throughout the United States.

13. The Debtors and the Committee believe that ESBA is well qualified and able to represent the Debtors in a cost-effective, efficient, and timely manner. ESBA has indicated a willingness to act on behalf of the Debtors and to subject itself to the jurisdiction and supervision of the Court.

#### **Services to Be Rendered**

14. If this Application is approved, the professional services that ESBA will render to the Debtors are expected to include:<sup>3</sup>

- (a) Assess each operation, evaluate the Debtors' existing business plan and recommend operational restructuring strategies as appropriate;
- (b) Review the overhead costs and expenses of the Debtors and propose actions necessary to reduce costs where possible in connection with the business plan;
- (c) Assist with the preparation of projections, including feasibility analyses and schedules, if required, in connection with the business plan;
- (d) Monitor the orderly liquidation of terminated operations (if any);
- (e) Assist the Debtors in the development and negotiation of a plan of reorganization;
- (f) With the approval of the designated Officer of the Debtors, consult with all other retained parties, secured lender, creditors' committee, and other parties-in-interest in connection with the business plan and the plan or reorganization;

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<sup>3</sup> The description of the Engagement Letter herein is a summary. To the extent that this Application and the terms of the Engagement Letter are inconsistent, the terms of the Engagement Letter shall control.

- (g) Participate in Court hearings and, if necessary, provide expert testimony in connection with any hearings before the Court regarding the business plan and the plan or reorganization;
- (h) Assist the Debtors with the preparation of an employee retention plan;
- (i) Perform such other tasks as appropriate as may reasonably be requested by the Debtors' management or Debtors' counsel.

15. The Debtors believe that ESBA is well qualified and able to provide the foregoing services to the Debtors. ESBA has indicated a willingness to (i) act on behalf of the Debtors on the terms described above and (ii) subject itself to the jurisdiction of the Court. Additionally, the Debtors have been advised by ESBA that it will endeavor to coordinate with the other retained professionals in these Cases to eliminate unnecessary duplication or overlap of work.

#### **Disinterestedness of Professional**

16. The Debtors have numerous shareholders, creditors and other parties with whom they maintain business relationships. ESBA has conducted a conflicts check and due inquiry regarding its relations with the Debtors, their significant creditors, any other material party-in-interest, their respective attorneys and accountants, and the Office of the United States Trustee to determine whether it has any conflicts or other relationships that might bear on its retention. Among other things, ESBA researched its client files and records that contain information retained under its normal retention policies. In connection with this check, ESBA obtained from the Debtors and/or their representatives the names of individuals and entities that may be such parties-in-interest in these Cases. To the best of the Debtors' knowledge, information and belief, insofar as the Debtors have been able to ascertain after due inquiry,

neither ESBA nor any professional employee of ESBA has any connection with or holds any interest adverse to, the Debtors, their significant creditors, any other party-in-interest, their respective attorneys or accountants, the Office of the United States Trustee or any person employed in the Office of the United States Trustee, in the matters for which ESBA is proposed to be retained except as disclosed in the Henrich Affidavit.

17. To the best of the Debtors' knowledge, ESBA is a "disinterested person", as such term is defined in section 101(14) of the Bankruptcy Code and as required under section 327(a) of the Bankruptcy Code. The Henrich Affidavit, executed on behalf of ESBA in accordance with section 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014, is filed contemporaneously herewith. The Debtors' knowledge, information, and belief regarding certain of the matters set forth in this Application are based on, and are made in reliance upon, the Henrich Affidavit.

18. The Debtors submit that the appointment of ESBA on the terms and conditions set forth herein is in the best interests of the Debtors, their creditors and all parties-in-interest.

#### **Professional Compensation**

19. As more fully described in the Engagement Letter, the Debtors have been advised that fees for the services rendered in these Cases will be as follows:

ESBA's compensation for professional services rendered to the Debtors shall be based upon a monthly fee of \$65,000 for an initial term of six months (the "Monthly Fee"). The Debtors shall have the option to extend ESBA's retention on the same terms for additional mutually agreed upon periods of time with the consent of the Debtors, ESBA and the creditors' committee and without the need for Court approval. Such notice will be

submitted to the Court no later than 30 days prior to the expiration of the existing term.

20. The overall compensation structure described above is comparable to compensation generally charged by financial advisory and investment banking firms of similar stature to ESBA and for comparable engagements, both in and out of court.

21. ESBA also will seek reimbursement for reasonable out-of-pocket expenses, and other fees and expenses, including reasonable expenses of counsel, if any. ESBA will follow its customary expense reimbursement guidelines and practices in seeking expense reimbursement from the Debtors.

22. The hours worked, the results achieved and the ultimate benefit to the Debtors of the work performed by ESBA in connection with its engagement may vary and the Debtors and ESBA have taken this into account in setting the above fees. In order to induce ESBA to do business with the Debtors in bankruptcy, the compensation structure described above was established to reflect the difficulty of the extensive assignments ESBA expects to undertake and the potential for failure.

23. The Debtors acknowledge and agree that ESBA's restructuring expertise, and financing skills, some or all of which may be required by the Debtors during the term of ESBA's engagement, were important factors in determining the amount the Monthly Fee and that the ultimate benefit to the Debtors of ESBA's services likely could not be measured merely by reference to the number of hours to be expended by ESBA's professionals in the performance of such services.

24. In addition, given the numerous issues which ESBA may be required to address in the performance of its services hereunder, ESBA's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for ESBA's services for engagements of this nature in an out-of-court context, as well as in chapter 11, the Debtors agree that the fee arrangements in the Engagement Letter are reasonable under the standards set forth in 11 U.S.C. § 328(a).

25. As set forth in the Henrich Affidavit, ESBA has not shared or agreed to share any of its compensation from the Debtors with any other persons, other than a managing director, professional or employee of ESBA, as permitted by section 504 of the Bankruptcy Code.

#### Indemnification

26. As part of the overall compensation payable to ESBA under the terms of the Engagement Letter, the Debtors have agreed to certain indemnification. ESBA and the Debtors believe that such provisions are customary and reasonable for financial advisory and investment banking engagements, both out-of-court and in chapter 11. See In re Joan & David Halpern, Inc., 248 B.R. 43 (Bankr. S.D.N.Y. 2000), aff'd, 2000 WL 1800690 (S.D.N.Y. Dec. 6, 2000); In re Metrocall, Inc., et al., No. 02-11579 (RB) (Bankr. D. Del. June 3, 2002).

27. The indemnification provisions of the Engagement Letter are subject to the following:

- (a) subject to the provisions of subparagraph (c) infra the Debtors indemnify ESBA in accordance with the Engagement Letter, for any claim arising from, related to, or in connection with the consulting and advisory services, but not for any claim arising from, relating to or in connection with ESBA's post-petition

performance of any services other than consulting and advisory services unless such post-petition services and indemnification therefor are approved by the Court;

(b) notwithstanding any provision of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify ESBA, or provide contribution or reimbursement to ESBA, for any claim or expense that is either (a) judicially determined (the determination having become final) to have arisen solely from ESBA's gross negligence or willful misconduct, or (b) settled prior to a judicial determination as to ESBA's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which ESBA should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter; and

(c) if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these Cases, ESBA believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter, including without limitation the advancement of defense costs, ESBA will file an application therefor in this Court, and the Debtors will not pay any such amounts to ESBA before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by ESBA for indemnification, contribution or reimbursement and not a provision limiting the duration of the Debtors' obligation to indemnify ESBA.

(d) notwithstanding subparagraphs (a) through (c) supra, the United States Trustee, and only the United States Trustee, shall have the right to seek reconsideration to the indemnification provisions approved herein if, during the Debtors' Cases, the United States Court of Appeals for the Third Circuit issues a ruling with respect to the appeal from the decision of the United States District Court for the District of Delaware with respect to indemnification rights in In re

United Artists Theatre Company, et al., Case No. 00-3514 (SLR); provided that the United States Trustee shall be required to file any such motion for reconsideration within 60 days after the date the United States Court of Appeals for the Third Circuit issues such ruling.

#### **Term of Engagement**

28. The Debtors may terminate their engagement upon one month's written notice to ESBA. Should the Debtors convert their chapter 11 case to chapter 7, ESBA's services will automatically terminate. Payment of all outstanding amounts due ESBA is to accompany termination by Debtors.

#### **Fee Applications**

29. As required by the Engagement Letter, ESBA will file interim and final fee applications for allowance of its compensation and expenses with respect to its services with the Court in accordance with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, the Local Rules and orders of this Court, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330. Such applications will include time records setting forth, in a summary format, a description of the services rendered by each restructuring professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors.

30. ESBA's restructuring professionals will keep time records, including a detailed description of the activities performed by them, the identity of persons who performed such tasks, and the amount of time expended on each activity on a daily basis. ESBA will supplement this with the non-restructuring professionals (i.e., trading, research) who spend time

on this assignment. ESBA also will maintain detailed records of any actual and necessary costs and expenses incurred in connection with the aforementioned services.

**Approval of Engagement Under Section 328(a) of the Bankruptcy Code**

31. The Debtors request approval of the terms of ESBA's engagement, including (i) the terms of the Engagement Letter and (ii) the indemnification provisions contained in the Henrich Affidavit, subject to the standard of review provided in section 328(a) of the Bankruptcy Code. That section provides in part, that a debtor "with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including a retainer, on an hourly basis, or on a contingent fee basis." 11 U.S.C. § 328(a). As recognized by numerous courts, Congress intended in section 328(a) to enable debtors to retain professionals pursuant to specific fee arrangements to be determined at the time of the court's approval of the retention, subject to reversal only if the terms are found to be improvident in light of "developments not capable of being anticipated at the time of the fixing of such terms and conditions." 11 U.S.C. § 328(a). See Donaldson, Lufkin & Jenrette Sec. Corp. v. Nat'l Gypsum Co. (In re Nat'l Gypsum Co.), 123 F.3d 861, 862-3 (5th Cir. 1997) ("If the most competent professionals are to be available for complicated capital restructuring and the development of successful corporate reorganization, they must know what they will receive for their expertise and commitment.").

32. The Debtors believe that the fee structure and indemnification provisions set forth in the Engagement Letter and the Henrich Affidavit are reasonable terms and conditions of employment and should be approved under section 328(a) of the Bankruptcy Code. The fee

structure and indemnification provisions appropriately reflect (i) the nature of the services to be provided by ESBA and (ii) the fee structures and indemnification provisions typically utilized by ESBA and other leading financial advisory and investment banking firms, which do not bill their clients on an hourly basis and generally are compensated on a transactional basis. In sum, therefore, the Debtors believe that the fee structure and indemnification provisions are reasonable terms and conditions of employment in light of (a) industry practice, (b) market rates charged for comparable services both in and out of the chapter 11 context, (c) ESBA's substantial experience with respect to restructuring and financial advisory services, and (d) the nature and scope of work to be performed by ESBA in these Cases.

33. Notwithstanding anything to the contrary herein or in the Engagement Letter, all of ESBA's fees and expenses in these Cases shall be subject to approval of the Court under the standard set forth under section 328(a) of the Bankruptcy Code upon proper application by ESBA in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court and any other applicable orders of this Court.

#### Notice

34. Notice of this Motion has been given to all parties required to receive notice pursuant to Del.Bankr.L.R. 2002-1(b).

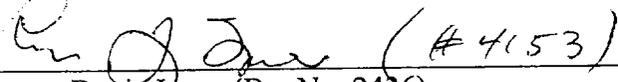
WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form annexed hereto, (a) authorizing the employment and retention of ESBA as the Debtors' restructuring consultants and financial advisor pursuant to the terms of the Engagement Letter, (b) approving the proposed fee structure and indemnification provisions set forth in the Engagement Letter and the Henrich Affidavit as reasonable under section 328(a) of the Bankruptcy Code and (c) granting such other and further relief as this Court deems just and proper.

Dated: July 25, 2002

SCHULTE, ROTH & ZABEL LLP  
Jeffrey S. Sabin (JSS 7600)  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 756-2000  
Facsimile: (212) 593-5955

and

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

  
\_\_\_\_\_  
Laura Davis Jones (Bar No. 2436)  
919 North Market Street, 16th Floor  
P.O. Box 8705  
Wilmington, Delaware 19899-8705 (Courier 19801)  
Telephone: (302) 652-4100  
Facsimile: (302) 652-4400

Counsel for Fansteel, Inc., et al.,

**Exhibit A**

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 (JF)  
) (Jointly Administered)  
)  
Debtor. )

**AFFIDAVIT OF WILLIAM H HENRICH PURSUANT TO  
BANKRUPTCY CODE SECTIONS 327(a) AND 328 FED. R. BANKR. 2015 AND  
DEL. BANKR. L. R. 2014-1**

STATE OF NEW YORK :  
 :  
COUNTY OF NEW YORK :

WILLIAM H. HENRICH, being duly sworn, deposes and says as follows:

1. I am a Managing Director in the firm of Executive Sounding Board Associates Inc. (“ESBA”) with offices located at 1350 Broadway, Suite 702, New York, New York 10018 and I am authorized to execute this affidavit on behalf of ESBA.

2. I submit this Affidavit in support of the above captioned debtors’ and debtors-in-possession (collectively, the “Debtors”) application for an order approving the retention and employment of ESBA as restructuring consultants and financial advisor to the Debtors in the above-captioned cases, in compliance with the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

3. ESBA is a firm of management and financial consultants operating throughout the United States since 1977. ESBA has been retained as management and financial consultants to render professional services to Debtors, creditors, creditors’ committees, investors and others in numerous bankruptcy cases, including RSL Comm

<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.

USA, North American Telecom, FastComm Corporation, Telephone Warehouse, Inc., Worldwide Direct, Inc., Pegasus Gold Corporation, Inc., and Brownstone Studio, Inc.

4. To the best of my knowledge, neither ESBA, nor any of its professional personnel have any relationship with the Debtors that would impair ESBA's ability to provide such management and financial services.

5. To the best of my knowledge, ESBA has not had any prior business association with the Debtors, any creditors of the Debtors or any other parties-in-interest in these Chapter 11 cases, or the respective attorneys, accountants and advisors identified at the present time, except as follows:

- a) ESBA may have previously provided management and financial consulting services to other borrowers of the Debtors' secured lender on unrelated matters, including Congress Financial Corporation and The CIT Group/Equipment Financing.
- b) ESBA may have worked, continues to work and/or has mutual clients with certain law firms who represent the Debtors and its creditors or are creditors themselves, including Schulte Roth & Zabel, Pachulski Stang Ziehl Young & Jones, Reed Smith, Klehr Harrison Harvey Branzburg & Eilers, Klett Rooney Lieber & Schorling, Piper Marbury Rudnick & Wolfe and Pepper Hamilton.
- c) ESBA may have previously provided or continues to provide management and financial consulting services to companies, unrelated to the Debtors, who may have secured or unsecured creditors who are also unsecured creditors of the Debtors, including Foothill Capital Corporation and General Electric Capital Corporation.

6. To the best of my knowledge, ESBA has not been retained to assist any entity or person other than the Debtors on matters relating to or in connection with these Chapter 11 cases. If ESBA's proposed retention is approved by this Court, ESBA will not accept any engagement or perform any service for any entity or person other than the Debtors in these Chapter 11 cases. ESBA will, however, continue to provide professional services to entities or persons that may be creditors or equity security holders of the Debtors or parties-in-interest in this Chapter 11 case, provided that such services do not relate to, or have any direct connection with, these Chapter 11 cases.

7. To the best of my knowledge, information and belief, ESBA does not have or represent any interest materially adverse to the interest of the Debtors, or the Committee of Unsecured Creditors, or of any class of creditors or equity security holders of the Debtors by reason of any direct or indirect relationship to, connection with, or interest in the Debtors or for any other reason except as noted in Paragraph 5 above.

8. ESBA's requested compensation for professional services rendered to the Debtors shall be based upon a monthly fee of \$65,000 for an initial term of six months, commencing on the date ESBA's retention becomes effective and ending on the six month anniversary thereof. (Should ESBA's retention become effective on a date during the course of a month, as opposed to the first day of a month, the monthly fee for both the first and last months of ESBA's retention will be pro-rated accordingly.) The Debtors shall have the option to extend ESBA's retention on the same terms for additional mutually agreed upon periods of time with the consent of the Debtors, ESBA and the Creditors' Committee and without the need for Court approval. Such notice will be submitted to the Court no later than 30 days prior to the expiration of the existing term. Such services in this case ESBA understands will include any one or more of the following:

- Assist with the management of the bankruptcy process, as required;
- Assess each operation, evaluate the Debtors' existing business plan and recommend operational restructuring strategies as appropriate;
- Review the overhead costs and expenses of the Debtors and propose actions necessary to reduce costs where possible in connection with the business plan;
- Assist with the preparation of projections, including feasibility analyses and schedules, if required, in connection with the business plan;
- Monitor the orderly liquidation of terminated operations (if any);

- Assist the Debtors in the development and negotiation of a Plan of Reorganization;
- With the approval of the designated Officer of the Debtors, consult with all other retained parties, secured lender, creditors' committee, and other parties-in-interest, in connection with the business plan and the plan of reorganization;
- Participate in Court hearings and, if necessary, provide expert testimony in connection with any hearings before the Court regarding the business plan and the plan of reorganization;
- Assist the Debtors with the preparation of an employee retention plan;
- Perform such other tasks as appropriate as may reasonably be requested by the Debtors' management or Company counsel.

9. It is ESBA's policy to charge its clients in all areas of practice for expenses incurred in connection with the client's case. Expenses charged to clients include, among other things, telephone, telecopier and related charges, regular mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, travel expenses, computerized research and transaction costs. ESBA will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to ESBA's other clients.

10. Consistent with turnaround industry practice, as well as consulting practices in general, ESBA augments its full time professional staff from time to time with qualified professionals as independent contractors and other service providers who assist ESBA in the performance of the services to be provided to their clients. Financial advisory firms, such as ESBA, hire independent contractors and other service providers for various reasons ranging from the need for specialized industry or functional expertise to the manpower needs of a particular engagement. Financial advisory firms also use

independent contractors and third party service providers to manage their payroll cost, the single largest cost of a professional service firm. In addition, many times it is the qualified professional's choice to be an independent contractor instead of an employee in order to maintain lifestyle flexibility.

11. With respect to any independent contractor or third party service provider used by ESBA in connection with a client engagement, ESBA bears complete responsibility for both (a) the performance of the independent contractor or third party service provider and (b) the payment of all amounts due and owing to such independent contractor or third party service provider for the services rendered, regardless of whether ESBA is paid by the ultimate client. The obligations are evidenced by contracts entered into by ESBA and the independent contractor or third party service provider, as applicable.

12. In these cases, the Debtors have retained ESBA to perform services on behalf of, and render advice to the Debtors with respect to the matters described in the Application of the Debtors to retain ESBA. If the Debtors' request to retain ESBA to perform these services is approved, I will be the person from ESBA ultimately responsible for the engagement, and will be responsible for assuring that all services are performed in a professional and timely manner consistent with the dictates of this Court, the applicable provisions of the Bankruptcy Code and Rules of Bankruptcy Procedure, and at the direction of the Debtors.

13. ESBA understands that, in accordance with the Bankruptcy Code, interim and final compensation and reimbursement of costs expended are subject to approval by this Court.

14. A retainer has not been paid to ESBA for post-petition services to be rendered in connection with these Chapter 11 cases, however a \$65,000 retainer is being sought in connection with our application for retention. Subject to the approval of this Court, the source of all compensation for professional services to be rendered on behalf of the Debtors shall be funds of the Debtors' estate.

15. No agreement exists between ESBA and any other person (other than the employees of ESBA) for the sharing of compensation to be received by ESBA in connection with services rendered in these cases.

16. If the Debtors seek to have ESBA perform any services other than the Consultant and Advisory Services, a supplemental Application seeking authorization to retain ESBA to do so will be filed by the Debtors. Until such a supplemental Application is filed and approved by the Court, ESBA will not provide any other services to the Debtors and shall not be compensated or indemnified for providing such services.

17. The indemnification provisions of the Engagement Letter are subject to the following:

- (a) subject to the provisions of subparagraph (c) infra the Debtors indemnify ESBA in accordance with the Engagement Letter, for any claim arising from, related to, or in connection with the Consulting and Advisory Services, but not for any claim arising from, relating to or in connection with ESBA's post-petition performance of any services other than Consulting and Advisory Services unless such post-petition services and indemnification therefor are approved by the Court;
- (b) notwithstanding any provision of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify ESBA, or provide contribution or reimbursement to ESBA, for any claim or expense that is either (a) judicially determined (the determination having become final) to have arisen solely from ESBA's gross negligence or willful misconduct, or (b) settled prior to a judicial determination as to ESBA's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which ESBA should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter; and
- (c) if, before the earlier of (i) the entry of an order confirming a Chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these Chapter 11 cases, ESBA believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter, including without limitation the advancement of defense costs,

ESBA will file an application therefor in this Court, and the Debtors will not pay any such amounts to ESBA before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by ESBA for indemnification, contribution or reimbursement and not a provision limiting the duration of the Debtors' obligation to indemnify ESBA.

(d) notwithstanding subparagraphs (a) through (c) supra, the United States Trustee, and only the United States Trustee, shall have the right to seek reconsideration to the indemnification provisions approved herein if, during the Debtors' cases, the United States Court of Appeals for the Third Circuit issues a ruling with respect to the appeal from the decision of the United States District Court for the District of Delaware with respect to indemnification rights in In re United Artists Theatre Company, et al., Case No. 00-3514 (SLR); provided that the United States Trustee shall be required to file any such motion for reconsideration within 60 days after the date the United States Court of Appeals for the Third Circuit issues such ruling.

18. With respect to ESBA's provision of post-petition services, including the Consulting and Advisory Services, ESBA hereby irrevocably and unconditionally submits to the exclusive jurisdiction of this Court over any suit, action or proceeding arising out of or relating to the Engagement Letter or this Court's order, and over the approval of its requests for any fees and expenses (including any request for indemnification, contribution or reimbursement) accruing through confirmation of a plan of reorganization in these Chapter 11 cases or, in the event that no plan of reorganization is confirmed in the cases, fees and expenses accruing prior to the last day of ESBA's employment pursuant to the Engagement Letter as modified by this Affidavit and this Court's order. This Court will retain jurisdiction to construe and enforce the terms of the Application, the Engagement Letter (as modified hereby), and this Court's order.

19. ESBA shall file interim and final fee applications pursuant to the Bankruptcy Code, the Rules of Bankruptcy Procedure and any applicable order of this Court, including without limitation an approved Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals and Committee Members (the "Administrative Order"), provided, however, that ESBA may submit time records in a form which shall set forth a description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services to or on behalf of the Debtors. The Debtors shall pay ESBA's monthly fee and to reimburse ESBA for its costs and expenses as provided in the Engagement Letter, upon approval by the Court of interim and final applications and in accordance with the terms of an approved Administrative Order. All fees and reimbursements paid or payable to ESBA in accordance with the Engagement Letter and the Court's order shall be subject to this Court's approval.

WHEREFORE affiant respectfully requests that an order be entered authorizing the Debtors' retention of ESBA as of July 25, 2002 as restructuring consultant and financial advisor to perform the services described above.

  
\_\_\_\_\_  
William H. Henrich

Sworn to before me on this 12<sup>th</sup> day of July, 2002

  
\_\_\_\_\_  
Notary Public

**ELAINE RUBIN**  
Notary Public, State of New York  
No. 01RU6059349  
Qualified in Queens County  
Commission Expires 5-29-03

**Exhibit B**

# Executive Sounding Board Associates Inc.

Management and Financial Consultants

1350 Broadway • Suite 702 • New York, NY 10018 • (212) 944-0750 • FAX: (212) 944-0753

July 8, 2002

Mr. Gary L. Tessitore  
Chairman of the Board and CEO  
Fansteel Inc.  
One Tantalum Place  
North Chicago, IL 60064

Dear Mr. Tessitore:

Thank you for choosing Executive Sounding Board Associates Inc. ("ESBA") to become Restructuring Consultant and Financial Advisor to Fansteel Inc. and its affiliated companies ("Fansteel" or "Company" or "Debtors") in connection with its Chapter 11 bankruptcy proceeding.

Executive Sounding Board Associates Inc. ("ESBA") has provided turnaround consulting and crisis management services to more than seven hundred companies during its twenty-five year history. ESBA is regularly called upon to help companies in situations in which change must be implemented very quickly in the context of a Chapter 11 filing such as this one. Our professional staff are adept at adjusting to the requirements of the situation to maximize the value recovered and resolve complex issues.

This letter sets forth our understanding that Fansteel has agreed to retain ESBA to provide the management consulting and advisory services described below. Also detailed below please find our standard engagement terms for your review. If the aforementioned work scope and terms herein meet with your approval, please sign and return this engagement letter as well as file the appropriate application for employment to the District of Delaware Bankruptcy Court. If you require any clarification of the terms, please don't hesitate to call me at (212) 944-0750 ext. 11.

## Scope of Work

Based on our discussions, we understand that the Debtors desire ESBA to:

- Assist Debtors' management with the Chapter 11 bankruptcy process to minimize costs associated with that process, assist in the assessment and development of the Debtors' business plan (with efforts geared toward formulating with management a business plan by the mid/late-October timeframe) assist the Debtors' in their development and negotiation of a Plan of Reorganization and facilitate the Debtors' communication with parties-in-interest. Provide guidance as to compliance with all requirements of the Court, as requested.

In connection with the foregoing, ESBA may be requested to:

- Assess each operation, evaluate the Debtors' existing business plan and recommend operational restructuring strategies as appropriate;
- Review the overhead costs and expenses of the Debtors and propose actions necessary to reduce costs where possible in connection with the business plan;

- Assist with the preparation of projections, including feasibility analyses and schedules, if required, in connection with the business plan;
- Monitor the orderly liquidation of terminated operations (if any);
- Assist the Debtors in the development and negotiation of a plan of reorganization;
- With the approval of the designated Officer of the Debtors, consult with all other retained parties, secured lender, creditors' committee, and other parties-in-interest in connection with the business plan and the plan of reorganization;
- Participate in Court hearings and, if necessary, provide expert testimony in connection with any hearings before the Court regarding the business plan and the plan of reorganization;
- Assist the Debtors with the preparation of an employee retention plan;
- Perform such other tasks as appropriate as may reasonably be requested by the Debtors' management or Debtors' counsel.

Standard Engagement Terms:

1) ESBA will be paid a monthly fee to provide the services described above ("Monthly Fee") in the amount of \$65,000. Should ESBA's retention be effective on a date during the course of a month, as opposed to the first day of a month, the monthly fee for both the first and last months of ESBA's retention will be pro-rated accordingly. We will endeavor to work efficiently and effectively; the efficiency of our work depends upon the complete cooperation and availability of your entire management team as well as the quality and timeliness of your data and management reporting systems.

2) ESBA understands that the Debtors will promptly submit an application for employment of ESBA with the Bankruptcy Court by July 25, 2002. Such application will request approval for an initial term of six months, which will begin on the date ESBA's retention becomes effective and end on the six month anniversary thereof, and provide for the Debtors' option to extend ESBA's retention on the same terms for additional mutually agreed upon periods of time with the consent of the Debtors, ESBA and the Creditors' Committee and without the need for Court approval. Such notice will be submitted to the Court no later than 30 days prior to the expiration of the existing term. In accordance with the Bankruptcy Code, interim and final compensation and reimbursement of costs expended are subject to approval by the Bankruptcy Court. Fee applications will be submitted to the Court for its consideration in accordance with the Bankruptcy Code or the Court approved administrative order modifying terms of payments to professionals, if any. Our understanding is that ESBA's application submitted to the Bankruptcy Court for approval will provide for monthly reimbursement of fees and expenses, subject to a provision for notice to and a limited review and objection period for specified parties-in-interest.

3) Fansteel agrees to pay ESBA a retainer of \$65,000 on behalf of the Debtors, due and payable upon the Court's Order approving ESBA's retention, to be retained by ESBA until the approval of ESBA's final fee application in the case. At the conclusion of ESBA's engagement and when all ESBA's fees and expenses have been paid, subject to the approval of the Bankruptcy Court, any amount of retainer remaining after application to unpaid fees will be returned to the Debtors.

4) Debtors shall reimburse ESBA for any out-of-pocket expenses reasonably incurred by ESBA in connection with the services rendered hereunder and in accordance with applicable guidelines established by the Bankruptcy Court. Such expenses include, but are not limited to out-of-town travel, (meals, lodging, parking, etc.) telephone calls, general office services, as necessary and reasonably required by ESBA in connection with this engagement.

- 5) Debtors at its premises shall provide ESBA with the use of office facilities, telephone facilities and general office services, as necessary, and reasonably required by ESBA in connection with this engagement.
- 6) ESBA is being retained by Fansteel and shall report to Mr. Gary Tessitore, the designated Officer of the Debtors or his designee.
- 7) Debtors agree to make available to ESBA all of the Company's financial and operational information and data as requested by ESBA and agrees to permit discussions with Debtors' personnel that ESBA might reasonably require in connection with this engagement.
- 8) ESBA is authorized to share any information or data it collects and to discuss the affairs of the Debtors, as deemed necessary by ESBA and after consultation with the Debtors as applicable, with the authorized representatives of the Debtors, as applicable, and its counsel, auditors, lenders and other parties-in-interest.
- 9) Should services outside the scope of this engagement be requested (e.g., M&A advisory), their extent and the additional compensation to be paid to ESBA for such services shall be mutually agreed to before ESBA begins to perform such services, a separate engagement letter will be entered into and an application to the Court will be duly filed.
- 10) ESBA is not an independent accounting firm or law firm and does not undertake the performance of an audit or the rendering of legal advice in this engagement. ESBA will rely upon financial data and legal advice provided by the Debtors and the Debtors' independent auditors and counsel, as applicable.
- 11) The Debtors shall indemnify and hold harmless ESBA, its affiliates and their respective shareholders, directors, officers, employees and agents from and against any and all claims, liability, loss, cost, damage or expense (including reasonable attorneys' fees) asserted against, or incurred by ESBA, or its affiliates or any such shareholder, director, officer, employee or agent by reason of, or arising out of this agreement or performance under this agreement, whether such claim, liability, loss, cost, damage or expense is asserted by client or any other person or entity unless caused by the willful misconduct or gross negligence of ESBA.
- 12) Except for the services to be provided by ESBA pursuant to this Agreement, during the term of this engagement and for a period of two (2) years thereafter, Company or Debtors shall not utilize, whether as employee or independent consultant, and whether directly or indirectly, the services of any person who is, was or had been employed by ESBA during the term of this engagement.
- 13) Either ESBA or the Debtors can terminate this Agreement upon one month's written notice. In addition, should the Debtors convert its Chapter 11 case to Chapter 7, ESBA's services will automatically terminate. Paragraph 11 above shall survive any termination. Payment of all outstanding amounts due ESBA is to accompany termination by Company or Debtors, as applicable.
- 14) If ESBA is requested or required to appear and/or testify before any tribunal, whether or not pursuant to lawful process, all time spent and out of pocket expenditures by ESBA, including for legal counsel, shall be considered to have been performed under the terms of this Engagement Agreement, and ESBA shall be entitled to receive payment of fees and reimbursement of expenses therefor.

Mr. Gary L. Tessitore  
July 8, 2002

Page 4

The signing of this engagement letter and application to the Court for ESBA's retention, including provision for the retainer, are necessary and required for this engagement to commence. If the foregoing is in accordance with our understanding, please sign the attached copy of the engagement letter and forward it to us. The retainer may be wire transferred to ESBA's account at PNC Bank, Philadelphia, PA 19102, ABA#031000053, account number 8605830556.

Sincerest regards,

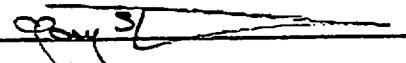
EXECUTIVE SOUNDING BOARD ASSOCIATES INC.

*William H. Henrich*

William H. Henrich  
Managing Director

AGREED TO AND ACCEPTED:

Fansteel Inc.  
(and its affiliated companies)

By: 

Title: CEO

Date: July 25, 2002

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)  
 )  
Debtor.

**ORDER UNDER BANKRUPTCY CODE SECTIONS 327(a)  
AND 328, FED. R. BANKR. P. 2014, AND DEL.BANKR.LR 2014-1  
AUTHORIZING EMPLOYMENT AND RETENTION OF  
EXECUTIVE SOUNDING BOARD ASSOCIATES INC. AS  
DEBTORS' RESTRUCTURING CONSULTANTS AND FINANCIAL ADVISOR**

Upon consideration of motion filed by the debtors and debtors-in-possession in the above-captioned chapter 11 cases (the "Debtors") for an order pursuant to sections 327(a) and 328(a) of title 11, United States Code (the "Bankruptcy Code"), Fed. R. Bankr. P. 2014 and Del.Bankr.LR 2014-1 authorizing the Debtors to employ and retain Executive Sounding Board Associates Inc. ("ESBA") as the Debtors' restructuring consultants and financial advisor (the "Application"); and upon the affidavit of James Henrich (the "Henrich Affidavit"), a managing director at ESBA, in support thereof and in support of the engagement letter between ESBA and the Debtors, dated July 22, 2001 ("Engagement Letter"); and the Court being satisfied based on the representations made in the Application and in the Henrich Affidavit that ESBA has no interest adverse to the Debtors' estates with respect to the matters upon which it is to be engaged,

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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.

that ESBA is a disinterested person as that term is defined under section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and that ESBA's employment is necessary and would be in the best interests of the Debtors' estates; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Application is granted; and it is further

ORDERED that, in accordance with sections 327(a) and 328(a) of the Bankruptcy Code, Fed. R. Bankr. P. 2014 and Del.Bankr.LR 2014-1, the Debtors are authorized to employ and retain ESBA as restructuring consultants and financial advisor on the terms set forth in the Application and this order; and to the extent consistent with the Application and this order, the Engagement Letter; and it is further

ORDERED that, ESBA shall be compensated in accordance with the terms of the Engagement Letter, subject to the procedures set forth in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, and any other applicable orders of this Court; and it is further

ORDERED that, the indemnification provisions set forth in the Henrich Affidavit are approved, subject during the pendency of the Debtors' Cases to the following:

- (a) subject to the provisions of subparagraph (c) infra the Debtors indemnify ESBA in accordance with the Engagement Letter, for any claim arising from, related to, or in connection with the consulting and advisory services, but not for any claim arising from, relating to or in connection with ESBA's post-petition performance of any services other than consulting and advisory services unless such post-petition services and indemnification therefor are approved by the Court;

(b) notwithstanding any provision of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify ESBA, or provide contribution or reimbursement to ESBA, for any claim or expense that is either (a) judicially determined (the determination having become final) to have arisen solely from ESBA's gross negligence or willful misconduct, or (b) settled prior to a judicial determination as to ESBA's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which ESBA should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter;

(c) if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these Cases, ESBA believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter, including without limitation the advancement of defense costs, ESBA will file an application therefor in this Court, and the Debtors will not pay any such amounts to ESBA before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by ESBA for indemnification, contribution or reimbursement and not a provision limiting the duration of the Debtors' obligation to indemnify ESBA.

(d) notwithstanding subparagraphs (a) through (c) supra, the United States Trustee, and only the United States Trustee, shall have the right to seek reconsideration to the indemnification provisions approved herein if, during the Debtors' Cases, the United States Court of Appeals for the Third Circuit issues a ruling with respect to the appeal from the decision of the United States District Court for the District of Delaware with respect to indemnification rights in In re United Artists Theatre Company, et al., Case No. 00-3514 (SLR); provided that the United States Trustee shall be required to file any such motion for

reconsideration within 60 days after the date the United States Court of Appeals for the Third Circuit issues such ruling.

ORDERED that, ESBA shall file interim and final fee applications for allowance of its compensation and expenses with respect to its services with the Court in accordance with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Local Rules and orders of the Court; provided, however, that ESBA may submit time records in a summary format which shall set forth a description of the services rendered by each restructuring professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors. The Debtors are authorized to pay ESBA's fees and to reimburse ESBA for its costs and expenses as provided in the Engagement Letter, upon approval by the Court of interim and final applications. All fees and reimbursements paid or payable to ESBA in accordance with the Engagement Letter and this order shall be subject to this Court's approval.

Notwithstanding anything to the contrary herein or in the Engagement Letter, all of ESBA's fees and expenses in these cases shall be subject to approval of the Court under the standard set forth in section 328(a) of the Bankruptcy Code upon proper application by ESBA in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court and any other applicable orders of this Court.

During the pendency of the Debtors' bankruptcy cases, this Court shall retain exclusive jurisdiction to construe and enforce the terms of the Application, the Engagement Letter, and this order.

Dated: July \_\_, 2002

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

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

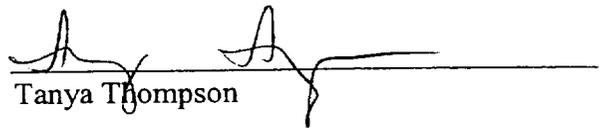
In re: ) Chapter 11  
)  
FANSTEEL INC., *et al.*,<sup>1</sup> ) Case No. 02-10109 (JJF)  
) (Jointly Administered)  
)  
Debtors. )

**AFFIDAVIT OF SERVICE**

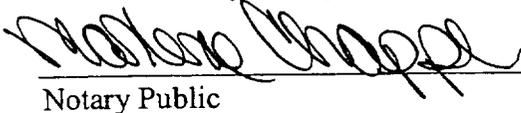
Tanya Thompson, being duly sworn according to law, deposes and says that she is employed by the law firm of Pachulski, Stang, Ziehl, Young & Jones P.C., and that on the 25<sup>th</sup> day of July 2002, she caused a copy of the following document(s) to be served upon the attached service lists in the manner indicated:

1. APPLICATION FOR ORDER UNDER BANKRUPTCY CODE SECTIONS 327(a) AND 328, FED. R. BANKR. P. 2014, AND DEL.BANKR.LR 2014-1 AUTHORIZING EMPLOYMENT AND RETENTION OF EXECUTIVE SOUNDING BOARD ASSOCIATES INC. AS DEBTORS' RESTRUCTURING CONSULTANTS AND FINANCIAL ADVISOR; and

2. NOTICE OF APPLICATION FOR ORDER UNDER BANKRUPTCY CODE SECTIONS 327(a) AND 328, FED. R. BANKR. P. 2014, AND DEL.BANKR.LR 2014-1 AUTHORIZING EMPLOYMENT AND RETENTION OF EXECUTIVE SOUNDING BOARD ASSOCIATES INC. AS DEBTORS' RESTRUCTURING CONSULTANTS AND FINANCIAL ADVISOR

  
Tanya Thompson

Sworn to and subscribed before  
me this 25<sup>th</sup> day of July 2002

  
Notary Public

MARLENE S. CHAPPE  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires July 31, 2005

<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.

**Fansteel Inc. Additional Service List  
for Application For Order Under Bankruptcy  
Code Sections 327(a) and 328 Fed. R. Bankr.  
P. 2014 and Del. Bankr. LR 2014-1 Authorizing  
Employment And Retention Of Executive  
Sounding Board Associates Inc. As Debtors'  
Restructuring Consultants And Financial Advisor**  
Case No. 02-10109 (JJF)  
Doc. #51602  
2 – Overnight Delivery

Overnight Delivery  
Adam Charrb, Esquire  
O'Melveney & Myers  
153 East 53<sup>rd</sup> Street  
New York, NY 10022

Overnight Delivery  
William H. Henrick, Managing Director  
Executive Sounding Board Associates, Inc.  
1350 Broadway, Suite 702  
New York, NY 10018

**Fansteel Inc. 2002 Service List**

Case No. 02-10109 (JJF)

Doc. #38494

14 - Hand Delivery

39 - First Class Mail

02 - Express Mail

15- Overnight Delivery

1 – Via Los Angeles PSZYJ Pouch

**(Co-Counsel for Debtors)**

Laura Davis Jones, Esquire

Rosalie L. Spelman, Esquire

Pachulski, Stang, Ziehl, Young & Jones P.C.

919 Market Street, 16th Floor

P.O. Box 8705

Wilmington, DE 19899-8705

**Via Los Angeles (PSZYJ) Pouch**

(Co-Counsel for Debtors)

Hamid Rafatjoo, Esquire

Pachulski, Stang, Ziehl, Young & Jones P.C.

10100 Santa Monica Boulevard, Suite 1100

Los Angeles, CA 90067

**Hand Delivery**

(Parcels)

Vito I. DiMiao

Parcels, Inc.

4 East Seventh Street

Wilmington, DE 19801

**Hand Delivery**

)

David Buchbinder, Esquire

Office of the United States Trustee

844 King Street, Suite 2313

Wilmington, DE 19801

**Hand Delivery**

)

Ellen W. Slights, Esquire

U.S. Attorney's Office

1201 Market Street, Suite 1100

Wilmington, DE 19899

**Hand Delivery**

(Counsel for the Committee of Unsecured Creditor)

Adam G. Landis, Esquire

Klett Rooney Lieber & Schorling

1000 West Street, Suite 1401

Wilmington, DE 19801

**Hand Delivery**

(TTI Metals)

Tobery M. Daluz, Esquire

Reed Smith LLP

1201 Market Street, Suite 1500

Wilmington, DE 19801

**Hand Delivery**

(U.S. Bancorp Leasing & Financial)

James E. Huggett, Esquire

Klehr, Harrison, Harvey, Branzburg & Ellers LLP

919 Market Street, Suite 1000

Wilmington, DE 19801

**Hand Delivery**

(Allegheny Power)

John D. Demmy, Esquire

300 Delaware Avenue

8<sup>th</sup> Floor, Suite 800

Wilmington, DE 19801

**Hand Delivery**

(Advance Services, Inc)

Bruce W. McCullough, Esquire

McCullough & McKenty, PA

824 Market Street, 4<sup>th</sup> Floor

PO Box 397

Wilmington, DE 19899-0397

**Hand Delivery**

(Counsel for CIT)

Edward B. Rosenthal, Esquire

Rosenthal, Monhait, Gross & Goddess, P.A.

Mellon Bank Cente, Suite 1401

PO Box 1070

Wilmington, DE 19899-1070

**Hand Delivery**

(Southern California Gas company)

William D. Sullivan, Esquire

Elzufon Austin Reardon

Tarlov & Mondell, PA

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