

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

40-7580

In re:) Chapter 11
)
FANSTEEL INC., et al.,¹) Case No. 02-10109 (JJF)
) (Jointly Administered)
Debtors.)
Objection Deadline: September 4, 2002 at 4:00 p.m.
Hearing Date: Negative Notice

NOTICE OF MOTION

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

PLEASE TAKE NOTICE that on or about August 15, 2002, the debtors and debtors-in-possession (the "Debtors") filed with United States District Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court") the attached *Application for Order Authorizing The Employment and Retention of RSM McGladrey, Inc. as Tax Accountants, Nunc Pro Tunc to February 21, 2002 ("RSM Application")*.

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the relief requested in the RSM Application must be in writing, filed with the Bankruptcy Court, and served upon both undersigned counsel for Debtors so as to be received by 4:00 p.m., Eastern Time on September 4, 2002.

PLEASE TAKE FURTHER NOTICE that, if any objections are timely filed and served, a hearing on the RSM Application will be held at the earliest convenience of the

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

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Court, before the Honorable Joseph J. Farnan, Jr., of the United States District Court for the District of Delaware. The hearing, if any, will be held in the 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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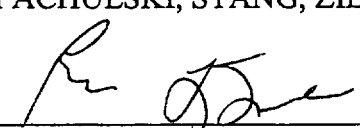
**IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN
ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF
REQUESTED IN THE RSM APPLICATION WITHOUT FURTHER NOTICE OR
HEARING.**

Dated: August 15, 2002

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Co-Counsel for the Debtors and Debtors in Possession

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

Objection Deadline: September 4, 2002 at 4:00 p.m. Eastern Time
Hearing Date: Negative Notice

**APPLICATION FOR ORDER AUTHORIZING THE
EMPLOYMENT AND RETENTION OF RSM MCGLADREY, INC.
AS TAX ACCOUNTANTS, NUNC PRO TUNC TO FEBRUARY 21, 2002**

Debtors and Debtors in Possession in the captioned cases hereby submit this application (the "Application") for entry of an Order under Section 327(a) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, authorizing the employment and retention of RSM McGladrey, Inc. ("RSM") as Debtors' tax accountants *nunc pro tunc* to February 21, 2002. In support of this Application, Debtors respectfully request as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue of these proceedings and this Application is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief requested herein are Section 327(a) of the

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

Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure.

Background

4. The facts and circumstances leading to these bankruptcy cases are set forth in the Affidavit of Gary L. Tessitore, Chairman of the Board, President and Chief Executive Officer in Support of First Day Motions, filed on January 15, 2002 [Docket No. 4].

5. Prior to these bankruptcies, RSM had a relationship with Debtors whereby it acted as recordkeeper or “administrator” of Debtors’ employees’ deferred profit sharing and retirement plans (“401(k) Plans”). Under the close direction of Debtors’ personnel, RSM performed such duties as keeping track of accounts, producing account statements, and maintaining a Website accessible to employees. This relationship is ongoing. Debtors do not believe that these services qualify as “professional” services under Bankruptcy Code Section 327(a). This Court authorized the payment of pre-petition costs incidental to maintaining employee benefits programs in the ordinary course of business in its Order Authorizing Debtors to Pay (i) Pre-Petition Commissions, Consulting Fees, Employee Wages, Salaries, and Contributions to 401(k) and Other Employee Benefit Plans, Including Workers Compensation Plans, (ii) Reimbursement Obligations on Account of Certain Pre-Petition Business Expenses, and (iii) All Costs and Expenses Incident to the Foregoing Payments and Contributions in the Ordinary Course of Business [Docket No. 27], entered January 17, 2002. The Debtors have continued to pay these RSM costs as incidental, non-professional costs critical to maintenance of the 401(k) Plans.²

² Approximately \$27,031.00 has been paid for pre-petition invoices and \$15,818.00 has been paid for post-petition invoices on the 401(k) service. As to RSM’s role as a “professional” person in its work with the 401(k) plan, see, e.g., In Re. Napoleon, 233 B.R. 910, 911 (Bankr.D.N.J. 1999)(expert witness not a professional); In re Sieling Associates Ltd. Partnership, 128 B.R. 721, 723 (Bankr.E.D.Va.1991)(environmental consultants not professionals), and cases cited therein.

6. In February 2002, the Debtors were required to prepare an audit of their Florida sales tax. The Debtors sent RSM an Affidavit of Disinterestedness form to be completed and submitted to Debtors' counsel in order for RSM to qualify as an "Ordinary Course Professional" as that term is defined in this Court's Order Authorizing Debtors to Employ and Compensate Certain Professionals Utilized in the Ordinary Course of Debtors' Business [District Court Docket No. 84] ("Ordinary Course Professionals Order"). RSM personnel infrequently (if at all) work with bankrupt companies, and unfortunately, the Affidavit of Disinterestedness was not returned to the Debtors' counsel. However, the Debtors utilize a computer-check system whereby entities that are sent the Ordinary Course Professional forms are not paid until an Affidavit of Disinterestedness is filed with the Court and the objection period has passed. RSM has not been paid for its work in connection with the Florida tax audit, because it was never approved as an Ordinary Course Professional.

7. In June 2002, RSM began work on a second, larger, tax project for the Debtors. It is hoped that this tax work ultimately will lead to tax savings of over two million dollars. The parties realized the urgent need for RSM to become qualified as an ordinary course professional. RSM substantially stopped work on the project until it was approved as an ordinary course professional.

8. RSM filed its Affidavit of Disinterestedness on July 19, 2002. The Office of the United States Trustee ("OUST") questioned RSM's retention as an Ordinary Course Professional because the OUST believed that the tax work described in the Affidavit of Disinterestedness was beyond the scope of an Ordinary Course Professional retention.

9. Without conceding their position that RSM is an Ordinary Course

Professional, the Debtors submit this Application at the request of the OUST.

Relief Requested

10. By this Application, Debtors seek to employ and retain RSM nunc pro tunc to February 21, 2002, pursuant to Section 327(a) of the Bankruptcy Code as their tax accountants, and to perform such other services as are within the scope of RSM's expertise as the Debtor's may request from time to time. February 21, 2002, is the date on which RSM McGladrey, Inc. began its tax work for Debtors as an ordinary course professional.

11. The grant of this Application nunc pro tunc should not be an issue in these circumstances, because RSM first began work in these cases as an ordinary course professional. In the event that the retroactive aspect of the Application is put at issue, however, Debtors believe that this Application falls within the "extraordinary circumstances" test of the Third Circuit. See, e.g. F/S Airlease II, Inc. vs. Simon, 844 F. 2d 99, 105 (3rd Cir. 1988), cert. denied, 488 U.S. 852, 109 S. Ct. 137, 102 L.Ed.2d 110 (1988); In re. Arkansas Co., Inc., 798 F 2d. 645, 649 (3rd Cir 1986). Under the "extraordinary circumstances" test, courts may consider such factors as the "sophistication" of the entity seeking retention, detriment to other parties in the case, and the cause of the delay. See, e.g., In re. United Companies Financial Corporation, 241 B.R. 521 (Bankr. D.Del.1999), and cases cited therein. Here, the offices of RSM with which Debtors are working simply do not represent a significant number of bankrupt entities and, hence, are "unsophisticated" for purposes of the "extraordinary circumstances" test. Moreover, the Application does not prejudice other parties, since the RSM work is abundantly important to the estate. Ultimately, the RSM work is expected to preserve the estate assets and possibly recover approximately two million dollars in federal tax refunds. Finally, "but for" the OUST's

objection to the Ordinary Course Professional status of this entity, there has been no “delay” in this Application, because Debtors believe that RSM should have been qualified as an ordinary course professional and have acted accordingly at all times.

12. RSM’s work will preserve the estate assets and possibly recover approximately two million dollars in a federal tax refund.

13. The Debtors believe that RSM is well qualified and will continue to assist Debtors in a cost-effective, efficient, and timely manner. The work that RSM has performed, and will continue to perform, is essential to the continued operation of the estate. RSM has indicated a willingness to continue to act on behalf of Debtors and to subject itself to the jurisdiction and supervision of the Court.

14. RSM will provide such professional services for Debtors as RSM and Debtors shall deem appropriate and feasible in order to advise Debtors in the course of these Chapter 11 cases, including the following:

- a. preparation of 2001 federal and state income tax returns, and
- b. assistance with other tax matters, including amending Debtors’ past returns in order for the Debtors to realize a substantial tax refund because of changes in federal tax law.

15. RSM will continue to provide the Debtors with support in the administration of Debtors’ 401(k) Plans. In addition, from time to time, RSM, at the request of Debtors, may provide additional professional business services within its expertise.

To the best of Debtors’ knowledge, no member of RSM has any connection with the Debtors, their creditors, any other parties in interest, or their respective attorneys and accountants, or with

the United States Trustee or any person employed in the Office of the United States Trustee in this District, except as otherwise disclosed herein or in the Affidavit of James K. Mansk, submitted in support of this application (the "Mansk Affidavit"), attached hereto as Exhibit A.

16. In addition, to the best of Debtors' knowledge, no principals or professionals assigned to this engagement by RSM are relatives of any of the District Court Judges or Bankruptcy Court Judges in this District, or of the United States Trustee.

17. Further, except as disclosed herein and in the Mansk Affidavit, Debtors submit that RSM does not hold or represent any interest adverse to Debtors as debtors-in-possession or to their estates, that RSM is a "disinterested person" as that term is defined in Sections 101(14) and 1107(b) of the Bankruptcy Code, and that RSM is qualified to serve as Debtors' tax accountants and to perform other work for Debtors, as is within RSM's expertise, pursuant to Section 327 of the Bankruptcy Code and Rules 2014 and 5002 of the Federal Rules of Bankruptcy Procedure. RSM has waived any outstanding claim against the Debtors for pre-petition services performed by RSM, including those services performed by FERS Business Services, Inc. (a company that was merged into RSM in November 2000).⁴

18. In the ninety days immediately preceding the Petition Date, the Debtors have made payments to RSM for services performed in the approximate amount of \$18,324 – solely for 401(k) administration services.

19. Except for work on the 401(k) Plans, all services provided by RSM will be invoiced and compensated at the ordinary billing rates and in accordance with this District's local rules regarding fees and expenses pursuant to the provisions of Sections 330(a) and 331 of

⁴ FERS Business Services, Inc. is listed in Schedule F of Schedules of Assets and Liabilities of Fansteel, Inc. for a claim of \$6,470.00.

the Bankruptcy Code, this Court's Order under 11 U.S.C. 105(a) and 3316 Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Committee Members (District Court Docket No. 73), entered February 2, 2002, and such other orders as this Court may direct.

20. The manner in which RSM will perform and invoice work on the 401(k) Plans will remain consistent with the Debtors' and RSM's relationship prior to the Petition Date.

21. Debtors have agreed to compensate RSM for tax services (and other services unrelated to the 401(k) Plans) on an hourly basis, according to RSM's normal and customary hourly rates. The hourly rates for those individuals anticipated for this engagement are set forth in the Mansk Affidavit. The hourly rates set forth in the Mansk Affidavit are subject to periodic adjustments to reflect economic and other conditions. Other professionals from RSM may from time to time serve the Debtors in connection with the matters herein described.

22. The hourly rates set forth in the Mansk Affidavit are RSM's standard hourly rates for work of this nature. These rates are set at a level designed to fairly compensate RSM for the work of its professionals and to cover fixed and routine overhead expenses. It is RSM's policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, telephone and telecopier toll and other charges, mail and express mail charges, special or hand delivery charges, document retrieval, photocopying charges, charges for mailing supplies (including, without limitation, envelopes and labels) provided by RSM to outside copying services for use in mass mailings, travel expenses, expenses for "working meals," computerized research, transcription costs, as well as non-ordinary overhead expenses such as secretarial and

other overtime. RSM will charge Debtors for these expenses in a manner and at rates consistent with charges made generally to RSM's other clients. RSM believes that it is more fair to charge these expenses to the clients incurring them than to increase the hourly rates and spread the expenses among all clients.

Notice

23. Notice of this Application has been given to all parties required to receive notice pursuant to Delaware Local Rule of Bankruptcy 2002-1. In light of the nature of the relief requested, Debtors submit that no other or further notice is required.

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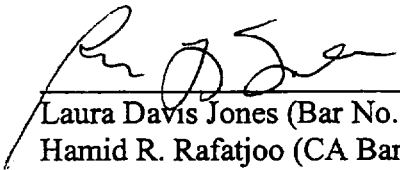
WHEREFORE, Debtors request entry of an Order substantially in the form attached hereto, authorizing Debtors to employ and retain nunc pro tunc to February 21, 2002 RSM as Debtors' tax accountants, and to perform such other work as Debtors may request from time to time that is within the expertise of RSM, and granting such other and further relief as is just and proper.

Dated: August 15, 2002

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Co-Counsel for the Debtors and Debtors In Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
FANSTEEL INC., *et al.*,¹) 02-10109 (JJF)
)
) (Jointly Administered)
Debtors.)

AFFIDAVIT OF JAMES K. MANSK

JAMES K. MANSK, being duly sworn, deposes and says:

1. I am a Director in the business consulting firm of RSM McGladrey, Inc. (“RSM” or the “Firm”), located at 1699 East Woodfield Road, Suite 300, Schaumburg, IL 60173. This Affidavit is submitted in support of the “Application for Order *Nunc Pro Tunc* to February 21, 2002, authorizing the Employment and Retention of RSM McGladrey, Inc. as Debtors’ Tax Accountants (the “RSM Application”).

Background and Scope of Employment

2. The Debtors have asked for the assistance of RSM in connection with its taxes and have indicated that they would like the assistance of RSM, from time to time, in other matters in which RSM has expertise.

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

Disinterestedness of Professionals

3. To the best of my knowledge, information and belief, formed after due inquiry², RSM does not have any connection with the Debtors and does not currently represent any of their creditors, other parties-in-interest, the United States Trustee or any person employed by the Office of the United States Trustee with respect to the matters upon which it is to be engaged by the Debtors, and RSM does not, by reason of any direct or indirect relationship to, connection with or interest in the Debtors, hold or represent any interest adverse to the Debtors, their estates or any class of creditors or equity interest holders. RSM has waived any outstanding claim against the Debtors for pre-petition services performed by RSM, including those services performed by FERS Business Services, Inc. (a company that was merged into RSM in November 2000).

4. Although unascertainable at this time after due inquiry, due to magnitude of the Debtors' potential universe of creditors and RSM's clients, RSM may represent certain other creditors of the Debtors, or certain parties owing monies for services to the Debtors, in discrete matters entirely unrelated to the Debtors and their estates, but in this regard, RSM's work for these clients will not include representation of any matters relating to the Debtors' chapter 11 cases.

5. I believe that RSM's representation of such entities in matters entirely unrelated to the Debtors is not adverse to the Debtors' interests, or the interests of their creditors or estates

² RSM has reviewed Debtors' lists of the twenty largest unsecured creditors for each separate Debtor.

in respect of the matters for which RSM will be engaged, nor will such services impair RSM's ability to perform its duties to the Debtors in these chapter 11 cases.

6. In light of the foregoing, I believe that RSM does not hold or represent any interest materially adverse to the Debtors, their respective estates, creditors or equity interest holders, as identified to RSM, with respect to matters in which RSM will be engaged.

Accordingly, I believe RSM is a "disinterested person" within the meaning of Sections 101(14) and 327 of the Bankruptcy Code.

7. RSM further states that it has not shared, nor agreed to share any compensation received in connection with this chapter 11 case with another part or person, other than as permitted by Section 504(b) of the Bankruptcy Code and Bankruptcy Rule 2016.

8. If any new relevant facts or relationships are discovered or arise, RSM will take reasonable efforts to identify such further developments and will promptly file a Supplemental Affidavit as Bankruptcy Rule 2014(s) requires.

Compensation

9. In the ninety days prior to filing these chapter 11 cases, Debtors paid RSM \$18,324—solely for 401(k) administration services.

10. Prior to these bankruptcies, RSM had a relationship with Debtors whereby it acted as recordkeeper or "administrator" of Debtors' employees' deferred profit sharing and retirement plans ("401(k) Plans"). This means that, under the direction of Debtors' personnel, RSM performed such duties as keeping track of accounts and maintaining a Website accessible to

employees. This relationship is ongoing and the Debtors have paid all costs associated with the work

11. Besides fees in connection with the 401(k) Plans, RSM has not been paid post-petition by the Debtors. In February 2002 RSM assisted Debtors in a Florida tax audit. RSM was not paid for this work, nor has it been paid for work that it began in connection with completing the Debtors 2001 taxes.

12. RSM filed an Affidavit of Disinterestedness, in order to be qualified as an Ordinary Course Professional in these cases on July 19, 2002.

13. In accordance with § 330(a) of the Bankruptcy Code and subject to the Court's approval, RSM will charge for its non-401(K) Plan services on an hourly basis in accordance with its ordinary and customary hourly rates, as they may change from time to time, in effect on the date services are rendered, plus actual, necessary out-of-pocket expenses it may incur. The employees whom RSM expects to deploy in this engagement, their positions, and their current hourly rates are as follows:

PERSON	POSITION	HOURLY RATE
Seung Jun	Professional Staff	\$130
Neil Kaplan	Managing Director	\$330
Scott Miller	Manager	\$205
Harold M. Paulsen	Senior Manager	\$270
Joanne Pietanza	Professional Staff	\$130
Don Pollworth	Senior Manager	\$290

Cindy Pope	Manager	\$210
Bettyann Roginic	Support Staff	\$85
Michael Tanis	Professional Staff	\$130

14. Other than for its work on the 401(k) Plans, RSM will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with the rendering of services described above by category and nature of the services rendered.

15. RSM will submit interim and final applications for compensation in accordance with the Bankruptcy Rules, the Local Rules of this Court and such other and further Orders as the Court may direct, including this Court's Order under 11 U.S.C. § 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Professionals and Committee Members [District Court Docket No. 73].

16. It is RSM's policy to charge its clients in all areas of practice for all out-of-pocket expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, photocopying, witness fees, travel expenses, filing and recordation fees, long distance telephone calls, postage, telecopier, express mail and messenger charges, and computerized legal research charges and other computer services. RSM will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to the RSM's other clients. RSM believes that it is fairer to charge these expenses to the particular client rather than increasing the hourly rates and spreading the expenses among all clients.

17. Except for the compensation described above, to the best of my knowledge, information and belief, no promises have been received by RSM or by any member, counsel or

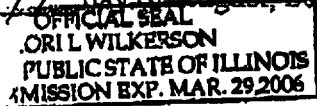
associate thereof as to compensation in connection with these cases other than in accordance with the provisions of the Bankruptcy Code. To the best of my knowledge, information and belief, neither RSM nor any officer, director or employee thereof has any agreement with any other entity to share with such entity any compensation received by RSM in connection with these chapter 11 cases.

18. To the best of my knowledge, information and belief, neither RSM, its officers, directors or employees has shared or agreed to share: (a) any commission it has received or may receive with another party or person, other than with the counsel and associates of RSM; or (b) any compensation that another person or party has received or may receive.

Dated: August 14, 2002


James K. Mansk, Managing Director
RSM McGladrey, Inc.

SWORN TO AND SUBSCRIBED before me this 14th day of August, 2002.



Notary Public

My Commission Expires: 3/29/06

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

**ORDER UNDER SECTION 327(a) OF THE
BANKRUPTCY CODE AUTHORIZING THE
EMPLOYMENT AND RETENTION OF RSM MCGLADREY
AS DEBTORS' TAX ACCOUNTANTS NUNC PRO TUNC TO FEBRUARY 21, 2002**

Upon the application (the "Application") debtors and debtors in possession ("Debtors") in the captioned cases for the employment and retention of RSM McGladrey Inc. ("RSM" or the "Firm") for Debtors, and upon the Affidavit of James K. Mansk, a director of the Firm, in support thereof (the "Mansk Affidavit"); and the Court being satisfied based on the representations made in the Application and in the Mansk Affidavit that said professionals represent no interest adverse to Debtors' estates with respect to the matters upon which they are to be engaged, that they are disinterested persons 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 their employment is necessary and would be in the best interests of Debtors' estates, and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Application is granted; and it is further

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

ORDERED that in accordance with Section 327(a) of the Bankruptcy Code, Debtors are authorized to employ and retain RSM *nunc pro tunc* to February 21, 2002, as their tax accountants, and to perform such other work as Debtors may request from time to time that is within the expertise of RSM on the terms set forth in the Application and the Mansk Affidavit; and it is further

ORDERED that all post-petition payments made to RSM in connection with its services on Debtors 401(k) Plans are approved, and that, in the future, RSM's work on the 401(k) Plans will be compensated in the same manner as RSM was compensated pre-petition; and it is further

ORDERED that the Firm shall be entitled to allowance of compensation and reimbursement of expenses, upon the filing and approval of interim and final applications pursuant to the Federal Rules of Bankruptcy Procedure, the Local Rules of this Court and such other orders as this Court may direct.

Wilmington, Delaware
Dated: _____, 2002

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