

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

40-7580

In re:)	Chapter 11
)	
FANSTEEL INC., <i>et al.</i> ,)	Case No. 02-10109(JJF)
)	
Debtors.)	(Jointly Administered)
)	
)	Objection Deadline: August 14, 2002 at 4:00 p.m.

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION
TO DEBTORS' MOTION FOR ORDER AUTHORIZING THE DEBTORS
TO ASSUME MOCNIAK CONFIDENTIAL SEVERANCE AGREEMENT AND
MUTUAL RELEASE [DOCKET NO. 359]**

The Official Committee of Unsecured Creditors (the "Creditors' Committee") of Fansteel Inc., *et al.*, (the "Debtors"), by its attorneys, submits this objection (the "Objection") to the Debtors' Motion for Order Authorizing the Debtors to Assume Mocniak Confidential Severance Agreement and Mutual Release (the "Motion") [Docket No. 359]. In support of the Objection, the Creditors' Committee respectfully states as follows:

FACTUAL BACKGROUND

1. Seven months before the Debtors filed for bankruptcy, on June 24, 2001, Michael Mocniak ("Mocniak"), the former Vice President and General Counsel of Fansteel, Inc. ("Fansteel"), voluntarily resigned and entered into a Confidential Severance Agreement and Mutual Release (the "Agreement") with Fansteel. The Agreement was for a thirteen-month period ending on July 24, 2002 (the "Severance Period") during which time Mocniak would continue to receive his base salary and certain other benefits. In exchange for these benefits, Mocniak would provide consulting services not to exceed twenty hours a month if requested by Fansteel. The Agreement terminated by its own terms on July 24, 2002. One day after the

DKT. NO. 402
DT. FILED 8-14-02

Add OGC Mail Center
NM55 01

Agreement terminated, on July 25, 2002, the Debtors' moved for an Order Authorizing the Debtors to Assume Mocniak Confidential Severance Agreement and Mutual Release.

THE AGREEMENT IS NOT AN EXECUTORY CONTRACT

2. A contract is only executory within the meaning of section 365(c) of the Bankruptcy Code if both the debtor and the other contracting party have remaining performance obligations. See In re Columbia Gas System, Inc., 50 F.3d 233, 239 (3d Cir. 1995); In re Access Beyond Tech., 237 B.R. 32, 43 (Bankr. D. Del. 1999). In circumstances where the nonbankrupt party has fully performed under a contract, it makes no sense to assume the contract. In re Columbia, 50 F.3d at 239.

3. In this case, Mocniak has fully performed his obligations under the Agreement. Under the terms of the Agreement, Mocniak was legally obligated, if requested by the Debtors, to consult and cooperate "...concerning matters in which Employee (Mocniak) was involved during the course of his employment by the Company (Fansteel), whether in connection with litigation with respect to matters or otherwise;...". (Agreement at ¶ 8). However, Mocniak was only required to perform consulting services to Fansteel during the "Severance Period". Under the terms of the Agreement, Mocniak's legal obligations to provide consulting services to Fansteel expired under its own terms on July 24, 2002. The Agreement defines the "Severance Period" as "thirteen (13) months following the Termination Date" of June 24, 2001 (Agreement at ¶ 2(e)). Moreover, the Debtors have not presented any evidence that Mocniak's performance obligations under the Agreement extended beyond July 24, 2002. Accordingly, Mocniak has fully performed his obligations under the Agreement and the Agreement is no longer an executory contract subject to assumption by the Debtors pursuant to section 365 of the Bankruptcy Code.

ASSUMPTION OF THE AGREEMENT BY THE DEBTORS DOES NOT BENEFIT THE ESTATE

4. In support of the Motion, the Debtors assert that it is in the best interest of the Debtors and their estates to assume the Agreement because assumption of the Agreement by “the Debtors will enhance the Debtors’ ongoing viability and reorganization efforts.” (Motion at ¶ 24). However, in circumstances where the nonbankrupt party has fully performed under the contract, assumption of the contract by the debtor would be of no benefit to the debtor’s estate, “serving only to convert the nonbankrupt’s claim into a first priority expense of the estate at the expense of other creditors.” In re Columbia, 50 F.3d at 239.

5. These exact circumstances exist in this case. Because Mocniak has fully performed his duties pursuant to terms of the Agreement, assumption of the Agreement by the Debtors provides no benefit to the Debtors’ estate or the Debtors’ creditors. The Debtors vaguely allege that Mocniak’s experience and expertise are necessary in dealing with the Nuclear Regulatory Commission (Motion at ¶¶ 6, 25). However, even if the Agreement is assumed, the consulting period expired on July 24, 2002. Moreover, the Debtors already are paying Winston & Strawn hundreds of thousands of dollars to work with the Nuclear Regulatory Commission. Given the amount of legal fees incurred to date, there is no justification for adding another lawyer now. In short, assumption of the Agreement will accomplish nothing more than the depletion of valuable estate assets to the detriment of the Debtors’ creditors. If the Court were to grant the Motion, the Debtors would be required to pay Mocniak almost \$145,000 and in return, the Debtors’ creditors would receive no benefit since Mocniak has fully performed his obligations under the Agreement.

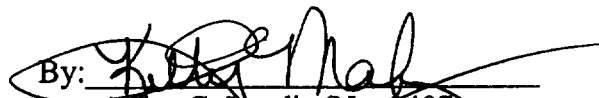
6. The Debtors fail to state any legal basis for this Court to grant the Motion. The Debtors seek to assume an agreement that already has expired and provides no benefit to the Debtors' estate or the creditors. Mocniak has fully performed his legal obligations under the terms of the Agreement, assumption of the Agreement by the Debtors would deplete valuable assets of the Debtors' estate, and the Debtors' creditors would derive no benefit from the assumption of the Agreement.

CONCLUSION

7. The Debtors have provided no legal or practical reason for assuming the expired Mocniak Agreement. The only party who will benefit from assumption is Mocniak, whose prepetition claim will be paid in full while all other prepetition claims go unpaid. For all the foregoing reasons, the Official Committee of Unsecured Creditors of Fansteel, Inc., respectfully requests that this Court enter an order denying the Debtors' Motion for Order Authorizing the Debtors to Assume Mocniak Confidential Severance Agreement and Mutual Release, and granting such other and further relief as is just.

Date: August 14, 2002

KLETT ROONEY LIEBER & SCHORLING

By: 
Adam G. Landis (No. 3407)
Kathleen P. Makowski (No. 3648)
Kerri K. Mumford (No. 4186)
1000 West Street, Suite 1410
Wilmington, DE 19801
(302) 552-4200 (Telephone)
(302) 552-4295 (Facsimile)

and

Frances Gecker, Esquire
Joseph D. Frank, Esquire
FREEBORN & PETERS
311 South Wacker Drive, Suite 3000
Chicago, IL 60606
(312) 360-6000 (Telephone)
(312) 360-6596 (Facsimile)

Counsel to the Official Committee of
Unsecured Creditors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

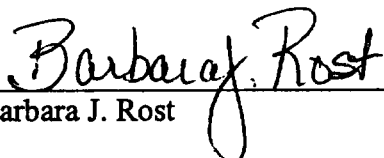
AFFIDAVIT OF SERVICE

STATE OF DELAWARE :
SS:
NEW CASTLE COUNTY :

I, Barbara J. Rost, certify that I am, and at all times during the service of process, have been, an employee of Klett Rooney Lieber & Schorling, a Professional Corporation, not less than 18 years of age and not a party to this matter. I certify further that the service of the attached:

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION
TO DEBTORS' MOTION FOR ORDER AUTHORIZING THE DEBTORS
TO ASSUME MOCNIAK CONFIDENTIAL SEVERANCE AGREEMENT AND
MUTUAL RELEASE [DOCKET NO. 359]**

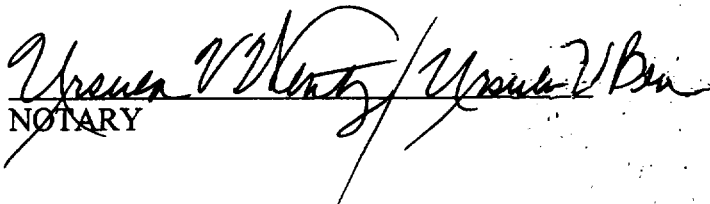
was made on August 14, 2002 on the parties listed on the attached Service List via Hand Delivery on Wilmington, Delaware local counsel and via First Class United States Mail, postage prepaid, on all others.



Barbara J. Rost

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

URSULA V. WENTZ
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires July 24, 2003



NOTARY

¹The 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.

Ellis Merschoff, Regional Administrator
Attention: Dr. Blair Spitzberg
U.S. Nuclear Regulatory Commission
Region IV - Harris Tower
611 Ryan Plaza Drive, Suite 400
Arlington, TX 76011-8064

Lori Robertson, Esquire
Linebarger Goggan Blair Pena & Sampson
1949 South IH 35 (78741)
P.O. Box 17428
Austin, TX 78760
Hidalgo County, City of McAllen

Richard Burkhart
7205 Chagrin Road, Suite 4
Bainbridge, OH 44023

Judith Archer, Esquire
295 North Maple Avenue, Room 1128M1
Basking Ridge, NJ 07920
AT&T

Roger Clement
R.C. Industrial Welding
140 Mesa Vista Drive
Bishop, CA 93514

Susan D. Profant
P.O. Box 25300
Bradenton, FK 34206
Manatee County Tax Collector

Patrick M. Goy, Managing Director
Lincoln Partners
181 West Madison Street, Ste 3750
Chicago, IL 60602

Mark P. Naughton, Jr., Esquire
Piper Marbury Rudnick & Wolfe
203 North La Salle Street, Suite 1800
Chicago, IL 60601
**(American National Bank & Trust
Co. of Chicago)**

Frances Gecker, Esquire
Freeborn & Peters
311 South Wacker Drive, Suite 3000
Chicago, IL 60606
(Counsel to Official Committee)

Marc Fenton, Esquire
1 Bank One Plaza, 11th Floor
Mail Code IL1-0286
Chicago, IL 60670
**(American National Bank & Trust
Co. of Chicago)**

Foothill Capital Corporation
161 North Clark Street, Suite 3590
Chicago, IL 60601

Mr. Richard Dickard
Congress Financial Corp (Central)
1500 S. Wacker Stive, Suite 2200
Chicago, IL 60606

Marc Fenton, Esquire
Bank One NA
1 Bank One Plaza, 11th Floor
Chicago, IL 60670
**American National Bank & Trust
Co. of Chicago**

Gary T. Zussman, Esquire
Goldberg Kohn Bell Black Rosenbloom &
Moritz
55 E. Monroe Street, Suite 3700
Chicago, IL 60603
Counsel to Post-Petition Lender

Elizabeth Weller, Esquire
Linebarger Goggan Blair Pena & Sampson
2323 Bryan Street,
1720 Univision Center
Dallas, TX 75201
Dallas County

Jeffrey W. Courter
Nymster Goode Voights West Hansell &
O'Brien
700 Walnut, Suite 1600
Des Moines, IA 50309
Wellmark, Inc.

Louis Rochkind, Esquire
Frank Aiello, Esquire
Jaffee Raitt Heuer & Weiss
One Woodward Avenue, Suite 2400
Detroit MI 48226
Taegu Tec Americas

Secretary of Treasury
P.O. Box 7040
Dover, DE 19903

Secretary of State
Division of Corporations
Franchise Tax
P.O. Box 7040
Dover, DE 19903

Julia Hasenzahl
Bankruptcy Management Corporation
1330 E. Franklin Ave
El Segundo, CA 90245
(Claims Agent)

Mark G. Claypool
Knox McLaughlin Gornall & Sennett
120 West 10th Street
Erie, PA 16501
Saegertown Manuf. Co.

Jerrold S. Kulback
Archer & Grenier
One Centennial Square
East Euclid Avenue
P.O. Box 3000
Haddonfield, NJ 08033
Reade Manuf. Co.

Kelly Stephens
PA Economic Development Finance
Authority
Dept Of Community & Economic
Development
466 Forum Building
Harrisburg, PA 17120

Mr. George Knehr, Chief
Self-Insurance Division
Bureau of Workers' Compensation
1171 S. Cameron St., Room 103
Harrisburgh, PA 17104

Jeanne M. Jorgensen, Esquire
Allen Matkins Leck Gamble & Mallory
1900 Main Street, 5th Floor
Irvine, CA 92614

CitiCapital Commercial Corporation
Attention: Bankruptcy Unit
P.O. Box 141029
Irving, TX 75014-1029

Gary L. Barnhart, Esquire
Missouri Dept of Revenue
General Counsel's Office
301 W. High Street, Room 670
P.O.Box 475
Jefferson City, MO 65105
Missouri Dept. of Revenue

Allan H. Ickowitz, Esquire
Nossaman, Guthner, Knox & Elliot LLP
445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071
**(Southern California Gas
Company)**

Hamid Rafatjoo, Esquire
Pachulski, Stang, Ziehl, Young & Jones P.C.
10100 Santa Monica Boulevard, Suite 1100
Los Angeles, CA 90067
(Co-Counsel for Debtors)

American Express Travel Related
SVCS CO INC Corp Card
c/o Beckett & Lee LLP
P.O. Box 3001 Dept. AC
Malvern, PA 19355-0701
**(American Express Travel
Related)**

David W. Letto
Milchap Products Inc.
8656 West National Avenue
P.O. Box 270267
Milwaukee, WI 53227
Milchap Products

Vivek Melwani, Esquire
Fried, Frank, Harris, Shriver & Jacobson
One New York Plaza
New York, NY 10004
(Counsel for CIT)

Jeffrey S. Sabin, Esquire
Mark A. Broude, Esquire
Schulte, Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
(Counsel for Debtors)

Elliot H. Herskowitz
Regen Capital I, Inc.
P.O. Box 626
Planetarium Station
New York, NY 10024-0540
(Regen Capital I, Inc.)

James M. Malley
Angelo Gordon & Co.
245 Park Avenue, 26th Floor
New York, NY 10167

Nathan Fuchs
Patricia Schrage
US Securities and Exchange Commission
Northeast Regional Office
233 Broadway
New York, NY 10279

Conrad K. Chiu, Esquire
Pitney Hardin Kipp & Szuch
685 Third Avenue
New York, NY 10017
General Electric Capital Corp.

Robert T. Aulgur, Jr., Esq.
Kristi J. Doughty, Esq.
Whittington & Aulgur
313 N. Dupont Highway, Suite 110
P.O. Box 617
Odessa, DE 19730-1617
**(Toyota Motor Credit
Corporation)**

Kelly Hunter Burch, Asst. Atty. General
Stan A. Koop, Asst. Atty. General
Oklahoma Attorney General's Office
4545 N. Lincoln, Suite 260
Oklahoma City, OK 73105

Peter S. Clark, II, Esquire
Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
TTI Metals

Brian D. Stewart, Esquire
Reed Smith LLP
2500 Liberty Place
1650 Market Street
Philadelphia, PA 19103-7301
**[The CIT Group/Equipment
Financing, Inc.]**

R. Matthew Pettigrew, Jr., Esquire
Markowitz & Richman
1100 North American Bldg
121 S. Broad Street
Philadelphia, PA 19107
**Glass, Molders, Potters, Plastics &
Allied Workers International
Union**

Stephen Woloshin
CarsonPrecision
P.O. Box 82000
Phoenix, AZ 85071

Larry Camper, Chief Decommissioning
Branch
Office of Nuclear Materials Safety &
Safeguards
Attention: Dr. Blair Spitzberg/Thomas
Fredrichs
Mail stop T-7F27-Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

Document Control Desk
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Ms. Leah Tremper
License Fee & Accounts Receivable Branch
Office of the Chief Financial Officer
Mail stop T-9E10 - Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

John Cordes, Solicitor
U.S. Nuclear Regulatory Commission
Mail stop 0-15D21
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Melvyn Leach
Office of Nuclear Materials Safety &
Safeguards
Attention: Ms. Leslie Fields
Mail Stop T-8A33-Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

Stuart Treby, Esquire
Office of the General Counsel
Attention: Stephen Lewis
U.S. Nuclear Regulatory Commission
Mail stop 0-15D21-One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Kathleen Strandes, Office Manager
Steamaster Co., Inc.
275 Veterans Blvd.
Rutherford, NJ 07070

James R. Curtiss
Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005-3502

Charles Finke, Esquire
Assistant General Counsel
Office of the General Counsel
1200 K Street, N.W.
Washington, DC 20005
Pension Benefit Guaranty Corp.

S. William Livingston, Jr.
Michael St. Patrick Baxter
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004
**Boeing Co., GE Company,
McDonnell Douglas Corp, TriMas
Corp., Millenium Petrochemicals,
Northrup Grumman**

Richard Gladstein, Esquire
US Dept of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington DC 20044
Nuclear Regulatory Commission

U.S. Securities and Exchange Commission
15th & Pennsylvania Avenue, N.W.
Washington, DC 20020

Brad C. Epperly
Pingel & Templer, PC
3737 Woodland Avenue, Suite 437
West Des Moines, IA 50266
**Iowa Dept of Economic
Development**

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
(Co-Counsel for Debtors)

Vito I. DiMiao
Parcels, Inc.
4 East Seventh Street
Wilmington, DE 19801
(Parcels)

Ellen W. Slights, Esquire
U.S. Attorney's Office
1201 Market Street, Suite 1100
Wilmington, DE 19899

Kathleen M. Miller, Esquire
Smith, Katzenstein & Furlow LLP
800 Delaware Avenue, 7th Floor
P.O. Box 410
Wilmington, DE 19899
**[Wells Fargo Financial Leasing,
Inc.]**

David L. Buchbinder, Esquire
Office of the United States Trustee
844 King Street, Suite 2313
Wilmington, DE 19801

Bruce McCullough, Esquire
McCullough & McKenty, PA
824 Market Street, 4th Floor
Wilmington, DE 19801
Advance Services, Inc.

Tobey Daluz, , Esquire
Reed Smith LLP
1201 Market Street, Suite 1500
Wilmington, DE 19801
[CIT]

John Demmy, Esquire
300 Delaware Avenue
Suite 800
Wilmington, DE 19801
Allegheny Power

James Huggett, Esquire
Klehr Harrison Harvey Branzburg, & Ellers
919 Market Street, Suite 1000
Wilmington, DE 19801
US Bancorp Leasing & Financial

Edward B. Rosenthal, Esquire
Rosenthal, Monhait, Gross & Goddess, P.A.
Mellon Bank Center, Suite 1401
PO Box 1070
Wilmington, DE 19899-1070
(Counsel for CIT)

David B. Stratton, Esquire
Pepper Hamilton LLP
1201 Market Street, Suite 1600
Wilmington, DE 19801
**(American National Bank & Trust
Co. of Chicago)**

District Director
IRS
209 Silverside Road
Wilmington, DE 19809

Adam G. Landis, Esquire
Klett Rooney Lieber & Schorling
1000 West Street, Suite 1410
Wilmington, DE 19801
(Counsel to Official Committee)

William D. Sullivan, Esquire
Elzufon Austin Reardon Tarlov & Mondell,
P.A.
300 Delaware Avenue, 17th Floor
Wilmington, DE 19801
**(Southern California Gas
Company)**