

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: October 2, 2002 at 4:00 p.m. E.T.
Hearing Date: Negative Notice

**NOTICE OF MOTION FOR ORDER APPROVING
COMPROMISE AND SETTLEMENT OF FANSTEEL INC. WITH
KEVIN DIXON AND THE NATIONAL LABOR RELATIONS BOARD
PURSUANT TO U.S.C. § 363 AND FED. R. BANKR. P. 9019(a)**

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

PLEASE TAKE NOTICE that on or about September 12, 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 *Motion For Order Approving Compromise And Settlement Of Fansteel Inc. With Kevin Dixon And The National Labor Relations Board Pursuant To U.S.C. § 363 And Fed. R. Bankr. P. 9019(a)* ("NLRB Settlement Motion").

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the relief requested in the NLRB Settlement Motion must be in writing, filed with 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.

nmssol Add: Rids Ogcmal Center

Bankruptcy Court, and served upon both undersigned counsel for Debtors so as to be received by 4:00 p.m. Eastern Time on October 2, 2002.

PLEASE TAKE FURTHER NOTICE that, if any objections are timely filed and served, a hearing on the NLRB Settlement Motion will be held at the earliest convenience of the Court, before the Honorable Joseph J. Farnan, Jr., of the United States District Court for the District of Delaware. The hearing 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 NLRB SETTLEMENT MOTION WITHOUT FURTHER
NOTICE OR HEARING.**

Dated: September 12, 2002

SCHULTE ROTH & ZABEL LLP
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New York, NY 10022
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and

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Laura Davis Jones (Bar No. 2436)
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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) Case No. 02-10109 (JJF)
) (Jointly Administered)
Debtors.)

**MOTION FOR ORDER APPROVING COMPROMISE
AND SETTLEMENT OF FANSTEEL INC. WITH KEVIN DIXON
AND THE NATIONAL LABOR RELATIONS BOARD PURSUANT
TO 11 U.S.C. § 363 AND FED. R. BANKR. P. 9019(a)**

Fansteel Inc. ("Fansteel"), one of the above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby move the Court (the "Motion") for entry of an order (the "Order") approving its compromise and settlement with Kevin Dixon and the National Labor Relations Board pursuant to 11 U.S.C. § 363 and Fed. R. Bankr. P. 9019(a). In support of this Motion, Fansteel respectfully states as follows:

Jurisdiction

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for relief are 11 U.S.C. § 363 and Fed. R. Bankr. P. 9019(a) (the "Bankruptcy Rules").

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.

Background

1. On January 15, 2002 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of 11 U.S.C. §§ et seq. ("Bankruptcy Code"). The Court entered an order pursuant to Bankruptcy Rule 1015(b) directing that the Debtors' separate chapter 11 cases (the "Cases") be procedurally consolidated and jointly administered by this Court.

2. The Debtors continue to manage their respective properties and operate their respective businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On January 29, 2002, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Creditors Committee") for these Cases. No trustee or examiner has been appointed in any of the Cases.

4. Fansteel VR/Wesson, a division of Fansteel, operates a 72,000 square foot manufacturing facility at Plantsville, Connecticut ("Plantsville"). Plantsville utilizes state-of-the-art manufacturing technology to produce and market precision ground custom carbide inserts, toolholders, and milling cutters to a global customer base. Approximately sixty one (61) people are employed at Plantsville (the "Employees"). None of the Employees are presently represented by a union.

5. The National Labor Relations Board ("NLRB"), on behalf of Employee Kevin Dixon ("Dixon"), has filed a complaint against Fansteel, No. 34-Ca-9918 (Region 34), dated March 19, 2002 (the "Complaint") which is now pending before the NLRB. The

Complaint alleges that Fansteel violated certain of Dixon's rights guaranteed under section 7 of the National Labor Relations Act, including Dixon's right to organize a union.

6. The NLRB has continued to prosecute the Complaint under the police and regulatory powers exception to the automatic stay triggered by Fansteel's filing its petition for bankruptcy relief. 11 U.S.C. § 362(b)(4).²

7. In addition to the allegations as set forth in the Complaint, Dixon has also alleged a claim of discrimination against Fansteel from the events arising from his separation from employment.

8. On or about November 8, 2001, Dixon's employment was terminated by Fansteel because of, among other things, a pattern of what Fansteel considered to be insubordinate behavior by Dixon.

9. Pursuant to this Court's order, entered February 21, 2002, authorizing the Debtors to employ and compensate certain professionals utilized in the ordinary course of business, Fansteel retained the law firm of Letizia Ambrose & Cohen P.C. as local counsel ("Local Counsel") to represent them in this matter.

10. Fansteel continues to incur legal costs and expenses as a result of the NLRB investigation. On the advice of Fansteel's bankruptcy counsel and Local Counsel,

²In relevant part, 11 U.S.C. § 362(b)(4) provides that "the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's . . . police or regulatory power . . ." does not operate as a stay. 11 U.S.C. § 362(b)(4). Governmental units may pursue employment discrimination actions, *see, E.E.O.C. v. Hall's Motor Transit Co.*, 789 F.2d 1011 (3d Cir. 1986), and labor law enforcement proceedings, *NLRB v. P*I*E Nationwide, Inc.*, 923 F.2d 507 (7th Cir. 1991).

Fansteel has entered into a Settlement Agreement (described below) that Fansteel believe is cost effective and will maximize the value of its estates.

The Settlement Agreement

11. As described with specificity in the settlement agreement, attached hereto as Exhibit A (the "Settlement Agreement"),³ the Debtors, NLRB and Dixon agree that, in full and final settlement of all matters and claims relating to or arising from Dixon's termination from employment at Plantsville, including withdrawal of the Complaint by the NLRB with prejudice, Fansteel will pay Dixon the sum of eight thousand eight hundred dollars (\$8,800.00).

12. As described in the NLRB correspondence and conditional order attached hereto as Exhibit B, the NLRB will withdraw the Complaint with prejudice upon this Court's entry of an order approving the Settlement Agreement.

Relief Requested

13. By this Motion, the Debtors seek entry of an order, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), approving the Settlement Agreement.

Basis For Relief Requested

Section 363

14. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor in possession, after notice and hearing, to use property of the estate other than in the ordinary course of business. See 11 U.S.C. § 363(b)(1). Courts typically required that a debtor articulate a proper business justification for its request to use property of the estate. If a valid business

³In the event there are inconsistencies between the Settlement Agreement and this Motion, the terms of the Settlement Agreement shall govern.

justification exists, a debtor may use the property with a strong presumption “that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.” In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1990), quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985). See also In re Delaware & Hudson Ry., 124 B.R. 169, 176 (D. Del. 1991) (explaining that the Third Circuit has adopted the “sound business purpose” test to evaluate motions brought pursuant to section 363(b)).

Fed. R. Bankr. P. 9019(a)

15. Bankruptcy Rule 9019(a) provides that “on motion by the trustee and after a hearing, the bankruptcy court may approve a compromise or settlement.” Settlements are favored in the bankruptcy context “[t]o minimize litigation and expedite the administration of a bankruptcy estate.” In re Martin, 91 F.3d 389, 393 (3d Cir. 1996). The Supreme Court has recognized that “in administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims in which there are substantial and reasonable doubts.” In re Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968).

The U.S. Supreme Court has stated that in determining a compromise's fairness, a judge should:

form an educated estimate of the complexity, expense and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of the litigation.

Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968). The Third Circuit, applying TMT Trailer in the context of a settlement pursuant to Bankruptcy Rule 9019(a), has set forth four factors to be considered:

- (i) the probability of success in litigation;
- (ii) the likely difficulties of collection;
- (iii) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- (iv) the paramount interest of the creditors.

Martin v. Myers (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996).

16. Approval of a proposed settlement is within the “sound discretion” of the Court. Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995). The Court must determine whether the proposed settlement is in the “best interests of the estate.” See In the Matter of Energy Cooperative, Inc., 886 F.2d 921, 927 (7th Cir. 1989). The bankruptcy court should not substitute its judgment for that of a trustee or debtor in possession. Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985); In re Curlew Valley Assocs., 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). The Court should not decide the numerous questions of law or fact raised by the litigation, but rather should canvas the issues to see whether the settlement falls below the lowest point in the range of reasonableness. See In re Penn Trans. Co., 596 F.2d 1102, 1114 (3d Cir. 1979); Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983), cert. denied, 464 U.S. 822 (1983).

17. Fansteel respectfully submits that the approval of the Settlement Agreement is in the best interests of its estate, that the settlement falls well within the range of reasonableness, and that it otherwise satisfies the factors identified herein.

Notice

18. Notice of this Motion has been given to all those parties required to receive notice pursuant to Rule 2002-1(b) of the Local Rules of Bankruptcy Practices and Procedures for the United States Bankruptcy Court for the District of Delaware. The Debtors submit that the notice provided is appropriate under the circumstances of these Cases.

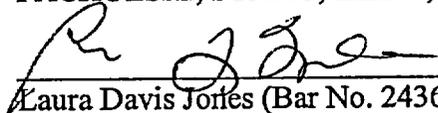
WHEREFORE, Fansteel respectfully requests that this Court enter the attached Order and grant it such other and further relief as this Court deems just and proper.

Dated: September 12, 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

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

EXHIBIT A

GENERAL RELEASE AND SETTLEMENT AGREEMENT

Kevin Dixon and Fansteel VR/Wesson, A Division of Fansteel, Inc. ("Fansteel"), in consideration for the mutual promises contained herein, agree to the following terms in full and final settlement of all matters and claims relating to or arising from Mr. Dixon's employment and the events relating to or arising from his separation from employment.

1. Neither the negotiation, undertaking, agreement nor execution of this General Release and Settlement Agreement ("Agreement") shall constitute or operate as an acknowledgment or admission of any wrongdoing in violation of any federal, state or local law, regulation or statute by Fansteel, its parent company, any affiliated entity, or any person or entity acting on their behalf.
2. Mr. Dixon agrees to release and discharge Fansteel, its parent, subsidiaries, affiliates, successors and assigns and their current and former officers, directors, employees, agents and representatives from any claims or causes of action in law or equity of any kind whatsoever which he ever had, now has or which may be brought on his behalf against them, including but not limited to any claims of discrimination in employment under the National Labor Relations Act, in tort or contract, and any other claim under federal, state or local laws relating to or arising from Mr. Dixon's employment and events relating to or arising from his separation from employment.
3. Mr. Dixon will also withdraw, with prejudice, the complaint against Fansteel, No. 34-CA-9918 (Region 34), now pending before the National Labor Relations Board.
4. In consideration for entering into this Agreement, Fansteel agrees to pay Mr. Dixon the sum of eight thousand eight hundred dollars (\$8,800.00). Fansteel will issue a Form 1099 in this amount, and Mr. Dixon will be solely responsible for payment of appropriate state and local taxes.
5. Mr. Dixon and Fansteel agree that the terms of this Agreement and discussions leading to its execution are confidential and that they will not disclose any information, other than the existence of this section, concerning those discussions or concerning the events relating to his employment or separation from employment to anyone at any time, unless compelled to do so under subpoena or other judicial process.
6. Mr. Dixon agrees not to make or condone any negative, derogatory, uncomplimentary, defamatory, or false statements about Fansteel, its parent, affiliates, present or former officers, managers or employees.
7. Mr. Dixon agrees further that he will not apply for employment with Fansteel, its parent or any affiliated company, and should he violate this agreement by applying for such a job, Fansteel or such other company will have the lawful right to reject the application under this agreement.

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

FANSTEEL VR/WESSON, A DIVISION OF
FANSTEEL, INC.

and

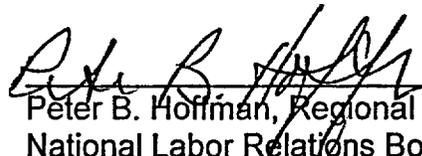
TRUCK DRIVERS & HELPERS, LOCAL UNION
NO. 677, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO,

Case No. 34-CA-9918

**ORDER CONDITIONALLY APPROVING
WITHDRAWAL OF CHARGE AND COMPLAINT**

A Complaint and Notice of Hearing issued in this case on March 19, 2002. Truck Drivers & Helpers, Local Union No. 677, International Brotherhood of Teamsters, AFL-CIO, has requested withdrawal of the charge in this case as a result of a non-Board settlement with Respondent. Accordingly, conditioned upon Respondent's full compliance with the terms of the non-Board settlement, including the payment of \$8,800.00 to Kevin Dixon, the withdrawal of the charge is conditionally approved, and the Complaint and Notice of Hearing is conditionally withdrawn.

Signed at Hartford, Connecticut this 26th day of August, 2002.


Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 34

280 Trumbull Street, 21st Floor

Hartford, CT 06103-3503

Telephone (860) 240-3004

Facsimile (860) 240-3564

www.nlrb.gov

**Via Facsimile Transmission &
Regular Mail**

August 29, 2002

Michael Mitchell, Esquire
Schulte, Roth & Zabel
919 Third Avenue
New York, NY 10022

Re: **FANSTEEL VR/WESSON, A
DIVISION OF FANSTEEL, INC.
Case No. 34-CA-9918**

Dear Mr. Mitchell:

This is to confirm that with regard to the Order Conditionally Approving Withdrawal of Charge and Complaint dated August 26, 2002, upon Respondent's compliance with the terms of the non-Board settlement, i.e., the payment of \$8,800.00 to Kevin Dixon, the withdrawal will be considered final and the case will be formally closed. At that point, Section 10(b) of the Act will preclude the filing of any future unfair labor practice charges concerning any of the allegations set forth in the Complaint and Notice of Hearing dated March 19, 2002.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jonathan B. Kreisberg".

Jonathan B. Kreisberg
Regional Attorney

JBK:mhs

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

**ORDER APPROVING COMPROMISE AND SETTLEMENT OF FANSTEEL INC.
WITH KEVIN DIXON AND NATIONAL LABOR RELATIONS BOARD
PURSUANT TO 11 U.S.C. § 363 AND FED. R. BANKR. P. 9019(a)**

Upon consideration of the above-captioned motion for entry of an order approving compromise and settlement of Fansteel Inc. with Kevin Dixon and the National Labor Relations Board (the "Motion"); and it appearing that the relief requested in the Motion is in the best interests of Fansteel Inc., its estate, creditors and other parties in interest, and may be authorized pursuant to 11 U.S.C. § 363 and Fed. R. Bankr. P. 9019(a); and notice of the Motion having been provided to all those required to receive notice pursuant to Rule 2002-1(b) of the Local Rules of Bankruptcy Practices and Procedures of the United States Bankruptcy Court for the District of Delaware; and it appearing that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is granted; and it is further

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.

ORDERED that the Settlement Agreement attached to the Motion as Exhibit A is approved; and it is further

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

Dated: September ____, 2002

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