

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. )  
)

Hearing Date: Scheduled for Telephonic Hearing  
at the Court's Convenience

**DEBTORS' MOTION FOR LEAVE TO FILE A RESPONSE TO COMMITTEE'S  
OBJECTION TO DEBTORS' MOTION FOR CONTINUANCE OF HEARING  
DATE ON, AND EXTENSION OF DEADLINE FOR RESPONDING TO, MOTION  
OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF  
AN ORDER (I) AUTHORIZING THE FILING OF A PLAN OF  
REORGANIZATION WITHOUT AN ACCOMPANYING DISCLOSURE  
STATEMENT PURSUANT TO BANKRUPTCY RULE 3016(b), (II) COMPELLING  
THE DEBTORS TO PROVIDE THE COMMITTEE WITH THE INFORMATION  
NECESSARY TO COMPLETE THE DISCLOSURE STATEMENT AND (III)  
ENJOINING THE DEBTORS FROM TRANSFERRING, SELLING OR  
CONSIGNING ESTATE ASSETS UNTIL CONFIRMATION OF A PLAN**

The above-captioned debtors and debtors-in-possession (the "Debtors"), hereby request pursuant to Del.Bankr.LR 9006-1(d) authority to file the *Debtors' Response to the Committee's Objection to the Debtor's Motion for Continuance of Hearing Date on, and Extension of Deadline for Responding to, the Motion of Official Committee of Unsecured Creditors for Entry of an Order (I) Authorizing the Filing of a Plan of Reorganization Without an Accompanying Disclosure Statement Pursuant to Bankruptcy Rule 3016(B), (II) Compelling the Debtors to Provide the Committee with the Information Necessary to Complete the Disclosure Statement and (III) Enjoining the Debtors from Transferring, Selling or Consigning Estate Assets Until Confirmation of a Plan* (the "Reply") in further support of the Motion for

<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., and American Sintered Technologies, Inc.

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Continuance of Hearing Date on, and Extension of Deadline for Responding to, the Motion of Official Committee of Unsecured Creditors for Entry of an Order (I) Authorizing the Filing of a Plan of Reorganization Without an Accompanying Disclosure Statement Pursuant to Bankruptcy Rule 3016(B), (II) Compelling the Debtors to Provide the Committee with the Information Necessary to Complete the Disclosure Statement and (III) Enjoining the Debtors from Transferring, Selling or Consigning Estate Assets Until Confirmation of a Plan (the "Motion"), which Motion shall be scheduled to be heard via a telephonic hearing to be scheduled by the Court (the "Hearing"). The Committee has filed an objection (the "Objection") to the relief sought in the Motion. The Debtors seek to file the Reply because the Objection raises certain issues to which the Debtors believe a response is appropriate before the Court rules on the Motion. Further, the Debtors believe that the Reply may help to narrow the issues that need to be addressed at the Hearing.

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WHEREFORE, the Debtors respectfully request the entry of an Order granting the Debtors authority to file the Reply, a copy of which is attached hereto as Exhibit A.

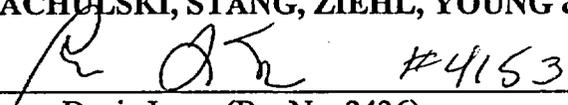
Dated: May 15, 2003

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

SO ORDERED this \_\_\_\_ day  
of \_\_\_\_\_, 2003

\_\_\_\_\_  
THE HONORABLE JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT COURT JUDGE

# **Exhibit A**

**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 (JJF)  
) (Jointly Administered)  
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Debtors. )  
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Hearing Date: Scheduled for Telephonic Hearing  
at the Court's Convenience

**DEBTORS' RESPONSE TO COMMITTEE'S OBJECTION TO DEBTORS' MOTION  
FOR CONTINUANCE OF HEARING DATE ON, AND EXTENSION OF DEADLINE  
FOR RESPONDING TO, MOTION OF OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE FILING OF A  
PLAN OF REORGANIZATION WITHOUT AN ACCOMPANYING DISCLOSURE  
STATEMENT PURSUANT TO BANKRUPTCY RULE 3016(b), (II) COMPELLING THE  
DEBTORS TO PROVIDE THE COMMITTEE WITH THE INFORMATION  
NECESSARY TO COMPLETE THE DISCLOSURE STATEMENT AND (III)  
ENJOINING THE DEBTORS FROM TRANSFERRING, SELLING OR  
CONSIGNING ESTATE ASSETS UNTIL CONFIRMATION OF A PLAN**

Fansteel Inc. ("Fansteel"), a Delaware corporation, and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), hereby reply (the "Reply") to the *Response of the Committee* (the "Objection") to the *Debtors' Emergency Motion for Continuance of Hearing Date on, and Extension of Deadline for Responding to*, (the "Motion for Continuance") *Motion of Official Committee of Unsecured Creditors for Entry of an Order (I) Authorizing the Filing of a Plan of Reorganization Without An Accompanying Disclosure Statement Pursuant to Bankruptcy Rule 3016(B), (II) Compelling the Debtors to Provide the Committee with the Information Necessary to Complete the Disclosure Statement and (III)*

<sup>1</sup> The Debtors are the following entities: Fansteel Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Ecast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., and American Sintered Technologies, Inc.

*Enjoining the Debtors from Transferring, Selling or Consigning Estate Assets Until Confirmation of a Plan* (the "Committee Motion"), Docket #897. In support of this Reply, the Debtors respectfully represent as follows:

1. The Debtors acknowledge that exclusivity expired on February 27, 2003. Despite the Committee's contention otherwise, the Debtors are not attempting to preclude the Committee, or any party in interest for that matter, from filing a plan of reorganization that has a reasonable prospect for success. The Committee Motion, however, seeks to prematurely file a plan of reorganization for the Debtors (the "Committee Plan") that is substantially incomplete and fraught with legal and practical infirmities without providing parties in interest the benefit of a disclosure statement. Most significantly, the Committee Plan does not even attach as exhibits the asset purchase agreements upon which the Committee Plan is purportedly grounded.

2. Granting the relief sought in the Committee Motion will not serve any legitimate interest of the constituency which the Committee represents and may severely jeopardize the Debtors' efforts to finalize a consensual plan of reorganization with other key creditor constituents including, without limitation, the Pension Benefit Guaranty Corporation, the Nuclear Regulatory Commission, the Department of Justice, the Environmental Protection Agency and various state regulatory agencies, the largest creditors in these cases. The Debtors are concerned that trade vendors, employees and other parties in interest may perceive the filing of the Committee Plan as evidence that the Debtors have lost control of their operations and the reorganization process and that the final outcome for the Debtors' estates may be a forced liquidation. Moreover, because of the many legal infirmities in the Committee Plan, going down the road proposed by the Committee will only serve to waste valuable estate resources, to the

detriment of the overall creditor body. It is, therefore, critical that the Debtors be afforded sufficient time to formulate a complete response to the Committee Motion.

3. The Committee acknowledges that it currently does not have sufficient information to complete the disclosure statement that would accompany its Plan. See Par. 7 of Committee Motion. The Debtors have advised and offered to make necessary information available to the Committee and other key creditor constituents subject to certain terms and conditions necessary to protect privileged materials and the overall interests of the Debtors' estates. The Debtors are prepared to provide the Committee with any documents and information that is not subject to privilege and to provide any such privileged information to the extent that the Committee is prepared to execute a joint-interest agreement with the Debtors. As indicated in the Debtors' Motion for Continuance, the Debtors previously provided a mark-up of such an agreement to the Committee but to date have received no response.

4. If the Committee had taken the time to formulate a reasoned proposal for a plan of reorganization that addressed the many issues presented by the myriad of claims against the Debtors in these cases, then creditors should have the opportunity to consider same. The Committee should not, however, be permitted to file, without the benefit of a proposed disclosure statement, the Committee Plan. That document is far from complete and only serves to create the inference that the Debtors have failed at their efforts to formulate and negotiate a consensual plan and, therefore, the Debtors' operations must necessarily be disbanded and sold.

5. The Committee suggests that, because these chapter 11 cases are presided over by the District Court, the Local Rules of the Bankruptcy Court are somehow inapplicable to these chapter 11 cases and, therefore, the Committee Motion was served timely. The Bankruptcy Court Local Rules do not support this contention. The Local Bankruptcy Court Rules provide

that "Unless otherwise noted in these Rules or ordered by the Court, all filings in the District of Delaware relating to cases under title 11 shall be made to the Clerk of the Bankruptcy Court and shall be governed by these Rules and the District Court Rules, in addition to the Fed.R.Bankr.P. The Federal Rules of Civil Procedure are applicable only to the extent provided herein or in the Fed.R.Bankr.P." Del.Bankr.LR 1001-1(b). Del.Bankr.LR 9006-1(c) is not inconsistent with the District Court Rules, the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, and therefore it is applicable to these cases. Accordingly, the Committee has ignored the basic rules of due process by failing to timely serve the Debtors with, or provide adequate time to respond to, the Committee Motion.

6. In its Objection to the Debtors' Motion for Continuance, the Committee has misrepresented the Debtors' intent. The Debtors derive no benefit from unnecessary delay and have not pursued a strategy of stall tactics in these cases. Instead, the Debtors have engaged in systematic, methodical and intense negotiations with the various major creditors and creditor constituencies in an effort to meld together a host of extremely complex, varied, and competing interests and rights and fashion a consensual plan of reorganization. Although the projected timeline for accomplishing this objective has, of necessity, been extended, such delays were a result of events and circumstances most of which were beyond the Debtors' control. The Debtors nonetheless have continued to work diligently towards their ultimate objective.

7. The Committee has attempted to create an air of exigency surrounding the relief sought in the Committee Motion by reference to the Debtors' operating performance and through repeated references to the Debtors' having sold assets outside the ordinary course. The

inferences are simply misleading and untrue.<sup>2</sup> The Debtors are fully aware of their obligations under the Bankruptcy Code, including without limitation, the need to seek prior Court approval of the sale of assets outside the ordinary course of business.<sup>3</sup> The Debtors have honored, and will continue to honor, such obligations for the duration of these cases.

8. The Committee would have this Court believe that the Committee Motion was filed only as a matter of last recourse and that the Debtors were afforded an opportunity to provide the information consensually. In point of fact, the Committee's counsel advised counsel for the Debtors that the Committee Motion and Committee Plan attached thereto were being filed regardless of the status of the Debtors' efforts.

9. The Motion for Continuance is warranted and necessitated by multiple factors. In addition to the due process concerns previously set forth, the Committee will not be prejudiced by a continuance. The filing of the Committee Plan without the necessary proposed disclosure documents and underlying exhibits may, however, unnecessarily expose the Debtors to the risk that vendors abandon efforts to continue to work with and supply them if they believe the Debtors' operations will be dismantled and sold. Further, the inferences that may be drawn from the Committee Plan, if filed, are likely to have considerable negative impact on the company's employees and the resulting attrition may adversely impact the operations of the

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<sup>2</sup> Despite contending with a severe recession throughout the bankruptcy in the industries served by the Debtors and a catastrophic downturn in aerospace business following September 11, 2001, the Debtors have not needed to borrow any monies from its DIP facility and have improved their cash position since the Petition Date. Key to maintaining a positive cash flow was sound business practice of reducing working capital to appropriate operating level, cost cutting, improving certain operations and sale of a non-core business unit.

<sup>3</sup> The Committee references are with respect to a single \$5,000 transaction in connection with a cost reduction program discussed with the Committee whereby the Debtors, in consultation with the Committee, determined that they would outsource certain operations of the business. In carrying out these cost reduction programs and outsourcing, the Debtors sold certain assets no longer used by the Debtors and of nominal value. The Committee was fully aware and supportive of these measures. The transaction was at arm's length and for fair market value. In this limited circumstance, the Debtors believe their actions were within the spirit, if not the letter of the Bankruptcy Code.

Debtors. Moreover, no confirmation process can begin with respect to the Committee Plan until the filing and approval of a disclosure statement. The requested continuance will afford the Debtors sufficient time to adequately demonstrate to the Court the infirmities within the Committee Plan. While the Debtors do not disagree that these may ultimately be issues for a confirmation hearing, they are relevant at this juncture since the Committee Plan as drafted, without the benefit of detailed disclosures, may have the effect of severely prejudicing the Debtors and their reorganization efforts.

10. The Department of Justice, which represents a number of the governmental agencies asserting substantial environmental claims and other obligations against the Debtors, and the Pension Benefit Guaranty Corporation, also a primary creditor constituent in these cases, have each advised the Debtors that the Committee Plan is unacceptable and they are prepared to litigate objections thereto if presented for confirmation. This reaction by these significant participants in the chapter 11 cases is further evidence that a premature filing of the Committee Plan will unduly burden the Debtors' estates and may jeopardize a consensual reorganization of the Debtors.

11. The Debtors believe that the requested continuance is necessary to permit the Debtors sufficient time to prepare a detailed objection to the Committee Motion. The present circumstances are akin to those circumstances where the courts have considered objections to a plan that is patently unconfirmable on its face prior to approval of a disclosure statement and solicitation in order to avoid unnecessary costs and burden to a debtor's estate. See In re Phoenix Petroleum, 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) ("If the disclosure statement describes a plan that is so 'fatally flawed' that confirmation is 'impossible,' the court should exercise its discretion to refuse to consider the adequacy of disclosures."); In re Curtis Ctr. Ltd. P'ship, 195

B.R. 631, 638 (Bankr. E.D. Pa. 1996) ("A disclosure statement should be disapproved where the plan it describes is patently unconfirmable."); In re Market Square Inn, Inc., 163 B.R. 64, 68 (Bankr. W.D. Pa. 1994) ("Where it is clear that a plan of reorganization is not capable of confirmation, it is appropriate to refuse the approval of the disclosure statement."); and In re H.K. Porter Co., 156 B.R. 16, 17 (Bankr. W.D. Pa. 1993) ("[I]t would be a waste of the Court's resources and of the estate's assets to allow a plan which is nonconfirmable on its face to proceed through the confirmation process.").

12. The Debtors are not seeking to tacitly extend exclusivity or preclude the Committee from filing a competing plan of reorganization. Rather, because the relief sought in the Committee Motion may be of monumental impact to the outcome of these cases, the Debtors should be afforded adequate time and opportunity to prepare an appropriate response in an effort to avoid any undue and irreversible prejudice to the estates herein. Further, the Debtors are continuing efforts to formulate a consensual plan of reorganization and such a continuance may benefit the Debtors' estates in that it may provide sufficient time for the Debtors to demonstrate to the Court and the Committee that such consensus has been achieved.

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WHEREFORE, the Debtors respectfully request that an order be entered granting the relief requested in the Debtors' Motion for a Continuance, and such other relief as may be appropriate in the circumstances.

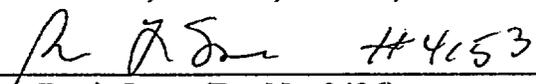
Dated: May 5, 2003

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