

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

40-7580

RESPONSE TO THE DEBTORS' EMERGENCY MOTION FOR CONTINUANCE OF THE HEARING DATE ON, AND THE DEADLINE FOR RESPONDING TO, THE MOTION OF THE 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 [RE: D.I. 902]

The Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), hereby responds (the "Response") to the Debtors' Emergency Motion for Continuance of the Hearing Date on, and the Deadline for Responding to, the Motion of the 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 [D.I. 902] (the "Continuance Motion"). In support of its Response, the Committee respectfully represents as follows:

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INTRODUCTION

When this case commenced almost 15 months ago, the Committee advised the Court that based on the Committee's review of the Debtors' finances and prospects, the Debtors would be required to sell certain of their assets in order to reorganize. Not surprisingly, the Court agreed with that assessment, specifically noting that in order for this case to be a successful reorganization "there has got to be some involvement with the sale of assets. Otherwise, [the Debtors'] case won't work, in my view." See Transcript of April 30, 2003 Hearing p. 20 (attached hereto as Exhibit "A").

Now, 15 months later, the Debtors have done little, if anything, to reorganize around a smaller, revitalized core business. To the contrary, for the entire course of this case, the Debtors have pursued a single-minded strategy of delay, playing defense while the unsecured creditors have repeatedly expressed their desire that the Debtors do everything possible - including exploring asset sales - to emerge quickly from Chapter 11 and the crippling administrative expenses that continue to accrue.

Even in the face of the expiration of exclusivity, the Committee has been exceedingly patient with the Debtors' efforts to structure a so-called "global resolution" to which all parties would agree. It is time for the Debtors to abandon their quest for the Holy Grail, to deal with the realities confronting them and the long-held wishes of their unsecured creditors. The plan structures that the Debtors have proposed do not include asset sales. They are unacceptable to the Committee. They do not support either the Debtors' long-term survival or appropriate returns for unsecured creditors.

Exclusivity has expired. The Committee has every right and obligation to move these cases toward a conclusion. With undenied charges that the Debtors have sold or transferred

assets outside of the ordinary course of business, without court approval and in blatant derogation of their statutory and fiduciary duties, the Debtors cannot assert that they should have the right to close down the plan process while parties wait for a term sheet suitable to the Debtors. The Committee therefore continues to seek the relief it requested in the motion, namely, (i) an order requiring the Debtors to cooperate fully with the Committee's efforts to complete its disclosure statement, (ii) disclosure of asset sales and transfers outside of the ordinary course and without court approval, and (iii) an injunction preventing any further transfers pending the confirmation of a plan.

BACKGROUND

1. On January 15, 2002, (the "Petition Date"), the Debtors filed their respective voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware. At the Debtors' request, the reference of the Debtors' reorganization cases was withdrawn to the District Court.

2. On January 28, 2002, the Office of the United States Trustee (the "UST") appointed the Committee to serve in these cases pursuant to Bankruptcy Code Section 1102.

3. The Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4. On or about February 27, 2003, after two extensions agreed to by the Committee, the Debtors' exclusive period to file a plan of reorganization expired. To date, no party has filed a plan of reorganization in these cases.

5. Following the expiration of exclusivity, the Committee continued to negotiate with the Debtors in an attempt to develop a consensual plan of reorganization. These

negotiations proved fruitless. In an attempt to finally bring these cases to a close, the Committee has proposed its own draft plan of reorganization (the "Plan"). The Plan provides for the sale of substantially all of the Debtors' assets, except the assets of Debtors American Sintered Technologies, Inc., Escast, Inc., and Wellman Dynamics Corporation, to the Purchaser (as defined in the Plan), or to a higher bidder following an auction process.

6. On May 9, 2003, the Committee filed the Motion of the 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 [D.I. 897] (the "Motion"). Prior to filing the Motion, the Committee informed the Debtors that it had drafted a Plan and was prepared to file the Motion unless the Debtors agreed to provide information necessary to complete a disclosure statement. On May 8, 2003, the Debtors sent a letter (the "May 8 Letter," which is attached to the Continuance Motion as Exhibit "A") flatly rejecting the Plan, stating only that the Plan "was seriously flawed." The Debtors further indicated in the May 8 Letter that the Debtors were "within 24 to 72 hours of reaching an agreement with the Nuclear Regulatory Commission, the Pension Benefit Guaranty Corporation and various other governmental and regulatory authorities." Those 72 hours have come and gone and the Debtors make no representation in the Motion that a firm agreement has in fact been reached. Instead, the Debtors allege now that a plan term sheet will be forthcoming by May 21, 2003. See Continuation Motion, ¶ 11.

7. On May 12, 2003, late in the evening, the Debtors filed the Continuation Motion. The Continuation Motion, full of baseless allegations and innuendos, does not state a single valid

reason why the Continuation Motion cannot be heard on Wednesday, May 21, 2003. Instead, the Debtors allege that (1) the Committee failed to comply with Local Bankruptcy Rules and (2) the Debtors need more time to review the Plan and determine whether the Committee violated any confidentiality agreements. Neither reason has any merit and neither should prevent the Motion from going forward.

RESPONSE TO CONTINUATION MOTION

8. In their Continuation Motion, the Debtors attempt to paint a picture of cooperation with the Committee. However, as set forth in the Motion, the Committee has attempted to negotiate a consensual plan of reorganization, but the Debtors are unwilling to adopt concepts proposed by the Committee, including, but not limited to, the sale of assets. The Debtors have let exclusivity expire, have let these cases drag on for over a year, and have incurred millions of dollars in Debtors' professional fees, and still have not filed a plan of reorganization. While the Debtors allege that they are "close" and will be prepared to file a plan soon, they have made these promises in the past and have failed to deliver. Even if this were in fact true, exclusivity has expired and the Debtors' proposed timeline does not and should not, prevent the Committee from pursuing an alternative plan of reorganization. There are no grounds to delay the Committee's Motion and the hearing should go forward on May 21, 2003.

A. The Bankruptcy Court Local Rules Do Not Apply to the District Court or This Case

9. The Debtors attempt to raise an issue of due process by stating that the Committee has failed to comply with Del. Bankr. LR 9006-1(c) & (e). This argument has no merit. First, the Court scheduled the May 21, 2003 hearing at the request of the Committee and established May 16, 2003 as the deadline to respond to the Motion. Although no order was entered by the Court, it was at the Court's direction that these dates were given.

10. More importantly, the Bankruptcy Court Local Rules do not apply to the District Court or this case. This is something that the Debtors should be keenly aware of, as they have routinely taken advantage of the fact that these cases are pending in the District Court. For example, the Debtors have filed virtually every motion on “negative notice,” which is not permitted in the Bankruptcy Court. Likewise, the Debtors have not noticed or held a single interim fee application hearing, hearings which would have been required if these cases were pending in the Bankruptcy Court. Although the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) specifically require at least twenty or twenty-five days notice in some circumstances, the Motion is not one of those circumstances and the twelve days notice period is appropriate under the Bankruptcy Rules and the District Court Local Rules. See Fed. R. Bankr. 2002(a)-(b).

11. Equally significant, although the Debtors allege due process violations, they have failed to provide a single fact to support the assertion that they do not have sufficient time to respond. The Debtors clearly have had sufficient time to respond – they filed the Emergency Motion three days before the Court-imposed deadline. To make matters clear, the Debtors only need to respond to the relief requested in the Motion, not the Plan.

**B. No “Substantive” Issues Need Be Resolved
Prior to the Hearing on the Motion**

12. In essence, the Emergency Motion is an attempt by the Debtors to further extend exclusivity which expired months ago. Parties in interest now have the right to pursue plans of reorganization, regardless of whether it is supported by the Debtors. With this issue clear, it is a simple matter to dispel each one of the Debtors’ stated concerns.

13. First, the Debtors allege that the Committee may have disclosed confidential information. There is no support for this allegation. There are no less than three separate

documents requiring the Committee and its members to keep certain information provided by the Debtors confidential: (1) the By-Laws of the Official Committee of Unsecured Creditors; (2) the Confidentiality Agreement between the Debtors and the Committee; and (3) the Nondisclosure Agreement between the Debtors and the Committee (collectively, the "Confidentiality Agreements"). Prior to providing any information, the Debtors required all of the Confidentiality Agreements be executed. Most recently, the Debtors requested that the Committee enter into a Joint Defense Agreement. This new requirement should not be placed as a roadblock to further hamstring the Committee's efforts to pursue a plan of reorganization on its own.

14. The Committee has abided by the Confidentiality Agreements. The Debtors' preference to pursue litigation regarding information it thinks may have been disclosed in connection with a purchase offer rather than to consider the offer itself is the best evidence of the Debtors' true motives. Instead of focusing on the plan or sale process, the Debtors threaten litigation in retaliation for the Committee proposing the Plan. The Committee has repeatedly stressed the need for the Debtors to emerge quickly from bankruptcy – a concern which is well supported by the Debtors' dismal performance while in bankruptcy as reflected in the Debtors' monthly operating reports.¹

¹ The Debtors' reported an EBITDA loss exceeding \$11 million in 2002, with a majority of the loss occurring in the last quarter of the year, including approximately \$2 million of asset writedowns and an increase in their bad debt reserve of approximately \$800,000 in December 2002. This compares to the Debtors' forecast of over \$1.8 million of *positive* EBITDA for the same period. The reported financial results in 2003 continue this trend, with an EBITDA loss for the first quarter exceeding \$1.1 million, compared to the Debtor's forecast of approximately \$300,000 of EBITDA loss for the period. The actual EBITDA loss for the first quarter of 2002 was approximately \$1.6 million, compared to the Debtor's forecasted EBITDA loss of approximately \$900,000. The expected proceeds from the assets to be sold as part of the draft plan of reorganization proposed by the Committee, based on a purchase formula of 80% of net book value for accounts receivable, inventory and property and equipment, and 50% of net book value of other assets thus shrunk from approximately \$24.6 million at June 30, 2002 to approximately \$19.6 million at March 31, 2003, a decline of \$5 million in only 9 months, largely from the Debtor funding its continuous string of operating losses through cannibalization of the company's working capital.

15. Even if there were any issues as to breach of confidentiality – which there are not – the Debtors have failed to provide any reason why this issue would prevent the Motion from being heard on Wednesday. They do not relate to one another: if there has been a breach – and again, there has not – there is nothing in the Committee’s Motion that prevents the Debtors from exercising its rights in this regard.

16. The second alleged “substantive” reason that the Debtors provide is that the Board of Directors has not had time to review the Plan and respond. The Debtors are confusing the issues before the Court. The Committee is not going forward with the Plan on Wednesday. Rather, the Committee is requesting an opportunity to complete its disclosure statement. The Committee notes that the fiduciary duties of this Board of Directors include duties to the unsecured creditors – who support the Plan proposed by the Committee and the relief sought in the Motion.

17. The Continuance Motion fails to address the most basic concerns of the Committee. First, the Debtors allege that they will be prepared to file a plan of reorganization within three weeks. The Debtors made this same allegation in December of 2002 and still has not filed a plan. Nonetheless, if the Debtors desire to pursue an alternative plan of reorganization, they have that right and the creditors, not the Debtors, can decide which plan is more favorable.

18. Second, there is no discussion or reason given why the Debtors are unable to provide the requested documents. The reason of course is implied: the Debtors are attempting to hold onto a right of exclusivity to which they are no longer entitled.

19. Finally, the Committee has alleged that the Debtors, without Court approval, have sold, transferred and/or consigned estate assets outside the ordinary course of business. Instead

of denying this allegation, the Debtors state that they are aware that the Bankruptcy Code prevents such transactions. The Committee, this Court and all parties in interest are entitled to know whether, and to what extent, these transactions took place.

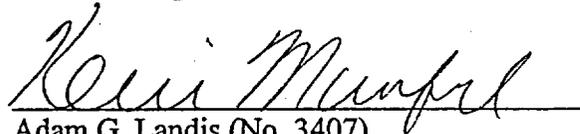
20. As the Debtors have failed to give one colorable basis for a continuance on the Motion, the Committee respectfully requests that the Continuance Motion be denied.

WHEREFORE, the Committee respectfully requests the Court enter an order (i) denying the Continuance Motion, and (ii) granting such other and further relief the Court deems just and proper.

Dated: May 13, 2003

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Counsel to the Official Committee
of Unsecured Creditors

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT

J. Farnan

IN AND FOR THE DISTRICT OF DELAWARE

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IN RE: : CASE NO. 02-10109 (JJF)
FANSTEEL, INC., et al., :
Defendants :

Wilmington, Delaware
Tuesday, April 30, 2002
1:17 o'clock p.m.

BEFORE: HONORABLE JOSEPH J. FARNAN, JR., U.S.D.C.J.

APPEARANCES:

PACHULSKI, STANG, ZIEHL, YOUNG & JONES
BY: ROSALIE SPELMAN, ESQ.

-and-

SHULTE, ROTH & SABLE
BY: MARK BRODY, ESQ.

Counsel for Debtors

DAVID BUCHBINDER, ESQ.
United States Trustee's Office

Counsel for the United States Trustee

Valerie J. Gunning
Official Court Reporter

1 all parties may have an interest in on the waiving their
2 rights going in because we don't know what Congress is
3 going to do. But we understand that there's going to be
4 lots of things they're going to need, pricing, the size
5 of the DIP, all sorts of areas for negotiation, and we
6 hope to have that opportunity to have these negotiations.

7 THE COURT: All right. Here's what we're
8 going to look at here: The driving force behind this bit
9 of financing, in my view, the little bit I've known from
10 being involved in this case and reading the papers, which
11 have all -- all the hearings have gone away, but I've read
12 the papers each time, is that this really to work is there
13 has got to be some involvement with the sale of assets.
14 Otherwise, their case won't work, in my view.

15 But -- and I can be proven wrong, but that's
16 my view.

17 Now, I understand that to get you to that and
18 maybe a plan, you need to show some strength. Otherwise,
19 you're going to be out of business.

20 And I have no problem when I looked at the fees
21 in this case of finding that they're excessive. It costs a
22 lot of money to borrow when you are in this situation,
23 that's the bottom line. And the fact that Congress is the
24 lowest bidder is important in my decision in a sense that
25 at least in a competitive market, that shows that their

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)

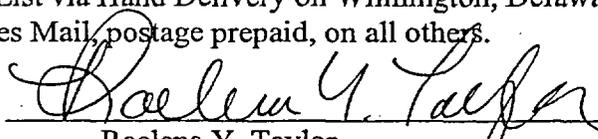
AFFIDAVIT OF SERVICE

STATE OF DELAWARE :
SS:
NEW CASTLE COUNTY :

I, Raelena Y. Taylor, 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 the matter concerning which services of process was made on May 13, 2003 I certify further that the service of the:

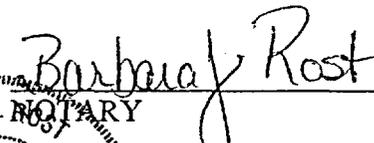
RESPONSE TO THE DEBTORS' EMERGENCY MOTION FOR CONTINUANCE OF THE HEARING DATE ON, AND THE DEADLINE FOR RESPONDING TO, THE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE FILING OF A PLAN OF REORGANIZATION WITHOUT AN ACCOMPANYING DISCLOSURE STATEMENT PURSUANT 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 [RE: D.I. 902]

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.



Raelena Y. Taylor

SWORN AND SUBSCRIBED before me this 13th day of May, 2003.





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File an answer to a motion:

02-10109-JJF Fansteel Inc.

U.S. Bankruptcy Court

District of Delaware

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The following transaction was received from Mumford, Kerri K entered on 5/13/2003 at 4:50 PM EDT and filed on 5/13/2003

Case Name: Fansteel Inc.
Case Number: 02-10109-JJF
Document Number: 905

Docket Text:

Response to Motion *Response to Debtors' Emergency Motion for Continuance of the Hearing Date on, and the Deadline for Responding to, the Motion of the 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 the 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 [Re: Docket No. 902]* Filed by Official Committee of Unsecured Creditors (Attachments: # (1) Exhibit A# Affidavit of Service) (Mumford, Kerri)

The following document(s) are associated with this transaction:

Document description:Main Document

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