

**ORIGINAL**

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

In re:	)	Chapter 11
	)	
FANSTEEL INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 02-10109 (JIF)
	)	(Jointly Administered)
	)	
Debtors.	)	Re: Docket No. 1111

**ORDER UNDER 11 U.S.C. §§ 105, 363 AND 365 AND FED. R. BANKR. P. 6004  
(I) APPROVING BIDDING PROCEDURES AND BREAK-UP FEE IN CONNECTION  
WITH THE PROPOSED SALE OF ASSETS, (II) SCHEDULING A HEARING DATE,  
AUCTION DATE AND BIDDING DEADLINE IN CONNECTION WITH SUCH SALE  
AND THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
LEASES AND (III) APPROVING FORM AND MANNER OF NOTICE THEREOF**

Upon the motion (the "Motion")[Docket No. 1111] of Fansteel Inc. ("Fansteel") and its affiliated debtors and debtors-in-possession (the "Debtors") for entry of (I) an order scheduling a hearing date to approve the bidding procedures and a break-up fee, (II) an order under 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 6004(f) (A) approving bidding procedures (the "Bidding Procedures Order") and a break-up fee in connection with the proposed sale by Fansteel and Phocnix Aerospace Corporation ("Phoenix") (Fansteel and Phoenix collectively, the "Seller") of substantially all of the assets, property and businesses of Phoenix and the divisions of Fansteel known as California Drop Forge, Hydro Carbide-Gulfport and Hydro Carbide-Latrobe ("Fansteel Cal Drop and Hydro Carbide Divisions"), the accounts receivable and inventory of the Fansteel division known as VR/Wesson-Plantsville ("Plantsville Division"), and the equipment and inventory located at Fansteel's facility in Lexington, Kentucky (collectively, the "Purchased Assets"), (B) scheduling a hearing date, auction date, and bidding deadlines and

<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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procedures in connection with the sale of the Purchased Assets, and (C) and approving the form and manner of notice thereof (collectively, "Part I of the Motion"); and (III) an order (the "Sale Order") under 11 U.S.C. §§ 105, 363, 365 and 1146(c) and Fed. R. Bankr. P. 2002(a)(2) and (c)(1), 6004 and 6006, (A) approving an Asset Purchase Agreement among Fansteel, Phoenix and the Proposed Purchaser (as hereafter defined) substantially in the form of the Agreement annexed to the Motion as Exhibit "D" (the "Asset Purchase Agreement"), or a modification thereof if another party is the Successful Bidder, (B) approving the sale of the Purchased Assets to the Proposed Purchaser or such other party making a higher and better offer therefore (the "Successful Bidder"), free and clear of liens, interests, claims, restrictions, encumbrances, encroachments and charges of every kind (except as otherwise provided in the Asset Purchase Agreement), (C) determining that such sale is exempt from any stamp, transfer, recording or similar taxes, and (D) approving the assumption by the Debtors and the assignment to the Successful Bidder of certain pre-petition executory contracts and unexpired leases (collectively, "Part II of the Motion"); and sufficient notice of the Motion having been given; and upon the order, dated August 5, 2003, Scheduling Hearing on Debtors' Motion to Approve Bidding Procedures and Break-Up Fee In Connection With the Proposed Sale of Debtors' Assets (the "Scheduling Order"); and the Scheduling Order having been served on all parties required to be served in accordance with the provisions of the Scheduling Order, and no written objection to the proposed bidding procedures and break-up fee having been interposed; and upon the Supplement to the Motion dated September 3, 2003 (the "Supplement") [Docket No. 1286] and the Asset Purchase Agreement among the Seller and HCA Acquisition, Inc. ("HCA"), CDF Acquisition, Inc. ("CDF"), and HBD Industries, Inc. ("HBD") (HBD, HCA and CDF collectively, the "Proposed Purchaser") substantially in the form of the Agreement attached to the Supplement as

Exhibit "1," and after due deliberation and good cause having been shown, the Court finds as follows:

A. Fansteel and Phoenix negotiated an Asset Purchase Agreement, substantially in the form attached as Exhibit "D" to the Motion, and subsequent to service and filing of the Motion received an unsolicited offer from the Proposed Purchaser to purchase the Purchased Assets for an amount equal to the sum of (i) eighty percent (80%) of the book value of the Receivables (reduced by book reserves for bad debts and credits and discounts granted prior to the Closing in the ordinary course), plus (ii) eighty percent (80%) of the book value of the Inventory (reduced by book reserves for excess and obsolete stock and scrap), plus (iii) fifty percent (50%) of the book value of the Prepaid Items and Deposits, plus (iv) eighty percent (80%) of the book value of the Fixed Assets (reduced by accumulated book depreciation in the ordinary course), plus (v) eighty percent (80%) of the book value of the Transferred Real Property (reduced by accumulated book depreciation) plus (vi) the sum of \$3,850,000 (the "Purchase Price").

B. Proposed Purchaser is prepared to purchase the Purchased Assets as described in the Asset Purchase Agreement. The Proposed Purchaser has committed substantial time and money to the transaction contemplated in the Asset Purchase Agreement.

C. The Asset Purchase Agreement contains a conditional requirement to pay a Break-Up Fee if a Qualified Bid prevails and is approved. The Break-Up Fee is a condition precedent to the effectiveness of the Asset Purchase Agreement. In the absence of such fee, the Proposed Purchaser, as an initial offeror, would be discouraged from making an offer, due to the fear that its initial offer would be "shopped around" and outbid by an entity that would rely upon the due diligence, time, and effort expended by the Proposed Purchaser. The payment of the

Break-Up Fee, if payable under the Asset Purchase Agreement, will not have an adverse impact upon Fansteel, Phoenix, their estates or their creditors. The Break-Up Fee is necessary to convince the Proposed Purchaser to proceed with the transactions contemplated by the Asset Purchase Agreement and thus, commence the bidding process for the sale of the Purchased Assets. The Break-Up Fee is reasonable in relation to the Proposed Purchaser's costs, efforts and risks, and the magnitude of the transactions contemplated in the Asset Purchase Agreement.

D. Good and sufficient notice of the relief sought in Part I of the Motion has been given in accordance with the Scheduling Order and no other or further notice is required. No written objection to the relief sought in Part I of the Motion has been filed or served in accordance with the Scheduling Order.

E. The Debtors' proposed notice of the sale of the Purchased Assets and bidding procedures announcing the Sale and the approval of the bidding procedures is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale of the Purchased Assets and the overbid procedures to be employed in connection therewith.

F. The Debtors have demonstrated a sound business justification for authorizing the payment of the Break-Up Fee to the Proposed Purchaser under the circumstances, timing and procedures set forth in the Motion.

G. The Break-up Fee is fair and reasonable, and was negotiated by the parties in good faith.

H. The payment to the Proposed Purchaser of the Break-up Fee, in the event the Proposed Purchaser is not the Successful Bidder, is (i) an actual and necessary cost of preserving the Debtors' estates, within the meaning of 11 U.S.C § 503(b), (ii) of substantial

benefit to the Debtors' estates, (iii) reasonable and appropriate, in light of the size and nature of the Sale and the efforts that have been and will be expended by the Proposed Purchaser notwithstanding that the proposed Sale is subject to higher or better offers, and (iv) necessary to ensure that the Proposed Purchaser will continue to pursue its proposed acquisition of the Purchased Assets.

I. The entry of this Order ("Bidding Procedures Order") is in the best interests of Fansteel, Phoenix, their estates or their creditors. Accordingly, it is

**ORDERED and ADJUDGED as follows:**

1. The Motion is GRANTED to the extent provided herein.
2. The Debtors shall provide notice by publication of the Sale Hearing date established by this Bidding Procedures Order, substantially in the form of notice which is annexed as Exhibit "1" (the "Notice"). The Debtors shall place the Notice in *The Wall Street Journal* following the date of this Bidding Procedures Order. The Notice shall also be served by regular U.S. mail on all parties entitled to notice under Local Bankruptcy Rule 2002-1.

3. Cure amounts for executory contracts and unexpired leases preliminarily designated for assumption and assignment in accordance with the terms and provisions of the Asset Purchase Agreement shall be listed by the Debtors in a schedule (the "Cure Amounts Schedule") to be filed and served, together with a copy of this Order, by overnight or express mail on counter-parties to the Assumed Agreements no later than ten days prior to the objection deadline for the Sale Hearing. Any non-debtor party to a listed Assumed Contract shall have the right to object in writing to the Cure Amount set forth by the Debtors on the Cure Amounts Schedule in accordance with the procedures set forth in this Order with respect to such Assumed Contract and indicate in its objection the cure amount it believes is required. Any objection to the Cure Amount must be served and filed at least two (2) calendar days prior to the Sale

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Hearing and accompanied by appropriate supporting documentation demonstrating the calculation of the cure amount claimed.

4. If no objection to the Cure Amount is timely received, or if a timely objection is received but is not in compliance with the foregoing requirements, the Cure Amount set forth in the Cure Amounts Schedule shall be controlling, notwithstanding anything to the contrary in any Assumed Agreement, proof of claim (whether formal or informal) or any other document or instrument. If no objection to the Cure Amount is filed in accordance with the foregoing procedures, the non-debtor party to the Assumed Contract shall be barred and permanently enjoined from asserting any amounts in excess of the Cure Amount as a condition to the assumption of such Assumed Contract by the Debtors and its assignment to the Proposed Purchaser or any prevailing Qualified Bidder. Notwithstanding the foregoing, nothing in this order shall affect the rights provided to any non-debtor party to an executory contract by section 365(c) of the Bankruptcy Code.

5. At the Sale Hearing, the Court will consider the Motion to sell the Purchased Assets to the Proposed Purchaser (or any prevailing Qualified Bidder(s)), pursuant to the Asset Purchase Agreement, and any timely objections thereto, in accordance with the procedures approved herein below ("Bidding Procedures"), such that no Qualified Bid(s) will be considered for approval unless it satisfies, at a minimum, each of the following conditions.

#### The Bidding Process

6. The Seller shall (i) determine whether any person is a Qualified Bidder (as defined below), (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) receive offers from Qualified Bidders and (iv) negotiate any offers made to purchase the Purchased Assets (collectively, the "Bidding Process"). Any person who wishes to participate in the Bidding Process must be a Qualified Bidder. Neither the Seller nor its

representatives shall be obligated to furnish any information of any kind whatsoever to any person who is not determined to be a Qualified Bidder. Qualified Bidders shall be given all relevant information pertaining to the Sale. The Seller shall have the right to adopt such other rules for the Bidding Process, which rules will better promote the goals of the Bidding Process and that are not inconsistent with any of the other provisions hereof or of any Court order.

#### Participation Requirements

7. Unless otherwise ordered by the Court for cause shown or as otherwise determined by the Seller, in order to participate in the Bidding Process each person (a "Proposed Bidder") must deliver (unless previously delivered) to the Seller:

- (i) An executed confidentiality agreement in form and substance satisfactory to the Seller; and
- (ii) Current audited financial statements of the Proposed Bidder, or, if the Proposed Bidder is an entity formed for the purpose of acquiring the Purchased Assets, current audited financial statements of the equity holder(s) of the Proposed Bidder, or such other form of financial disclosure acceptable to the Seller and its advisors demonstrating such Proposed Bidder's ability to close a proposed transaction.

8. A "Qualified Bidder" is any Proposed Bidder or multiple Proposed Bidders participating in the Bidding process together that delivers the documents described in subparagraphs (i) and (ii) above, whose financial information demonstrates the financial capability of the Proposed Bidders, either jointly or separately, to consummate the Sale, and that the Seller determines are reasonably likely (based on availability of financing, experience and other considerations) to submit a bona fide offer and to be able to consummate the Sale if selected as the Successful Bidder.

9. Within two business days after a Proposed Bidder delivers all of the materials required by subparagraphs (i) and (ii) above, the Seller shall determine, and shall notify the Proposed Bidder, if such Proposed Bidder is a Qualified Bidder.

**Due Diligence**

10. The Seller may afford any Qualified Bidder the opportunity to conduct a due diligence review. The Seller will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders. The Seller shall not be obligated to furnish any due diligence information after the Bid Deadline (as hereinafter defined). Neither the Seller nor any of its representatives are obligated to furnish any information to any person without prior execution by any party requesting such diligence of an appropriate confidentiality agreement. Bidders are advised to exercise their own discretion before relying on any information provided by anyone other than the Seller or its representatives.

**Bid Deadline**

11. A Qualified Bidder who desires to make a bid shall deliver a written copy of its bid to the Seller, c/o Schulte, Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022, Attn.: Jeffrey Sabin, Esq., not later than 11:00 a.m. (EST) on the date which is three Business Days prior to the date scheduled by the Court for the Sale Hearing (the "Bid Deadline"). The Seller will immediately distribute by facsimile transmission, personal delivery or reliable overnight courier service in accordance with the Asset Purchase Agreement, a copy of each bid upon receipt to counsel for the Proposed Purchaser. The Seller may, in its discretion, extend the Bid Deadline once or successively, but is not obligated to do so. The Seller shall announce the terms of the highest and best Qualified Bids received by the Bid Deadline by 5:00 p.m. (prevailing eastern time) on that date.

**Bid Requirements**

12. For the purposes of determining the existence of a bid, a bid may be in the form of a joint bid from more than one Qualified Bidder, or may be in the form of separate bids

from more than one Qualified Bidder, with each such separate bid being for a portion of the Purchased Assets, but all of such separate bids collectively aggregating a bid price having a value greater than or equal to the sum of (x) the value, as reasonably determined by the independent financial advisor of the Seller, of the Proposed Purchaser's offer plus (y) other than where the Proposed Purchaser makes a bid, the amount of the Break-Up Fee (as defined below) plus (z) (A) in the case of the initial Qualified Bid, \$150,000, and (B) in the case of any subsequent Qualified Bids, \$40,000 plus the amount by which the preceding Qualified Bid exceeds the sum of (x) plus (y) above. All bids must include the following documents (the "Required Bid Documents"):

- a letter stating that one or more Qualified Bidders offer to purchase all or a portion of the Purchased Assets and that such offer is irrevocable until two (2) business days after the Purchased Assets have been disposed of pursuant to these Bidding Procedures;
- a statement by each Qualified Bidder that it is prepared to enter into and consummate the Sale as soon as practicable but in no event more than thirty-one (31) days after entry by the Court of the Sale Order;
- an executed copy of the Asset Purchase Agreement, together with all Exhibits and Schedules thereto (the "Definitive Sale Documentation") marked and initialed to show those amendments and modifications to such agreement that the Qualified Bidder proposes, including, but not limited to, price and the time of closing;
- a good faith deposit (the "Good Faith Deposit") in the form of a certified check or other form acceptable to the Seller in its sole discretion payable to the order of the Seller (or such other party as the Seller may determine) in an amount equal to \$500,000. All Qualified Bidders shall enter into an escrow agreement as directed by the Seller; and
- written evidence of a commitment for financing or other evidence of ability to consummate the proposed transaction satisfactory to the Seller.

13. The Seller will consider a bid only if the bid is on terms that are not conditioned on obtaining financing or on the outcome of unperformed due diligence by the

bidder. A bid received from a Qualified Bidder that includes all of the Required Bid Documents and meets all of the above requirements is a "Qualified Bid."

14. If the Seller does not receive any Qualified Bids, the Seller will report the same to the Court and will proceed with a sale and assignment of the Purchased Assets to the Proposed Purchaser pursuant to the terms of the Asset Purchase Agreement. The Asset Purchase Agreement executed by the Proposed Purchaser shall constitute a Qualified Bid for all purposes.

#### Bid Protection

15. The payment of the Break-Up Fee is hereby approved.

#### Auction

16. If the Seller receives a Qualified Bid, the Seller will conduct an auction (the "Auction") at the offices of Schulte, Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022, on the date that is one Business Day prior to the date scheduled by the Court for the Sale Hearing, beginning at 11:00 a.m. (EST) or such later time or other place as the Seller shall notify all Qualified Bidders who have submitted Qualified Bids. Only the Proposed Purchaser, the Seller, the Committee and any Qualified Bidders who have timely submitted Qualified Bids shall be entitled to attend the Auction, and only the Proposed Purchaser and Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction. During the Auction, bidding shall begin initially with the highest Qualified Bid and continue in minimum increments of at least \$40,000 higher than the previous Qualified Bid. Bidding at the Auction will continue until such time as the highest and best Qualified Bid is determined. The Seller may announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent overbids) for conducting the Auction so long as such rules are not inconsistent with these Bidding Procedures.

17. Upon conclusion of the Auction, the Seller, in consultation with its financial and business advisors shall (i) review each Qualified Bid or bids on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale, and (ii) identify the highest and otherwise best offer for the Purchased Assets (the "Successful Bid"), which highest and best offer will provide the largest amount of net value to the Seller after payment of, among other things, the Break-Up Fee, if necessary. The Seller may adopt rules for the bidding process at the Auction that will better promote the goals of the bidding process and that are not inconsistent with any of the provisions of the Bankruptcy Code, any Court order, or these Bidding Procedures.

#### Acceptance Of Qualified Bids

18. The Seller shall sell the Purchased Assets for the highest or otherwise best Qualified Bid received at the Auction upon the approval of such Qualified Bid by the Court after the hearing (the "Sale Hearing"). The Seller's presentation of a particular Qualified Bid to the Court for approval does not constitute the Seller's acceptance of the bid. The Seller will be deemed to have accepted a bid only when the bid has been approved by the Court at the Sale Hearing.

#### Sale Hearing

19. A hearing to consider that part of the Motion seeking an order (a) approving the Asset Purchase Agreement among Fansteel, Phoenix and the Proposed Purchaser (the "Asset Purchase Agreement") or a modification thereof if another party is the Successful Bidder, (b) approving the sale of the Purchased Assets to the Proposed Purchaser or such other party making a higher and better offer therefore, free and clear of liens, interests, claims, restrictions, encumbrances, encroachments and charges of every kind (except as otherwise

provided in the Asset Purchase Agreement), and (c) approving the assumption by the Debtors and the assignment to the Successful Bidder of certain pre-petition executory contracts and unexpired leases, shall be held before the Honorable Joseph J. Farnan on October 7, 2003 at 12:00 p.m. (EST) at the United States <sup>District</sup> Bankruptcy Court for the District of Delaware, located in Wilmington, Delaware or as soon thereafter as counsel may be heard. Such hearing may be adjourned or rescheduled without further notice by an announcement of the adjourned date at the Sale Hearing.

20. Following the Sale Hearing approving the sale of the Purchased Assets to the Successful Bidder, if such Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, shall be deemed to be the Successful Bid and the Seller shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such bid without further order of the Court.

#### Return Of Good Faith Deposit

21. Good Faith Deposits of all Qualified Bidders (except for the Successful Bidder) shall be held in an interest-bearing escrow account until two (2) days following the Auction. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Seller will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder.

#### Modifications

22. The Seller may (a) determine, which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject at any time before entry of an order of the Court approving a Qualified Bid, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of

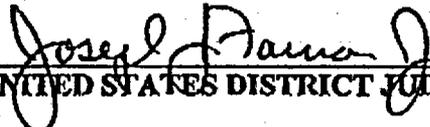
sale, or (iii) contrary to the best interests of the Seller, its estates and creditors. At or before the Sale Hearing, the Seller may impose such other terms and conditions as it may determine to be in the best interests of the Seller's estate, its creditors and other parties-in-interest.

**Objections**

23. All objections to the Sale Motion must be in writing, must state the name of the objecting party, must state the particularity of the reasons and basis for the objection, and must be filed with the Court (with a copy hand delivered to Chambers) and served upon (i) Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022, Attn.: Jeffrey S. Sabin, Esq., attorney for the Debtors, (ii) HBD Industries, Inc., 5200 Upper Metro Place, Suite 110, Dublin, Ohio, Attn: Michael T. Clancey, General Counsel, the Proposed Purchaser, (iii) the Office of the United States Trustee, 844 King Street, Ste. 2207, Wilmington, DE 19801, Attn.: David Buchbinder, and (iv) Freeborn & Peters, 311 South Wacker Drive, Ste. 3000, Chicago, IL 60606-6677, Attn.: Frances Gecker, Esq., counsel for the Creditors' Committee, so that objections are actually received by such persons no later than September 30, 2003 at 5:00 p.m. (EST).

24. The Bankruptcy Court shall retain jurisdiction over any matters related to or arising from the implementation of this Bidding Procedures Order, including, but not limited to, the right to amend this Bidding Procedures Order.

Dated: Wilmington, Delaware  
September 5, 2003

  
UNITED STATES DISTRICT JUDGE