IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
FANSTEEL, INC., et al.;	)	Case No. 02-10109 (JJF)
	)	
Reorganized Debtor.	)	

Objection Deadline: April 22, 2004 at 4:00 p.m.
Hearing Date: April 29, 2004 at 4:30 p.m.

NOTICE OF MOTION OF REORGANIZED DEBTORS FOR ENTRY OF AN ORDER INTERPRETING CONFIRMED PLAN REGARDING PROSECUTION OF AVOIDANCE ACTIONS

TO: Parties required to receive notice pursuant to Del. Bankr. L.R. 2002-1, the Plan Committee, and the Office of the United States Trustee.

Reorganized Debtor Fansteel, Inc., on behalf of itself and Co-Reorganized Debtor Wellman Dynamics Corp. (the "Debtors") filed their Motion of the Reorganized Debtors for Entry of an Order Interpreting Confirmed Plan Regarding Prosecution of Avoidance Actions with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court"). A true and correct copy of the Motion is attached hereto.

Objections and other responses to the relief requested in the Motion, if any, must be in writing and be filed with the Bankruptcy Court no later than 4:00 p.m. Eastern Time on **April 22, 2004.**

Any objections or other responses to the Motion, if any, must also be served so that they are received not later than **April 22, 2004** at 4:00 p.m. Eastern Time, by co-counsel for the Debtors, (i) Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C., 919 North Market Street, Suite 1600, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801) (Attn: Laura Davis

BKRP01

Jones, Esquire) and Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C., 10100 Santa Monica Blvd., 11th Floor, Los Angeles, CA 90067-4100 (fax number 310-201-0760) (Attn: Steven J. Kahn, Esquire); and (ii) Schulte, Roth & Zabel, LLP, 919 Third Avenue, New York, NY 10022 (Attn: Jeffrey S. Sabin, Esquire).

IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

IN THE EVENT THAT ANY OBJECTION OR RESPONSE IS FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, A HEARING ON THE MOTION WILL BE HELD BEFORE THE HONORABLE JOSEPH J. FARNAN, JR. AT THE UNITED STATES

DISTRICT COURT FOR THE DISTRICT OF DELAWARE ON APRIL 29, 2004 AT 4:30 P.M. EASTERN TIME.

Dated: April 5, 2004

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MOTION OF REORGANIZED DEBTORS FOR ENTRY OF AN ORDER INTERPRETING CONFIRMED PLAN REGARDING PROSECUTION OF AVOIDANCE ACTIONS

Fansteel, Inc., on behalf of itself and its co-Reorganized Debtor Wellman Dynamics Corp. hereby moves this Court for entry of an order interpreting confirmed plan regarding prosecution of avoidance actions. In support of this Motion, the Debtors respectfully represent as follows:

INTRODUCTION AND BACKGROUND FACTS

1. This Motion is necessitated by the inability of the Reorganized Debtors to reach agreement with the Plan Committee representative of Holders of General Unsecured Claims ("Creditors' Representative") to provide a solution related to the respective entitlements of the Reorganized Debtors and the Holders of Allowed General Unsecured Claims to proceeds of settlements of Avoidance Actions filed prior to the Effective Date of January 23, 2004.

2. The statute of limitations for the filing of Avoidance Actions expired on January 15, 2004, prior to the Effective Date. By reason thereof, prior to the Effective Date the

Debtors commenced Avoidance Actions against 92 parties who received preferential transfers totaling over $6 million in the aggregate, after consultations with the Creditors' Committee.

3. As a result of the Amended Plan becoming effective on January 23, 2004, Holders of Allowed General Unsecured Claims became entitled to a pro rata distribution of cash, a pro rata distribution of New Fansteel common stock and 70% of Avoidance Action Cash.[1] A distribution of cash in the amount of approximately 39.675% of the face value of allowed general unsecured claims has been made to those creditors. Subject only to the obligation to distribute 70% of the Avoidance Action Cash to Holders of Allowed General Unsecured Claims, pursuant to Article IV.G. of the Amended Plan, the Reorganized Debtors retained the exclusive right to enforce, sue on, settle, or compromise (or to decline to do any of the foregoing all Avoidance Actions, in accordance with the best interests of the Debtors. Pursuant to Article XIV.B. of the Amended Plan, the rights of the Plan Committee[2] are solely to assist and advise the Reorganized Debtors in pursuing or determining not to pursue, any and all of the Avoidance Actions.

4. Two other important things occurred upon the Amended Plan becoming effective. The Reorganized Debtors filed objections to the claims of Avoidance Action Defendants pursuant to 11 U.S.C. § 502(d), and established a cash reserve (of approximately $897,000) against those claims, equivalent to the percentage distributed to allowed general

[1] Article I.B.xiii defines Avoidance Action Cash as "the aggregate amount of Cash recovered by the Debtors or Reorganized Debtors, as the case may be, from the prosecution, settlement, or other resolution of the Avoidance Actions, net of all transaction costs (including, but not limited to, attorneys' fees and expenses) incurred in connection therewith.

[2] As of the Effective Date, the Creditors' Committee was disbanded and the Plan Committee was formed, whose members currently consist of the Creditors' Representative and a representative of the Reorganized Debtors, as the PBGC, to date, has declined to serve as a member.

unsecured claims. Secondly, as required under the terms of the Amended Plan, cash reserves were established totaling $2,384,338.14 so as to fund the payment of potential 11 U.S.C. § 502(h) claims which might be filed by the Avoidance Action defendants as a result of settlements or judgments collected upon in the Avoidance Actions (the "502(h) Reserve").

5. When one refers to the definition of Avoidance Action Cash in the Amended Plan, it is defined as Cash "recovered" by the Reorganized Debtors from the prosecution, settlement, or other resolution of the Avoidance Actions, net of all transaction costs (including, but not limited to, attorneys' fees and expenses) incurred in connection therewith. The Reorganized Debtors require the Court to define the meaning of the term "recovered" because a dispute has arisen between the Reorganized Debtors and the Creditors' Representative over the meaning of that term.

6. In the course of settlement discussions with Avoidance Action Defendants, a number of Defendants have offered the relinquishment of the right to receive payment of cash distributions on their general unsecured claims and/or their right to assert a claim arising under 11 U.S.C. § 502(h) as full or partial consideration for dismissal of the adversary actions, either by way of a waiver of their right to cash or an assignment of their right to cash. Because of the substantial value of the general unsecured claims and potential 11 U.S.C. § 502(h) claims, such relinquishments of the right to cash payment either through assignment or waiver, constitute a major component of such settlement offers.

7. Because an assignment to the right of a cash distribution or waiver thereof constitutes a "recovery" of Cash, the Reorganized Debtors believe that they are entitled to (1) reimbursement for expenses related to such actions and (2) a 30% share of those

recoveries after deduction of expenses as provided in the Amended Plan. However, the Creditors' Representative contends that the phrase "recovery" should be read so as to relate solely to "new" money paid out of an Avoidance Action defendant's own pocket, and not assignments or waivers of the defendant's right to cash as represented by their claims and potential claims, and that 100% of the benefit should devolve directly to the general unsecured creditors regardless of the expenses incurred to obtain such recoveries. Cash being fungible, the Creditors' Representative's argument effectively eliminates what the Reorganized Debtors bargained for.

8. Although the Reorganized Debtors believe that such recoveries should be treated as Avoidance Action Cash, in an effort to resolve the dispute with the Creditors' Representative, the Reorganized Debtors offered to allow the general unsecured creditors to retain the benefit of all cash recovered through relinquishment of the rights to receive cash, so long as the general unsecured creditors made available to the Reorganized Debtors unused funds within the Section 502(h) Reserve to pay any and all expenses connected with the prosecution of the Avoidance Actions which may not be recompensed through recoveries of cash independent of claim waivers. The Creditors' Representative refused this offer and continues to assert that Holders of Allowed General Unsecured Claims are entitled to the totality of cash recoveries resulting from the relinquishment or assignment of a defendant's right to receive cash by reason of its proof of claim.

9. The primary purpose of this Motion is to make sure that the Amended Plan is interpreted correctly and fairly. Although the Reorganized Debtors believe that they will ultimately recover significant amounts in prosecution of the Avoidance Actions, as in any

litigation, the Reorganized Debtors are concerned that they may not generate enough cash under the interpretation of the Amended Plan advanced by the Creditors' Representative. Abandoning the Avoidance Actions would harm both the Holders of Allowed General Unsecured Claims and the Reorganized Debtors new shareholders. However, the risk of a shortfall under the interpretation of the Creditors' Representative is real.

10. Finally, the Amended Plan provides that all of the expenses associated in connection with the Avoidance Actions are to be paid out of Avoidance Action recoveries. (See definition of Avoidance Action Cash at page 5, footnote 2). Further, the Amended Plan defines Avoidance Actions at Article I.B.15 as, "the debtors' causes of action for any avoidance or recovery action . . . whether or not the litigation has been commenced with respect to such causes of action as of the Effective Date." The Reorganized Debtors interpret this provision to mean that all expenses are to be paid, including expenses which were required to be incurred before the Effective Date of January 23, 2004, because the statute of limitations for filing the Avoidance Actions ran on January 15, 2004. The Creditors' Representative interprets this provision to exclude expenses connected with the commencement and prosecution of the Avoidance Actions incurred before the Effective Date. The Reorganized Debtors therefore are forced to request that the Court also interpret the meaning of those provisions in the Amended Plan.

JURISDICTION

11. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334, Article XI.7 and 8 of the confirmed Amended Plan. This matter is a core proceeding within the

meaning of 28 U.S.C. § 157(b)(2)(A), (B) and (O). The statutory bases for the relief requested herein is section 105(a) of the Bankruptcy Code.

BACKGROUND

12. On January 15, 2002 (the "Petition Date"), the Debtors each filed with this Court a voluntary petition for relief under 11 U.S.C. §§ 101 et seq., as amended. The Debtors thereafter continued to operate their businesses and manage their affairs as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Debtors' chapter 11 cases (together, the "Cases"). The Creditors' Committee was appointed in these Cases on January 28, 2002.

13. On July 24, 2003, the Debtors and the Creditors' Committee filed, as co-proponents, their proposed Joint Reorganization Plan for Fansteel Inc. and Subsidiaries. Thereafter, on September 18, 2003, the Amended Joint Reorganization Plan (hereafter, the "Plan") was filed with this Court, together with the First Amended Disclosure Statement for the Plan (the "Disclosure Statement"). On September 30, 2003, the Court entered an order approving the Disclosure Statement as containing "adequate information" within the meaning of 11 U.S.C. §1125(a)(1) and scheduled the hearing on confirmation of the Plan.

14. On December 23, 2003, the Court entered an order (the "Confirmation Order") confirming the Amended Plan and adopting all of the Court's previous findings of fact and conclusions of law set forth in the earlier confirmation order. The Effective Date (as that term is defined in the Amended Plan) occurred on January 23, 2004.

THIS COURT HAS THE POWER AND AUTHORITY TO RESOLVE CONFLICTS AND AMBIGUITIES IN THE PLAN

15. Section 105(a) of the Bankruptcy Code provides that a Bankruptcy Court may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105(a). The United States Supreme Court recognizes that Bankruptcy Courts have broad statutory and equitable powers to modify creditor-debtor relationships. U.S. v. Energy Resources Co., Inc., 495 U.S. 545, 549,110 S. Ct. 2139, 2142 (1990) (citations omitted). Additionally, "the bankruptcy court has authority to take any action or make any determination necessary or appropriate to enforce or implement orders." Beal Bank, S.S.B. v. Jack's Marine, Inc., 201 B.R. 376, 379 (E.D. Pa. 1996) (citations omitted).

16. Article XI. 7 and 8 of the Amended Plan provide, in pertinent part, that this Court retains jurisdiction post-Effective Date to "enter such orders as may be necessary and appropriate to implement or consummate the provisions of the Plan," and to "hear and determine disputes arising in connection with the interpretation, implementation, consummation or enforcement of this Plan."

17. The Confirmation Order finds that this Court "shall retain jurisdiction over the matters set forth in Article XI of the Plan, the other provisions of this Confirmation Order, and sections 1142 and 105 of the Bankruptcy Code."

18. The Reorganized Debtors seek a clarification, not a modification, of the Plan. Recently this Court stated that "although 'modification' is not defined in the Bankruptcy Code, courts that have analyzed the issue of whether a subsequent change to a confirmed plan

of reorganization constitutes a 'modification' distinguish between the court's inability to 'modify' a plan and their ability to 'clarify a plan where it is silent or ambiguous', [sic] and/or "'interpret' plan provisions to further equitable concerns.'" Cohen v. TIC Financial Systems (In re Ampace Corp.), 279 B.R. 145, 152-53 (Bankr. D. Del. 2002) (citations omitted). See Terex Corp. v. Metropolitan Life Insurance Co. (In re Terex Corp.), 984 F. 2d 170, 173 (6th Cir. 1993) (award of interest under equitable powers of Bankruptcy Court was an interpretation of the plan, not a modification); State Government Creditors' Committee for Property Damage Claims v. McKay (In re Johns-Manville Corp.), 920 F.2d 121, 128 (2d Cir. 1990) ("Section 1127 does not define the term 'modification,' nor does the definitional section (§ 1101) of chapter eleven.") Cf. 11 U.S.C. § 1127(b) ("The proponent of the plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan," subject to the requirements set forth in such section).

19. These powers include the Bankruptcy Court's power to clarify a chapter 11 plan that has been confirmed and substantially consummated. U.S. v. APT Industries, Inc., 128 B.R. 145, 147 (W.D.N.C. 1991) ("the Supreme Court has found on facts essentially the same as the facts in this case that Bankruptcy Courts have the authority to issue Orders like the one issued" in that case, which "clarified a plan where it had been previously silent." "The Court does not believe such an Order amounts to a modification" of a substantially consummated plan.), citing Energy Resources, 495 U.S. at 549, 110 S. Ct. at 2142 (Bankruptcy Courts have broad statutory and equitable powers).

20. Courts have held that changes to plan terms in certain circumstances do not constitute modifications of a plan. See Beal Bank, 201 B.R. at 380 (extension of payment deadline under plan is not a modification), citing Johns-Manville Corp., 920 F.2d at 129 (temporarily suspending operation of claims resolution facility established under plan was not a modification, where "[I]t is clear that when the plan was adopted the parties were embarking into unknown territory and that the operations of the Manville claims facility might require adjustments and changes as additional knowledge and experience were gained."). Accord Foulston v. Harness (In re Harness), 218 B.R. 163, 166 (D. Kan. 1998) (imposition of newly-enacted U.S. Trustee's fees were not a post-substantial consummation modification of chapter 11 plans); In re Postconfirmation Fees, 224 B.R. 793, 797 (Bankr. E.D. Wash. 1998) (same).

RELIEF REQUESTED

21. Pursuant to Article IV.G of the Amended Plan, the Reorganized Debtors retain the exclusive right to enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all Litigation Claims, including Avoidance Actions, in accordance with the best interests of the Reorganized Debtors, subject to the obligation to distribute to Holders of Allowed General Unsecured Claims, on a pro rata basis, 70% of all Avoidance Action Cash.

22. Article I.B.22 of the Amended Plan defines Cash as "cash and cash equivalents, including but not limited to, wire transfers, bank deposits, checks and legal tender of the United States". (emphasis added).

23. Article I.B.14 of the Amended Plan defines Avoidance Action Cash as "the aggregate amount of Cash recovered by the Debtors or Reorganized Debtors, as the case may be, from the prosecution, settlement, or other resolution of the Avoidance Actions, net of

all transaction costs (including, but not limited to, attorneys' fees and expenses) incurred in connection therewith."

24. 11 U.S.C. § 101(5) includes in the definition of a claim, the right to payment.

25. Article XIV.B of the Amended Plan empowers the Plan Committee solely to assist and advise the Reorganized Debtors, in such manner as together determined by the Reorganized Debtors and Plan Committee to be the most efficient and least duplicative of effort, in pursuing or determining not to pursue, any and all of the Avoidance Actions, other litigation and objections to claims. The Creditors' Representative sits on the Plan Committee.

26. In the course of prosecuting the Avoidance Actions, the Reorganized Debtors have received a number of inquiries from defendants that propose to pay a portion or all of their settlement through a relinquishment of their right to a cash distribution on their filed or scheduled claims and/or the right to file 11 U.S.C. § 502(h) claims through either a waiver or assignment of those rights to cash. Such relinquishments of cash should be deemed a "recovery" of cash subject to the 70/30 split between the general unsecured creditors and the Debtors and the expense reimbursement provisions in Article IV.G. of the Amended Plan. However, the Creditors' Representative interprets the word "recovery" to not include such cash value and that (1) the Holders of Allowed General Unsecured Claims should receive one hundred percent (100%) of the value of the relinquished claims (whether by waiver or assignment), and (2) the Reorganized Debtors should receive nothing, despite having incurred legal and related expenses in prosecuting those Avoidance Actions recoveries. It is submitted that such a result would be in contravention of the clear intent of the Amended Plan, which

contemplates a 30/70 split of Avoidance Action recoveries between the Reorganized Debtors and Holders of Allowed General Unsecured Claims.

27. The cash value represented by the relinquished claims should be treated as Avoidance Action Cash under the Amended Plan because that value would not be recovered but for the successful prosecution by the Reorganized Debtors of an Avoidance Action to settlement. The net benefit of that recovery should therefore be divided seventy percent (70%) to the Holders of Allowed General Unsecured Claims and thirty percent (30%) to the Reorganized Debtors. The end result is that the Reorganized Debtors generated a recovery of cash, whether in the form of an out-of-pocket contribution by an Avoidance Action defendant or the defendant's right to receive cash.

28. As the Amended Plan contemplates that both the Reorganized Debtors and Holders of Allowed General Unsecured Claims separately benefit from recoveries obtained through the prosecution of Avoidance Actions, the relief requested herein fulfills the contemplated goals of the Amended Plan in that regard. If the Amended Plan is interpreted such that Holders of Allowed General Unsecured Claims are permitted to retain all of the benefit generated by reason of the Reorganized Debtors' prosecution of the Avoidance Actions resulting, in part, in the relinquishment of claims, then the Debtors would suffer an unjust result. As relinquishment of claims which may otherwise be entitled to a cash recovery in effect constitutes a cash recovery from prosecution of the Avoidance Actions, the distribution of the relinquished claim should properly be apportioned seventy percent (70%) to the Holders of Allowed General Unsecured Claims and thirty percent (30%) to the Reorganized Debtors.

29. Finally, because the Amended Plan provides that all expenses incurred in connection with the Avoidance Actions be paid from recoveries resulting from the prosecution of the Avoidance Actions, those expenses should include costs incurred before the Effective Date. Indeed, because the statute of limitations expired on January 15, 2004, before the Effective Date, the Debtors had no choice but to incur expenses in advance of the Effective Date. Further, the Plan contemplated that expenses would be incurred pre-Effective Date by defining Avoidance Actions as including actions filed before the Effective Date. The Creditors' Representatives' contrary interpretation should not be countenanced.

NOTICE

30. Notice of this Motion has been given to (i) the United States Trustee for the District of Delaware; (ii) the Plan Committee, and (iii) all parties requesting notice pursuant to Bankruptcy Rule 2002.

NO PRIOR REQUEST

31. No prior motion for the specific relief requested herein has been made to this or any other Court.

WHEREFORE, the Reorganized Debtors respectfully request that the Court enter an Order interpreting the Amended Plan such that (i) the cash value of claims (whether by waiver or assignment) relinquished by Avoidance Action defendants be treated as Cash and be distributed as provided in the Amended Plan thirty percent (30%) to the Reorganized Debtors and seventy percent (70%) to the Holders of Allowed General Unsecured Claims on a pro rata basis net of

expenses, and (ii) expenses incurred in relation to the Avoidance Actions which may be deducted from Avoidance Action recoveries include those expenses incurred prior to the Effective Date.

Dated: April 8, 2004

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FANSTEEL

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FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
FANSTEEL, INC., et al.,[1]	)	Case No. 02-10109 (JJF)
	)	
Reorganized Debtors.	)	[Re: Docket No. _____]

ORDER DIRECTING DISPOSITION OF DISALLOWED CLAIMS OF RELINQUISHED CLAIMS ARISING UNDER 11 U.S.C. § 502(H)

Upon consideration of the motion (the "Motion") of the Debtors[2] for the entry of an order interpreting confirmed plan regarding prosecution of avoidance actions; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334, and that this matter is a core matter pursuant to 28 U.S.C. § 157(b)(2); and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors and their creditors; and it appearing that due notice of the Motion has been given to: (i) the United States Trustee; (ii) the Plan Committee; and (iii) all parties that have requested such notice pursuant to Bankruptcy Rule 2002, and that no further notice need be given; and after due deliberation and sufficient cause appearing therefor;

[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., and American Sintered Technologies, Inc.

[2] Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion and the Second Amended Joint Plan of Reorganization of the Debtors.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.

a. The cash value of claims relinquished by Avoidance Action defendants (whether by waiver or assignment) shall be deemed Cash, and after deduction of expenses incurred in connection with the Avoidance Actions, shall be subject to distribution pursuant to the terms of the Amended Plan, 70% to the Holders of Allowed General Unsecured Claims and 30% to the Reorganized Debtors.

b. The Reorganized Debtors may deduct expenses incurred in connection with the Avoidance Actions, including those incurred prior to the Effective Date, from Cash recoveries generated from prosecution of the Avoidance Actions.

Dated: _____, 2004

_____
HONORABLE JOSEPH J. FARNON, JR
UNITED STATES DISTRICT JUDGE