IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Case No. 02-10109 (JJF)
	)	
FANSTEEL INC., *et al.*,	)	Chapter 11
	)	(Jointly Administered)
Reorganized Debtors.	)	**Related Docket No.: 2168, 2183**

Hearing Date: April 29, 2004 at 3:30 p.m.

MOTION OF REORGANIZED DEBTORS FOR LEAVE TO FILE A REPLY TO OBJECTION OF NORTHERN TRUST COMPANY AND M & I BANK TO MOTION OF REORGANIZED DEBTORS FOR ENTRY OF AN ORDER INTERPRETING CONFIRMED PLAN REGARDING PROSECUTION OF AVOIDANCE ACTIONS

Reorganized Debtor Fansteel, Inc., on behalf of itself and Co-Reorganized Debtor Wellman Dynamics Corp. (the "Reorganized Debtors") hereby move the Court for leave to file their reply to the to the Objection of the Northern Trust Company and M & I Bank (the "Objecting Creditors") to the Motion of Reorganized Debtors for Entry of an Order Interpreting Confirmed Plan Regarding Prosecution of Avoidance Actions ("Objection") (Docket No. 2168). In support thereof, the Debtors respectfully state as follows:

1. On April 8, 2004, the Reorganized Debtors filed their Motion for Entry of an Order Interpreting Confirmed Plan Regarding Prosecution of Avoidance Actions.

2. On April 22, 2004, the Objecting Creditors filed their Objection (Docket No. 2183).

3. The Objection makes various arguments to which the Debtors wish to reply in order to fully advise the Court as to the Debtors' position with respect to such arguments and applicable law.

BKRP01

4. Del. Bank. LR 9006-1(d) provides that "no reply papers shall be filed unless ordered by the Court."

WHEREFORE, the Reorganized 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: April 27, 2004

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Counsel for Fansteel Inc., et al.,
Debtors and Reorganized Debtors

SO ORDERED this ___ day of _____, 2004

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

EXHIBIT "A"

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
FANSTEEL, INC., et al.,	)	Case No. 02-10109 (JJF)
	)	Re Docket Nos. 2168, 2183
Reorganized Debtors.	)	

Objection Deadline: April 22, 2004 at 4:00 p.m.
Hearing Date: April 29, 2004 at 3:30 p.m.

REPLY OF REORGANIZED DEBTORS TO OBJECTION OF NORTHERN TRUST COMPANY AND M & I BANK TO MOTION OF REORGANIZED DEBTORS FOR ENTRY OF AN ORDER INTERPRETING CONFIRMED PLAN REGARDING PROSECUTION OF AVOIDANCE ACTIONS

Reorganized Debtor Fansteel, Inc., on behalf of itself and Co-Reorganized Debtor Wellman Dynamics Corp. (the "Reorganized Debtors") herein reply to the Objection of the Northern Trust Company and M & I Bank (the "Objecting Creditors") to the Motion of Reorganized Debtors for Entry of an Order Interpreting Confirmed Plan Regarding Prosecution of Avoidance Actions ("Objection"), and represents as follows:

REPLY

1. The Objection filed by Objecting Creditors misstates pertinent facts and mischaracterizes both the Reorganized Debtors' motivations and the effect of their interpretation of the Amended Plan.[1]

2. The Objection incorrectly states that the Debtors prepared an exhaustive series of preference analyses "long before they began pursuing the Avoidance Actions," and that

[1] All capitalized terms used herein shall have the same meanings ascribed to them in the Motion of Reorganized Debtors for Entry of an Order Interpreting Confirmed Plan Regarding Prosecution of Avoidance Actions (the "Motion").

these analyses "foretold" that creditors were likely to waive their claims rather than to pay cash to settle preferences. It is inferred that the Debtors were aware of these facts at the time of drafting the original Plan and the Amended Plan and Disclosure Statements, and did not provide for that eventuality in the Amended Plan or Disclosure Statement.

3. However, the fact is that the Amended Plan provisions relating to the 70/30 split of Avoidance Action Cash Recoveries first appeared in a prior version of the Plan filed with the Court back on July 24, 2003. It was not until late December, 2003, nearly five months later, that the Debtors first developed a meaningful list of potential preference defendants and analyses of those claims, and those analyses were promptly shared with the Creditors' Committee beginning on December 30, 2003. The avoidance actions were filed within two weeks thereafter so as to meet the statute of limitations deadline of January 15, 2004. Indeed, the joint Disclosure Statement of the Debtors and the Creditors Committee, having no meaningful basis upon which to value Avoidance Action Cash recoveries, made clear to creditors that their potential recoveries estimated in the Disclosure Statement, as approved on September 30, 2003, excluded any potential recovery from Avoidance Actions.

4. The essence of the dispute before the Court involves Article I.B.14 of the Amended Plan, which 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 transaction costs (including, but not limited to, attorneys fees and expenses) incurred in connection therewith."

5. Whether the terms of the Amended Plan are unambiguous or ambiguous, the interpretations of the Reorganized Debtors and the Objecting Creditors are wholly divergent.

6. The Reorganized Debtors believe that the Amended Plan is clear and unambiguous because Cash is ***recovered*** from the settlement of an Avoidance Action either through "new cash" contributed by an Avoidance Action defendant or that defendant's waiver or assignment to the Reorganized Debtors of its right to receive a Cash distribution on its claim.

7. However, to the extent that the terms of the Amended Plan can be deemed ambiguous in this regard, it should noted that, as set forth above, at the time those Plan provisions were drafted, ***neither*** the Debtors nor the Creditors' Committee had ***any*** conception of what the Avoidance Action claims would look like, either in terms of amount of the Avoidance Action claims or the amount of any unsecured claims that might be held by potential Avoidance Action defendants. The Amended Plan is silent as to the treatment of funds utilized by Avoidance Action defendants who seek to utilize the Cash value of their claims in settlement of the Avoidance Actions. Nonetheless, the Amended Plan clearly contemplates that Avoidance Action ***recoveries*** be split 70/30 after deduction of expenses.

8. Consistent with the Amended Plan, and on notice to the Plan Committee, the Reorganized Debtors, in connection with their initial distribution to creditors, set up reserves for the potential "new claims" (11 U.S.C. § 502(h) claims) that could arise as a result of the settlement or adjudication of the Avoidance Actions.

9. The Objecting Creditors mischaracterize the Reorganized Debtors intentions when they state that the Reorganized Debtors are trying to greedily "invade the sale proceeds set aside for creditors." This is simply not true. The fact of the matter is that any

moneys reserved from the initial distribution to general unsecured creditors represent only two things: first, 39.675% of the face value of filed or scheduled claims held by Avoidance Action defendants; and second, 39.675% of the gross value of potential 11 U.S.C. § 502(h) claims which may be asserted by those defendants. The Cash value of those reserves was *not* established to benefit the entire body of general unsecured creditors. Rather, the reserves were established to benefit the specific creditors who are also Avoidance Action defendants. The question before the Court is whether any individual defendant, in settling an avoidance action, can use *its right* to a Cash distribution to pay all or a part of its Avoidance Action liability. Seventy percent of the net amount of the Cash value of the claims utilized in such a fashion would be returned to the general unsecured creditor body.

10. Through its Objection, the Objecting Creditors would have the Reorganized Debtors assume all of the risks in pursuing the Avoidance Actions with no benefit, while the general unsecured creditor body would obtain 100% of the Cash value of the relinquished claims.[2]

11. The risk does exist that "new" cash generated by settlements or judgments entered in the Avoidance Actions will not be sufficient to cover the expenses of prosecuting those actions. There simply should not be a distinction between "new" money paid out of an

[2] In paragraph 16 of the Objection, the Objecting Creditors opine that approximately $1,000,000 of the preference actions are against entities who do not hold claims against the estate, and that even if the Reorganized Debtors collected only 50% of the non-creditor preferences, $500,000 would be available to pay fees and expenses related to prosecution of the Avoidance Actions. This supposition does not take into account ordinary course and new value defenses which may be asserted by those non-creditor defendants, and the fact that the non-creditor defendants would wish to pay a portion of their settlements through waiver of their right to file 11 U.S.C. § 502(h) claims. Hence, even if the $1,000,000 in gross claims were to be settled for $500,000, and the settling defendants, as part of the consideration for their settlements, waived their available 11 U.S.C. § 502(h) claims, even at 39.675%, new cash would total only $301,625.

Avoidance Action defendant's own pocket and assignments of that defendant's right to Cash represented by its claims and potential claims. Both sources represent Cash *recovered* by reason of the prosecution and/or settlement of the Avoidance Actions, and are within the plain meaning of Avoidance Action Cash. Those funds should be split as provided for in the Amended Plan 30% to the Reorganized Debtors and 70% to the general unsecured creditors net of expenses.

12. It is therefore respectfully requested that the court grant the Motion as prayed, fulfilling the clear intent of the Amended Plan.

Dated: April 27, 2004

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