

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>DAN RIVER INC., <i>et al.</i>,</b>	)	<b>Case Nos. 04-__ through 04-__</b>
	)	<b>Jointly Administered</b>
<b>Debtors.</b>	)	
	)	<b>Judge Drake</b>
	)	

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**MOTION OF DEBTORS FOR ORDER GRANTING ADMINISTRATIVE  
EXPENSE STATUS TO DEBTORS' UNDISPUTED OBLIGATIONS ARISING  
FROM THE POSTPETITION DELIVERY OF GOODS ORDERED IN THE  
PREPETITION PERIOD AND AUTHORIZING THE DEBTORS TO  
PAY SUCH OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS**

Dan River Inc. ("Dan River"), The Bibb Company LLC ("Bibb"), Dan River International Ltd. ("Dan River International"), and Dan River Factory Stores, Inc. ("Dan River Stores") (collectively, the "Debtors" or the "Company") file this Motion, respectfully showing the Court as follows:

**Jurisdiction**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Background**

2. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to operate their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

**A. Company Background.**

3. Dan River was founded in 1882 and is a leading designer, manufacturer and marketer of products for the home fashions and apparel fabrics markets. Dan River operates three business segments: home fashions, apparel fabrics, and engineered products.

4. During fiscal 2003, Dan River's home fashions division produced approximately 72 percent of the Company's revenues, generating \$342 million in net sales. Dan River's home fashions products include bedroom furnishings such as comforters, sheets, pillowcases, shams, bed skirts, decorative pillows and draperies. Dan River is an innovator in merchandising home fashions products and introduced the "Bed-in-a-Bag" complete bed ensemble that consists of a comforter with matching sheets, pillowcases, shams, and a dust ruffle. The home fashions products are marketed under the "Dan River" name as well as under private labels of the Company's major retail customers and under licenses from, among others, "Colours by Alexander Julian" and "Lilly Pulitzer." Dan River also markets home fashions products for the juvenile market under a number of licensed names and trademarks, including "Barbie," "Looney Tunes," "Spiderman," and "Scooby Doo" among others.

5. During fiscal 2003, Dan River's apparel fabrics division produced approximately 21 percent of Dan River's total revenues, generating \$102 million in net sales. Dan River's apparel fabrics products include a broad range of high quality woven cotton and cotton-blend fabrics that are marketed primarily to clothing manufacturers.

6. During fiscal 2003, the engineered products division was Dan River's smallest division, and produced 7 percent of Dan River's gross revenue, generating \$34 million in net sales. Dan River's engineered products include coated yarns and woven fabrics that are

manufactured to customer specifications for use in such products as high pressure hoses for the automotive industry, conveyer belts and other industrial applications.

7. The remaining debtors, Bibb, Dan River International, and Dan River Stores are wholly-owned subsidiaries of Dan River. Bibb was acquired by Dan River in 1998, and substantially all of its assets were subsequently transferred to Dan River. In 2001, Bibb was converted to a single member Delaware limited liability company, wholly owned by Dan River. The only remaining assets of Bibb are its environmentally impaired Abbeville facility, and small parcels of raw land with nominal value. Dan River International is a holding company for the Company's international operations.<sup>1</sup> Dan River Stores was formed in 1992. In 2001, Dan River Stores transferred substantially all of its assets to Dan River. The only remaining material assets of Dan River Stores are intercompany receivables and inconsequential leases.

#### **B. The Debtors' Long-Term Debt Structure.**

8. On April 15, 2003, the Debtors completed the refinancing of substantially all of their outstanding long-term debt. The refinancing included the sale, at 95.035 percent of par, of 12-3/4 percent senior notes due 2009 in the aggregate principal amount of \$157 million.

9. In addition, the Debtors entered into a new senior secured credit agreement (the "Credit Agreement") dated April 15, 2003 with Deutsche Bank Trust Company Americas, as Agent, Fleet Capital Corporation, as Syndication Agent, Wachovia Bank, National Association,

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<sup>1</sup> The Company's international operations include the following Mexican entities: Dan River de Mexico, S. de R.L. de C.V. ("DRMEX"), Maquilas Pinnacle, S. de R.L. de C.V. and Adsercorp, S. de R.L. de C.V. (collectively, the "Mexico Companies"). The Mexico Companies are the equivalent of limited liability companies. However, Mexico does not allow single member limited liability companies. Therefore, Dan River owns a one peso interest in DRMEX. The remaining Mexico Companies own a one peso interest in each other. Dan River International owns all remaining interests in the Mexico Companies. Dan River B.V. is a Netherlands corporation that was formed in 2000 as a wholly-owned subsidiary of Dan River International to hold Dan River International's interests in the Mexico Companies. However, those interests were never transferred to Dan River B.V., and Dan River B.V. has nominal assets. Neither Dan River B.V. nor any of the Mexico Companies are debtors in these proceedings.

as Documentation Agent, and the several lenders from time to time party thereto (collectively, the “Lenders”).

10. The Credit Agreement provides for a five-year \$40 million term loan and a \$160 million revolving credit facility. Availability under the revolving credit facility is based upon a borrowing base determined by reference to eligible accounts receivable and inventory. As of the Petition Date, the principal and interest outstanding under the term loan was \$35.85 million, and the principal and interest outstanding under the revolving credit facility was approximately \$75.8 million. In addition, letters of credit in the approximate amount of \$5.05 million were outstanding under the terms of the Credit Agreement, for a total current amount outstanding under the Credit Agreement of approximately \$116.7 million. The Debtors’ obligations under the Credit Agreement are secured by substantially all of the Debtors’ assets.

**C. Events Leading to the Debtors’ Chapter 11 Cases.**

11. In fiscal 2003, the Debtors experienced a significant drop in revenues beginning in the second quarter. Retail sales of the Debtors’ products began to weaken in the second quarter due to a lackluster retail environment in general and inventory adjustments by some of its customers, including its largest customer, Kmart. For fiscal 2003, total revenues were down 22.1 percent compared to the previous year.

12. During the second, third and fourth quarters of fiscal 2003, in response to the drop in sales, the Debtors initiated plans to eliminate approximately \$18 million in annual expenses through the closure and consolidation of manufacturing facilities and a reduction of workforce. Four manufacturing facilities were closed, which eliminated over 850 positions for a total estimated annual savings of \$13.6 million. Approximately 80 managerial and administrative positions were eliminated which reduced annual expenses by over \$4 million. The benefits of

these cost-cutting efforts were not expected to be realized until fiscal 2004, too late to mitigate a continued reduction in gross profit caused by the poor economic environment. The Debtors' gross profit for fiscal 2003 was approximately \$61 million less than their gross profit for the previous year.

13. The Debtors are not the only domestic textile company which has encountered financial problems. Numerous other domestic textile companies such as Burlington Industries, Cone Mills, WestPoint Stevens, Pillowtex, and others have already filed for bankruptcy protection.

14. As a result of the Debtors' financial performance, they failed to meet the maximum leverage ratio covenant contained in the Credit Agreement for the third quarter of 2003. The Debtors and the Lenders entered into an amendment of the Credit Agreement that waived the covenant violation and imposed new requirements for minimum levels of excess availability and monthly operating EBITDA. An additional amendment and waiver to the Credit Agreement was executed in December 2003, waiving certain anticipated defaults resulting from the Debtors' financial performance and imposing additional requirements on the Debtors. Another amendment was executed in January 2004 modifying certain terms of the Credit Agreement. Among other things, the Credit Agreement, as amended, requires the Debtors to deliver to the Agent on March 31, 2004 satisfactory evidence that the Debtors will be in compliance with the financial covenants in the Credit Agreement for the fiscal quarter ending April 3, 2004.

15. The Debtors' sales and profitability have not sufficiently improved to be in compliance with all of the Credit Agreement's financial covenants. As a result, commencing April 1, 2004, the Debtors will be in default under the Credit Agreement. Accordingly, the

Company will no longer have access to the funds necessary to meet its operating expenses and will be faced with a loss of enterprise value if it cannot restructure its debt and obtain additional financing. Therefore, the Debtors have concluded, after consultation with their advisors, that their interests and the interests of their creditors and employees will be best served by a reorganization under Chapter 11 of the Bankruptcy Code.

### **Relief Requested**

16. By this Motion, the Debtors seek the entry of an order: (a) granting the Vendors (defined below) administrative expense priority status under Sections 503(b) and 507(a)(1) of the Bankruptcy Code for undisputed obligations arising from the Outstanding Orders (defined below) for goods that are delivered to, and accepted by, the Debtors subsequent to the Petition Date; and (b) out of an abundance of caution, authorizing the Debtors to satisfy such undisputed obligations to Vendors in the ordinary course of business under Section 363(c) of the Bankruptcy Code.

### **Basis for Relief**

17. In the ordinary operation of the Debtors' businesses, numerous vendors and suppliers provide the Debtors with goods (i.e., supplies and materials) necessary for the operation of their businesses. As of the Petition Date, and in the ordinary course of their businesses, the Debtors had numerous prepetition purchase orders outstanding (the "Outstanding Orders") with trade vendors and suppliers (the "Vendors") for goods necessary for the operation of their businesses. As a consequence of the commencement of the Debtors' Chapter 11 cases, the Vendors may be concerned that delivery of goods after the Petition Date pursuant to prepetition Outstanding Orders will render the Vendors who make such deliveries prepetition general unsecured creditors of the Debtors' estates with respect to such deliveries. Accordingly, Vendors may refuse to ship or deliver goods to the Debtors unless the Debtors issue substitute

purchase orders or obtain an order of the Court providing that all undisputed obligations of the Debtors arising from the postpetition delivery of merchandise subject to prepetition Outstanding Orders are afforded administrative expense status.

18. The relief requested herein will ensure a continuous supply of goods that are indispensable to the Debtors' operations. The Debtors further submit that, pursuant to Section 503(b)(1)(A) of the Bankruptcy Code, the purchase obligations that arise in connection with the postpetition delivery and acceptance of goods, including goods ordered prepetition, are in fact administrative expense priority claims. Thus, the granting of the relief sought herein will not provide the Vendors with any greater priority than they would otherwise have if the relief herein is not granted and will not prejudice any other party in interest. Absent such relief, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide the Vendors with assurance of such administrative priority. The attendant disruption to the continuous flow of goods to the Debtors could result in insufficient supplies and materials with which to provide the products and services bargained for by their customers. Such a disruption could lead to dissatisfied customers, potentially harming customer confidence in the Debtors' ability to conduct their businesses at this critical juncture.

19. Such a request is not unusual in large Chapter 11 cases, and similar relief has been granted by bankruptcy courts in other large Chapter 11 cases. *See, e.g., In re Worldcom. Inc.*, Case No. 02-40188 (Bankr. S.D.N.Y. 2002); *In re Enron Corp. et al.*, Case No. 01-16034 (Bankr. S.D.N.Y. 2001).<sup>2</sup>

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<sup>2</sup> For the Court's convenience, copies of unpublished authorities cited herein are submitted for the Court's consideration in a separate binder.

20. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate and in the best interests of the Debtors, their creditors and all parties in interest.

**Notice**

21. Notice of this Motion has been provided to the Office of the United States Trustee, counsel for the Debtors' pre-petition secured lenders, counsel to the Agent for the Debtors' proposed debtor-in-possession lenders, the indenture trustee for Debtors' senior note holders, and the Debtors' thirty largest unsecured creditors on a consolidated basis. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

**Conclusion**

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein, and granting the Debtors such other and further relief as may be just.

Dated: Atlanta, Georgia  
March 31, 2004

Respectfully submitted,

KING & SPALDING LLP

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PROPOSED ATTORNEYS FOR THE DEBTORS



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>DAN RIVER INC., <i>et al.</i>,</b>	)	<b>Case Nos. 04-__ through 04-__</b>
	)	<b>Jointly Administered</b>
<b>Debtors.</b>	)	
	)	<b>Judge Drake</b>
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**ORDER GRANTING MOTION OF DEBTORS FOR ORDER GRANTING  
ADMINISTRATIVE EXPENSE STATUS TO DEBTORS' UNDISPUTED  
OBLIGATIONS ARISING FROM THE POSTPETITION DELIVERY OF GOODS  
ORDERED IN THE PREPETITION PERIOD AND AUTHORIZING THE DEBTORS TO  
PAY SUCH OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS**

This matter is before the Court on the motion of Dan River Inc., The Bibb Company LLC, Dan River International Ltd., and Dan River Factory Stores, Inc. (collectively, the “Debtors”) for authority to honor certain obligations arising from goods ordered prepetition but received postpetition (the “Motion”).

The Court has considered the Motion, the Declaration of Barry F. Shea in Support of First-Day Applications and Motions, and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been given to the Office of the United States Trustee, counsel for the Debtors’ prepetition secured lenders, the indenture trustee for the Debtors’ senior note holders, counsel to the Agent for the Debtors’ proposed debtor-in-possession lenders, and the Debtors’ thirty largest unsecured creditors on a consolidated basis; that no further notice is necessary; that the relief sought in the motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion is GRANTED.
2. Except as otherwise required by any post-petition financing order or the Debtors' post-petition financing agreement approved by this Court, the Debtors are authorized, but not required, to honor or pay those obligations arising from the postpetition delivery of goods ordered by the Debtors before the Petition Date.
3. The applicable banks and financial institutions that process, honor and pay any and all checks on account of obligations to be paid pursuant to this Order may rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions.
4. Payment of an obligation arising from goods or services ordered postpetition shall not preclude the Debtors from contesting the validity of such amounts claimed to be due.
5. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

**SO ORDERED.**

At Atlanta, Georgia this \_\_\_\_ day of \_\_\_\_\_, 2004.

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W. HOMER DRAKE, JR.  
UNITED STATES BANKRUPTCY JUDGE

Prepared and Presented by:

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