

**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., et al.,</b>	)	<b>Case Nos. 04-__ through 04-__</b>
	)	<b>Jointly Administered</b>
<b>Debtors.</b>	)	
	)	<b>Judge Drake</b>
_____	)	

**MOTION FOR AUTHORITY TO RETAIN BANKRUPTCY MANAGEMENT  
CORP. AS CLAIMS, NOTICING, AND BALLOTING AGENT FOR THE DEBTORS**

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 respectfully request the entry of an order, pursuant to 28 U.S.C. § 156(c), authorizing them to employ Bankruptcy Management Corporation (“BMC”) to, among other things: (a) serve as the Debtors’ noticing agent to mail notices to certain of the estates’ creditors and other parties in interest, (b) provide computerized claims, objection, schedule preparation and balloting database services, and (c) provide expertise and consultation and assistance in claim and ballot processing and with the dissemination of other administrative information related to the Debtors’ Chapter 11 cases.

### **Basis for Relief**

17. Pursuant to 28 U.S.C. § 156(c), this Court is authorized to utilize facilities other than those of the Clerk’s office for the administration of bankruptcy cases, including such matters as giving notice of hearings and orders filed in these Chapter 11 cases, the meeting of creditors pursuant to Section 341 of the Bankruptcy Code and claims bar dates, and providing record-keeping and claims-docketing assistance. For the reasons set forth below, the Debtors believe it is necessary and in the best interest of their creditors and estates to engage BMC to act as outside agent to the Clerk of the Bankruptcy Court to assume full responsibility for the distribution of notices and proof of claim forms and the maintenance, secondary processing, and docketing of all proofs of claim filed in the Debtors’ bankruptcy cases. In addition, in

connection with any plan of reorganization proposed by the Debtors, the Debtors have determined that they will require the services of BMC with respect to the mailing of the Debtors' disclosure statement, plan, and ballots and in maintaining and tallying ballots in connection with the voting on such plan.

18. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be hundreds of entities that the Debtors will be required to serve with various notices, pleadings, and other documents filed in these cases. In consideration of the number of anticipated claimants and parties in interest and the nature of the Debtors' businesses, the Debtors respectfully submit that the appointment of BMC will expedite the distribution of notices and relieve the Clerk's office of the administrative burden of processing such notices.

19. BMC provides comprehensive bankruptcy management services including data processing, noticing, claims processing, and other administrative tasks in Chapter 11 cases. The Debtors wish to engage BMC to send out certain designated notices, maintain claims files and a claims register, assist with schedule preparation and act as voting agent with respect to certain creditors in this case. The Debtors believe that such assistance will expedite service of Rule 2002 notices, streamline the claims administration process, and permit the Debtors to focus on their reorganization efforts. Accordingly, the Debtors' estates, and especially their creditors, will benefit as a result of BMC's experience and cost-effective methods.

20. BMC will, as directed by the Debtors, undertake the actions and procedures provided in the agreement attached hereto as Exhibit A, including, but not limited to, the following:

- (a) Prepare and serve required notices in these Chapter 11 cases, including:

- (i) a notice of the commencement of these Chapter 11 cases and the initial meeting of creditors under Section 341(a) of the Bankruptcy Code;
  - (ii) a notice of the claims bar date;
  - (iii) notices of objections to claims;
  - (iv) notices of any hearings on a disclosure statement and confirmation of a plan or plans of reorganization; and
  - (v) such other miscellaneous notices as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these Chapter 11 cases.
- (b) Within five business days after the service of a particular notice, file with the Clerk's office a certificate or affidavit of service that includes (i) a copy of the notice served, (ii) an alphabetical list of persons on whom the notice was served, along with their address, and (iii) the date and manner of service;
- (c) Maintain copies of all proofs of claim and proofs of interest filed in these cases;
- (d) Maintain official claims registers in this case by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each such claim or interest asserted:
  - (i) the name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
  - (ii) the date the proof of claim or proof of interest was received by BMC and/or the Court;
  - (iii) the claim number assigned to the proof of claim or proof of interest; and
  - (iv) the asserted amount and classification of the claim.
- (e) Implement necessary security measures to ensure the completeness and integrity of the claims registers;
- (f) Transmit to the Clerk's Office a copy of the claims registers on a weekly basis, unless requested by the Clerk's Office on a more or less frequent basis;



- (g) Maintain a current mailing list for all entities that have filed proofs of claim or proofs of interest and make such list available upon request to the Clerk's Office or any party in interest;
- (h) Provide access to the public for examination of the proofs of claim or proofs of interest filed in this case without charge during regular business hours;
- (i) Record all transfers of claims pursuant to Federal Rule of Bankruptcy Procedure 3001(e) and provide notice of such transfers as required by Rule 3001(e), if directed to do so by the Court;
- (j) Comply with applicable federal, state, municipal and local statutes, ordinances, rules, regulations, orders and other requirements;
- (k) Provide temporary employees to process claims, as necessary;
- (l) Promptly comply with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe;
- (m) Provide such other claims processing, noticing, balloting, and related administrative services as may be requested from time to time by the Debtors; and
- (n) Assist, if needed, in the preparation of the Debtors' schedules.

21. In addition to the foregoing, the Debtors seek to employ BMC to assist them with the preparation, mailing and tabulation of ballots of certain creditors for the purpose of voting to accept or reject a plan or plans of reorganization.

22. BMC has substantial experience in the matters upon which it is to be engaged. BMC has provided identical or substantially similar services in other Chapter 11 cases in a variety of jurisdictions, such as Exide Technologies, American Commercial Barge Line LLC, Consecro, Inc., eToys, Inc., Payless Cashways, Teligent, Inc., and Piccadilly Cafeterias. Thus, the Debtors believe that BMC is well-suited to serve as claims, noticing, and balloting agent in these Chapter 11 cases.

23. Annexed hereto as Exhibit B is the declaration of Sean Allen, President of BMC, in which he represents that, upon information and belief, BMC is not connected with the Debtors, their creditors, other parties in interest, the United States Trustee, or any person employed by the Office of the United States Trustee, and that to the best of BMC's knowledge, after due inquiry, it does not hold or represent any interest adverse to the Debtors, their estates, or any class of creditors or equity interest holders with respect to the matters upon which it is to be engaged.

24. Prior to the Petition Date, the Debtors have paid to BMC a total of approximately \$2,450 on account of prepetition services and expenses.

25. BMC's compensation is set forth in the agreement attached hereto. The Debtors respectfully submit that such compensation is reasonable in light of the services to be performed. Furthermore, the Debtors request authorization to compensate BMC for services rendered, without further order of this Court, upon the submission of monthly invoices by BMC summarizing, in reasonable detail, the services for which compensation is sought.

#### **Notice**

26. Notice of this Motion has been provided to the Office of the United States Trustee, counsel for the Debtors' pre-petition secured lenders, the indenture trustee for 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. 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

/s/ James A. Pardo, Jr.

James A. Pardo, Jr.

Georgia Bar No. 561206

Sarah Robinson Borders

Georgia Bar No. 610649

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Fax: (404) 572-5149

PROPOSED ATTORNEYS FOR THE DEBTORS

**EXHIBIT B**

**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., et al.,</b>	)	<b>Case Nos. 04-__ through 04-__</b>
	)	<b>Jointly Administered</b>
<b>Debtors.</b>	)	
	)	<b>Judge Drake</b>
	)	

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**DECLARATION OF SEAN ALLEN IN SUPPORT OF DEBTORS’  
MOTION FOR ORDER APPOINTING BANKRUPTCY MANAGEMENT  
CORPORATION AS CLAIMS, NOTICING, AND BALLOTING AGENT**

I, Sean Allen, hereby state and declare as follows:

1. I am the President of Bankruptcy Management Corporation (“BMC”), Chapter 11 administrative claims consultants and analysts, whose corporate offices are located at 6096 Upland Terrace S., Seattle, WA 98118. I submit this affidavit in support of the Motion (the “Motion”) of Dan River Inc. and its debtor affiliates (collectively, the “Debtors”) for authorization to employ and retain BMC as the official claims, noticing, and balloting agent in the Debtors’ Chapter 11 cases. The facts set forth in this Declaration are personally known to me and, if called as a witness, I could and would testify thereto.

2. As agent and custodian of court records, the services my firm proposes to render to the Clerk and the Debtors include the services described in the Motion.

3. BMC represents, among other things, that:

- (a) it is not employed by the United States and shall not seek any compensation from the United States;

- (b) by accepting employment in the case, it waives any rights to receive compensation from the United States;
- (c) it is not an agent of the United States and is not acting on behalf of the United States;
- (d) it will not misrepresent any fact to the public; and
- (e) it will not employ any past or present employee of the Debtors for work involving the Debtors' Chapter 11 cases.

4. BMC specializes in providing consulting and data processing services to Chapter 11 debtors in connection with claims administration, reconciliation and negotiations, and administration of plan votes. It has provided identical or substantially similar services in other Chapter 11 cases in a variety of jurisdictions such as Exide Technologies, American Commercial Barge Line LLC, Consecro, Inc., eToys, Inc., Payless Cashways, Teligent, Inc., and Piccadilly Cafeterias.

5. To the best of my knowledge, neither BMC nor any employee thereof has any connection with the Debtors, their creditors, other parties in interest, the United States Trustee, or any person employed by the Office of the United States Trustee. To the best of my knowledge, neither BMC nor any other employee thereof, represents any interest adverse to the Debtors' estates with respect to the matters upon which my firm is to be engaged.

6. I anticipate that prior to the Petition Date, the Debtors will have paid to BMC a total of \$2,450 on account of prepetition services and expenses.

7. In performing these services, my firm will charge the rates set forth in the Agreement annexed as Exhibit "A" to the Motion. These rates are at least as favorable as the prices BMC charges in cases in which the firm has been retained to perform similar services.

8. BMC will comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on March 22, 2004, at El Segundo, CA.

/s/ Sean Allen

Sean Allen, President

Bankruptcy Management Corporation

**IN THE UNITED STATES BANKRUPTCY COURT  
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<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 AUTHORIZING THE RETENTION OF  
BANKRUPTCY MANAGEMENT CORPORATION AS CLAIMS,  
NOTICING, AND BALLOTING AGENT FOR THE DEBTORS**

This matter is before the Court on the Motion of Dan River Inc. and its debtor affiliates (collectively, the “Debtors”) for authority to retain Bankruptcy Management Corporation (“BMC”) to act as claims, noticing, and balloting agent in these cases.

The Court has considered the Motion, the Declaration of Barry Shea in Support of First-Day Applications and Motions, the Declaration of Sean Allen in Support of Debtors’ Motion for Order Appointing Bankruptcy Management Corporation as Claims, Noticing, and Balloting Agent, 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’ pre-petition 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 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, subject to any objections filed within twenty days after entry of this Order (the “Objection Deadline”).

2. Subject to any such objections, the Debtors are authorized to retain Bankruptcy Management Corporation (“BMC”) as claims, noticing, and balloting agent to perform the services described in the Motion.

3. If any supplemental declarations are filed and served after the entry of this Order, absent any objections filed within twenty days after the filing and service of such supplemental declarations, BMC’s engagement shall continue as authorized pursuant to this Order.

4. BMC shall not be required to file fee applications with this Court pursuant to Sections 330 and 331 of the Bankruptcy Code on account of the services provided by BMC. BMC shall be compensated by the Debtors on the terms contained in its engagement letter. BMC shall prepare a monthly statement of compensation with this Court and shall serve copies on the Office of the United States Trustee and counsel for any official committee appointed in these cases.

5. Within five days of the entry of this Order, the Debtors shall serve a copy of this Order on the Office of the United States Trustee, counsel for the Debtors’ pre-petition secured lenders, the indenture trustee for the Debtors’ senior note holders, counsel to the Agent for the Debtors’ proposed debtor-in-possession lenders, the Debtors’ thirty largest unsecured creditors on a consolidated basis, and any counsel or party that has filed a notice of appearance or request for notice.

6. Any objection to the relief requested in the Motion shall be filed with the Court, 18 Greenville Street, PO Box 1408, Newnan, Georgia 30263, by the Objection Deadline and



shall be served upon (i) the Office of the United States Trustee, 75 Spring Street, S.W., Room 362, Atlanta, Georgia 30303; and (ii) James A. Pardo, Jr., King & Spalding LLP, 191 Peachtree Street, Atlanta, Georgia 30303, so as to be received by the Objection Deadline. If no objection is timely filed and served, this Order shall be deemed a final order, and no further hearing on the Motion shall be held.

7. 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:

**KING & SPALDING LLP**

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