

**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>
<hr/>	)	

**MOTION FOR AUTHORITY TO (A) MAINTAIN EXISTING BANK ACCOUNTS AND CASH MANAGEMENT SYSTEM, (B) CONTINUE USE OF EXISTING BUSINESS FORMS, AND (C) CONTINUE USE OF EXISTING INVESTMENT GUIDELINES**

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.

**D. The Debtors' Pre-Petition Bank Accounts and Cash Management System.**

16. As described more fully below, before commencing these Chapter 11 cases, the Debtors utilized a centralized cash management system in the ordinary course of their business. The Debtors maintain approximately 17 bank accounts, a schedule of which is attached hereto as Exhibit "A." The Debtors' cash management system with respect to accounts receivable consists of lockboxes, a concentration account with Wachovia Bank N.A. (the "Wachovia Concentration Account"), a concentration account with Bank of America (the "BofA Concentration Account"), and a revolver account with Deutsche Bank (the "DB Revolver Account"). In addition to these accounts, the Debtors maintain separate accounts for certain of their outlet stores (the "Retail Store Accounts") and maintain certain other disbursement accounts described below.

17. Most payments received by the Debtors are deposited into the lockboxes maintained by Wachovia Bank N.A. ("Wachovia"). The amounts that are received into the lockboxes are deposited into the Wachovia Concentration Account. Miscellaneous receipts that are collected by the Debtors at their Danville, Virginia headquarters are deposited into the BofA Concentration Account. Payments received by the Debtors' retail stores are deposited into the BofA Concentration Account or the Retail Store Accounts. The amounts in the Retail Store Accounts are periodically transferred to the Wachovia Concentration Account. On the morning

of each banking day, the net available balance in the Wachovia Concentration Account and the BofA Concentration Account is automatically swept to the DB Revolver Account.

18. Accounts for payroll and operating funds are maintained with Wachovia (the “Wachovia Operating Accounts”) and are funded from a disbursement account that is also maintained with Wachovia (the “Wachovia Disbursement Account”). Funds are transferred from the DB Revolver Account to the Wachovia Disbursement Account. Additional accounts for taxes (maintained by American National Bank), accident and sickness (maintained by Bank of America), workers’ compensation payments for South Carolina (maintained by Wachovia) and for supplemental payroll amounts (maintained by Bank of America) are also funded from the Wachovia Disbursement Account.

19. The Debtors also maintain separate accounts with the National Bank of Canada to minimize foreign exchange gains and losses with respect to the Debtors’ business transactions in Canada. Periodically, certain excess Canadian funds are converted to U.S. Dollars and wired to the Wachovia Concentration Account where they become part of the cash management system described above.

20. The Debtors’ cash management system is also used to manage funds for the Debtors’ Mexico Companies, which are not debtors in these bankruptcy cases. The Mexico Companies maintain their own bank accounts in Mexico, and certain cash payments resulting from sales by the Mexico Companies in Mexico are deposited into these accounts. However, the majority of the payments received on the Mexico Companies’ accounts receivable are received into the lockboxes described above and then deposited into the Wachovia Concentration Account. On a weekly basis, funds necessary for the operations of the Mexico Companies are transferred from the Wachovia Disbursement Account to the Mexico Companies. At all times,

the Debtors maintain detailed records regarding intercompany transfers and are able to identify the amount of funds collected on behalf of or distributed to the Mexico Companies.

### **Basis for Relief**

#### **A. Continued Use of the Debtors' Cash Management System.**

21. The Debtors' ability to continue and maintain their consolidated cash management system and existing bank accounts is essential to the efficient administration of their bankruptcy estates and is necessary to prevent inordinate disruption to the Debtors' operations. Maintenance of the Debtors' cash management system and existing bank accounts, as may be modified by any interim or final Orders of this Court authorizing the Debtors to incur post-petition financing, is also essential to the Debtors' ability to fund their existing payroll, and any disruption in the means by which the Debtors manage their financial affairs and satisfy their ordinary course post-petition obligations (and pre-petition payroll and other pre-petition obligations for which appropriate approval is being sought) would jeopardize the Debtors' reorganization at its commencement.

22. The foregoing centralized cash management procedures have been used by the Debtors in the past and constitute ordinary, usual, and essential business practices. Complex enterprises customarily employ cash management procedures similar to the Debtors' cash management system because of the numerous benefits they provide, including enhanced control of funds collected and disbursed across wide-ranging operations and reduced administrative expenses resulting from centralized control and account reconciliation. Such a system is necessary to generate timely and accurate financial information necessary to manage the Debtors' complex businesses. The Debtors maintain regular and detailed records of all transfers among the various accounts described above. Thus, allowing the Debtors to continue their



existing cash management procedures will prevent unnecessary disruption and expense and, thus, is in the best interests of the Debtors' estates and creditors.

23. This Court is authorized to grant the relief requested in this Motion pursuant to Section 105(a) of the Bankruptcy Code, which provides as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

24. Bankruptcy courts routinely grant Chapter 11 debtors authority to continue using their existing cash management systems and treat such requests for such authority as a relatively "simple matter." *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). This is particularly true where, as here, the Chapter 11 case involves complex financial affairs. In fact, the Eleventh Circuit has specifically held that a debtor's use of its pre-petition "routine cash management system" is "entirely consistent" with the provisions of the Bankruptcy Code. *See In re Charter Co.*, 778 F.2d 617, 621 (11th Cir. 1985). Likewise, in another context, the United States Bankruptcy Court for the District of Delaware has explained that a centralized cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1993). The Third Circuit has agreed, emphasizing that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient." *In re Columbia Gas Sys., Inc.*, 997 F.2d 1039, 1061 (3d Cir. 1993), *cert. denied*, 510 U.S. 1110 (1994); *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor to

“administer more efficiently and effectively its financial operations and assets”); *In re UNR Indus., Inc.*, 46 B.R. 25, 27 (Bankr. N.D. Ill. 1984).

25. Similarly, courts have allowed debtors to continue collecting and transferring funds for non-debtor foreign affiliates where such intercompany transfers are an integral part of the debtors’ cash management procedures. *In re Worldcom, Inc.* Case No. 02-13533 (Bankr. S.D.N.Y. October 15, 2002); *In re Global Crossing Ltd.* Case No. 02-40188 (Bankr. S.D.N.Y. January 28, 2002).

26. Courts within this district have entered similar orders authorizing debtors to maintain their pre-petition cash management procedures and existing bank accounts. *See, e.g., In re iPCS, Inc.* Case No. 03-62695 (Bankr. N.D. Ga. Feb. 25, 2003) (Drake, J.); *In re Centennial Healthcare Corporation*, Case No. 02-74974 (Bankr. N.D. Ga. Dec. 24, 2002) (Massey, J.); *In re The New Power Company*, Case No. 02-10835 (Bankr. N.D. Ga. July 12, 2002) (Drake, J.); *In re Wolf Camera, Inc.*, Case No. 01-83470 (Bankr. N.D. Ga. June 2, 2001) (Mullins, J.).<sup>2</sup>

**B. Continued Use of Existing Bank Accounts and Existing Business Forms.**

27. Unless they are waived by the Court, the operating guidelines established by the United States Trustee for the Northern District of Georgia (the “Trustee’s Operating Guidelines”) require the Debtors to open new bank accounts and to obtain checks for all debtor-in-possession accounts bearing the designation “Debtor-in-Possession,” as well as the bankruptcy case number for the type of account. However, the Debtors’ pre-petition bank accounts and business forms are integrally related to the Debtors’ cash management system. Thus, maintenance of the Debtors’ current accounts and forms is necessary to avoid the same delays, confusion, and disruption of the Debtors’ business that would result if their existing cash management

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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.

procedures (modified by any interim or final DIP financing order entered by the Court) are not approved.

28. The Trustee's Operating Guidelines are designed to separate pre-petition and post-petition transactions and prevent the inadvertent payment of pre-petition claims. The Debtors believe that their existing cash management procedures satisfy the spirit of the Trustee's Operating Guidelines. The Debtors do not seek authorization to pay any pre-petition claims through checks drawn on the existing bank accounts that have not yet been honored by the applicable drawee bank, except as separately authorized by this Court. The Debtors represent that if the relief requested in this Motion is granted, they will not pay, and each of the Debtors' banks will be directed not to pay, any debts incurred before the Petition Date, except as separately authorized by this Court.

29. Courts in this and other jurisdictions have recognized that a bankruptcy court has the discretion to allow the continued use of existing pre-petition bank accounts. *See, e.g., In re Centennial Healthcare Corporation*, Case No. 02-74974 (Bankr. N.D. Ga. Dec. 24, 2002) (Massey, J.); *In re The New Power Co.*, No. 02-10835 (Bankr. N.D. Ga. June 17, 2002) (Drake, J.); *In re Grant Broadcasting, Inc.*, 75 B.R. 819, 820 (E.D. Pa. 1987) (referring to order authorizing use of cash collateral and pre-petition bank accounts); *In re New York City Shoes, Inc.*, 78 B.R. 426, 427 (Bankr. E.D. Pa. 1987) (debtor depositing post-petition funds into pre-petition bank accounts). Because of the severe disruption to the Debtors' cash management system and, by extension, the Debtors' business, that would result if the Debtors were forced to open new accounts, the Debtors believe it important that this Court grant their request for maintaining their pre-petition bank accounts and business forms. Where necessary, (such as to comply with any order respecting post-petition financing), the Debtors also ask for authorization

to open FDIC- or FSLIC-insured bank accounts that will be subject to the requirements of this Order.

**C. Continued Use of Investment Practices**

30. The Debtors also seek a waiver of the deposit guidelines set forth in Section 345(b) of the Bankruptcy Code to the extent necessary to allow the Debtors to maintain their bank accounts and their existing cash management procedures.

31. Section 345 of the Bankruptcy Code authorizes a debtor to invest cash and money in a manner that will “yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). Section 345(b) of the Bankruptcy Code provides as follows:

(b) Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the trustee shall require from an entity with which such money is deposited or invested—

(1) a bond—

(A) in favor of the United States;

(B) secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and

(C) conditioned on—

(i) a proper accounting for all money so deposited or invested and for any return on such money;

(ii) prompt repayment of such money and return; and

(iii) faithful performance of duties as a depository; or

(2) the deposit of securities of the kind specified in section 9303 of title 31;

unless the court for cause orders otherwise.

11 U.S.C. § 345(b).

32. Section 345(b) also expressly provides that the Court may modify a debtor’s investment requirements for “cause.” The Debtors believe that their existing cash management procedures are designed to protect the principal invested while maximizing liquidity and,

therefore, believe that sufficient cause exists to waive the investment requirements of Section 345(b) to allow the Debtors to continue their existing cash management procedures.

33. Courts have routinely granted requests to approve the continued use of investment and deposit guidelines that do not comply strictly with Section 345. This is especially the case where, as here, the manner of the proposed investments is safe and prudent. *See, e.g., New Power*. The Debtors submit that their pre-petition investment practices generally conform with the intent of Section 345(b) to protect and maximize the value of their estates.

34. Moreover, the Debtors believe that the deposits at issue are safe because of the relative strength of the banks where the Debtors' pre-petition accounts are maintained. Requiring the Debtors to open multiple accounts at different banks so that the deposits in each such bank would be insured by FDIC would be unnecessarily burdensome and would lead to the same delays and disruption to the Debtors' business that this Motion seeks to avoid.

35. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of their estates.

#### **Notice**

36. 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.

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PROPOSED ATTORNEYS FOR THE DEBTORS

**EXHIBIT “A”**

**SCHEDULE OF BANK ACCOUNTS**

<b><u>ACCOUNT NAME</u></b>	<b><u>ACCOUNT NO.</u></b>	<b><u>TYPE OF ACCOUNT</u></b>
American National Bank	0102077301	Tax
AmSouth Florida	3400823066	Retail Store
Bank of America	000002663283	Concentration
Bank of America – Factory Stores	00011133898	Retail Stores
Bank of America – Supplemental	00012703362	Payroll Terminations, etc.
Bank of America A&S	00099364825	Accident & Sickness
BB&T	58012931	Retail Stores
Deutsche Bank Trust Co.	00427864	Concentration
First State Bank	3972	Check Cashing
National Bank of Canada	0210628	Receipts and Disbursements
RBC Centura	0790141309	Group Insurance Payments
Regions Bank	6450109868	Retail Stores
Wachovia Concentration	002050000637528	Concentration
Wachovia Disbursements	002000017796868	Disbursements
Wachovia of SC	002072166956383	SC Worker Compensation
Wachovia Payables	002079900100288	Payables
Wachovia Payroll	002079900100301	Payroll

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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>
_____	)	

**ORDER AUTHORIZING DEBTORS TO (A) MAINTAIN  
EXISTING BANK ACCOUNTS AND CASH MANAGEMENT SYSTEM,  
(B) CONTINUE USE OF EXISTING BUSINESS FORMS, AND  
(C) CONTINUE USE OF EXISTING INVESTMENT GUIDELINES**

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 (a) maintain existing bank accounts and cash management system, (b) continue use of existing business forms, and (c) continue use of existing investment guidelines (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’ 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 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 to continue to use their prepetition cash management system procedures, as described in the Motion, in the ordinary course of business.
3. The Debtors are authorized and empowered to (a) designate, maintain, and continue to use any and all existing bank accounts with the same account numbers, including, without limitation, the accounts identified in Exhibit A to the Motion; and (b) treat the bank accounts for all purposes as accounts of the Debtors as debtors in possession.
4. The banks at which the Debtors' bank accounts are maintained (collectively, the "Banks") are authorized to continue to service and administer the applicable bank accounts as accounts of the respective Debtor as a debtor-in-possession without interruption and in the usual and ordinary course, and to receive, process and honor and pay any and all checks, drafts, wires, or automated clearing house transfers ("ACH Transfers") drawn on the bank accounts after the Petition Date (as defined in the Motion) by holders or makers thereof, as the case may be. The Debtors shall reimburse the Banks for any claim arising prior to or after the Petition Date in connection with customer checks deposited with the Banks which have been dishonored or returned for insufficient funds in the applicable customer account; *provided, however*, that, in addition to the requirements thereof, any checks, drafts, wires, or ACH Transfers drawn or issued by the Debtors before the Petition Date shall be timely honored by any such Bank to the extent necessary to comply with any order(s) of this Court authorizing payment of certain prepetition claims, unless such Bank is instructed by the Debtors to stop payment on or otherwise dishonor such check, draft, wire or ACH Transfer.

5. Notwithstanding anything to the contrary in any other order in this case entered contemporaneously with this Order, the Banks (a) are authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH Transfers should be honored or dishonored consistent with any order(s) of this Court, whether the checks, drafts, wires, or ACH Transfers are dated prior to, on, or subsequent to the Petition Date, and whether or not the Bank believes the payment is or is not authorized by any order(s) of the Court, (b) have no duty to inquire as to whether such payments are authorized by any order(s) of the Court, and (c) have no liability to any party on account of following the Debtors' instructions in accordance with this Order.

6. Nothing contained herein shall prevent the Debtors from opening any additional bank accounts, or closing any existing bank account(s) as they may deem necessary and appropriate, and the Banks are authorized to honor the Debtors' requests to open or close, as the case may be, such bank accounts or additional bank accounts; *provided, however*, that any new account shall be with a bank that is insured with the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation and that is organized under the laws of the United States or any State therein.

7. Any and all accounts opened by the Debtors on or after the Petition Date at any Bank shall, for all purposes under this Order, similarly be subject to the rights and obligations of this Order.

8. The Debtors and the Banks are hereby authorized to continue to perform pursuant to the terms of any prepetition agreements that may exist between them, except and to the extent otherwise directed by the terms of this Order. The parties to such agreements shall continue to

enjoy the rights and remedies afforded to them under such agreements, except to the extent modified by the terms of this Order or by operation of the Bankruptcy Code.

9. The Debtors are authorized to continue to consolidate the management of their cash and cash equivalents, including, without limitation, their prepetition procedures related to investments of cash, and to effectuate the transfer of funds by and among the Debtors and their non-Debtor affiliates as and when needed to the extent permitted by their post-petition credit agreement and in the amounts necessary or appropriate to maintain their operations in the ordinary course of business; *provided, however*, that the Debtors shall maintain strict records of all such transfers in a manner so that all transactions can be readily ascertained to the same extent maintained by the Debtors prior to the Petition Date.

10. The Debtors are authorized to continue to use their existing business forms and stationery without alteration or change.

11. The Debtors are authorized to continue their current investment practices as described in the Motion.

12. To the extent the ten-day stay of Bankruptcy Rule 6004(g) may be construed to apply to the subject matter of this Order, such stay is hereby waived.

13. 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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