

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

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

**MOTION OF THE DEBTORS FOR ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND
363(b) AUTHORIZING PAYMENT OF PREPETITION CUSTOMS DUTIES
AND CLAIMS OF COMMON CARRIERS AND WAREHOUSEMEN AND
AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR
AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH CLAIMS**

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.¹ 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,

¹ 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. The Debtors seek entry of an order (a) authorizing them, in their sole discretion, to pay the prepetition Custom Duties, Common Carrier Claims, and Warehousemen Claims (as such terms are defined below) and maintain their ordinary course of business practices in respect thereof as such practices were followed prior to the Petition Date, and (b) authorizing and directing applicable banks and other financial institutions to receive, process, and pay any and all checks and other transfers related to such claims.

17. This Court has the authority to grant the relief requested herein pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Moreover, Section 105(a) of the Bankruptcy Code allows the Court to authorize payments on account of certain prepetition claims when necessary. Section 105(a) of the Bankruptcy Code provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

Payment of the Prepetition Customs Duties and Claims of Common Carriers Is In the Best Interests of the Debtors, Their Estates and All Parties In Interest

18. In connection with the normal operation of their businesses, the Debtors import into the United States and Canada raw materials and finished goods from overseas suppliers and

manufacturers for use by the Debtors in their manufacturing operations, such as grieg sheeting, yarns, sheet sets, comforters and quilts. All such merchandise (the “Surcharged Goods”) is subject to certain customs import duties (the “Customs Duties”) imposed by the laws of the United States.

19. In the ordinary course of their businesses, the Debtors purchase imported goods with Customs Duties prepaid, or from brokers or freight forwarders on credit terms or with a certain portion of the amount owed paid in advance. The Debtors estimate that on average they incur approximately \$110,000 per month on average in Customs Duties from the importation of Surcharged Goods.

20. These payment procedures generally enable Surcharged Goods to be released to the Debtors shortly after their arrival into the United States, thereby promoting an uninterrupted flow of merchandise, which is critical to the Debtors’ manufacturing operations. The Debtors estimate that the amount of prepetition Customs Duties that are accrued and unpaid as of the Petition Date (the “Prepetition Customs Duties”) aggregate approximately \$35,000.

21. In the ordinary course of their businesses, the Debtors also rely on certain shippers, including trucking companies, railroads, and air freight operators (collectively, the “Common Carriers”), to transport materials and work-in-process among the Debtors’ manufacturing facilities and to complete the delivery of finished goods to the Debtors’ customers and sales locations. The Debtors estimate that the amount of prepetition claims of the Common Carriers (the “Prepetition Common Carrier Claims”) that are accrued and unpaid as of the Petition Date aggregate approximately \$251,000.

22. The Debtors also rely on certain vendors that store unfinished products and materials, supplies and work-in-process owned by the Debtors. Such vendors may provide

outside finishing work, such as embroidery, on certain of the Debtors' unfinished products, and may hold the Debtors' products after completion until such time as the Debtors are able to accept delivery. In addition, the Debtors rely on third party warehouse vendors to store raw materials, finished goods and supplies owned by the Debtors. (All such vendors are referred to collectively as the "Warehousemen"). The Debtors estimate that the amount of prepetition Warehousemen claims that are accrued and unpaid as of the Petition Date (the "Prepetition Warehousemen Claims") aggregate approximately \$520,000.

23. As a result, the Common Carriers and Warehousemen have possession of the Debtors' materials or products in the ordinary course of their businesses. The Debtors believe that, as of the Petition Date, the aggregate value of goods in the possession of the Common Carriers and Warehousemen substantially exceeds the aggregate value of the Prepetition Common Carrier Claims and the Prepetition Warehousemen Claims (collectively, the "Prepetition Transit Claims").

24. As noted above, a significant portion of the Debtors' merchandise and materials for production are produced in foreign countries and imported into the United States. Any failure to pay the Prepetition Customs Duties is likely to result in a refusal by the importing parties (common carriers or freight forwarders) to clear such goods as well as any additional goods that are imported, or will result in the supplier drawing down letters of credit guaranteeing the Customs Duties or Prepetition Transit Claims. At this critical point in the Debtors' business operations, any interruption in this supply would wreak havoc on the Debtors' efforts to reorganize. Since it is essential to the Debtors' businesses that the flow of Surcharged Goods into the United States continues uninterrupted during the pendency of the Chapter 11 cases, the

interests of the Debtors, their estates and their creditors will best be served by an order of this Court authorizing the payment of the Customs Duties.

25. The Debtors submit that any claim for Customs Duties is a priority claim in accordance with Section 507(a)(8)(F) of the Bankruptcy Code. As such, the Customs Duties would be paid in their entirety in any event. Consequently, creditors will not be prejudiced by the proposed payment. To the contrary, such payments will inure to their benefit through the uninterrupted continuation of the Debtors' operations.

26. Similarly, if the Debtors fail to pay the Transit Claims, the Debtors believe that many Common Carriers and Warehousemen may stop providing their essential services to the Debtors. Given the importance of moving goods quickly through the Debtors' manufacturing and distribution systems, even the slightest delay in receiving services from the Common Carriers and Warehousemen could cause a substantial disruption to the Debtors' operations, potentially delaying shipments to customers, damaging the Debtors' business reputation, and undermining the Debtors' ability to generate ongoing operating revenue. Accordingly, it is imperative that the Debtors be authorized to pay the Transit Claims to ensure that the essential services provided by the Common Carriers and Warehousemen are available to the Debtors without interruption and, thus, preserve to the fullest extent possible, the value of the Debtors' businesses for the benefit of all parties in interest.

27. Moreover, the Debtors' failure to pay the Transit Claims may result in the assertion of materialman's or similar liens (collectively, the "Liens") by many of the Common Carriers and Warehousemen against the raw materials, work-in-process, finished goods and supplies in their possession as of the Petition Date. Pursuant to Section 362(b)(3) of the Bankruptcy Code, the act of perfecting such Liens, to the extent consistent with Section 546(b)

of the Bankruptcy Code, is expressly excluded from the automatic stay otherwise imposed by Section 362(a) of the Bankruptcy Code.² Moreover, to protect their asserted lien rights, the Common Carriers and Warehousemen may refuse to release goods in their possession unless and until their prepetition claims for processing, warehousing or shipping services have been satisfied.

28. Section 9-310 of the Uniform Commercial Code also grants to creditors, such as common carriers holding possessory liens, a priority in payment over consensual lien creditors. Therefore, as secured creditors, the Common Carriers and Warehousemen are entitled to receive payment in full for the Transit Claims pursuant to any confirmed plan of reorganization in these Chapter 11 cases. Consequently, payment of such charges and fees gives the Common Carriers and Warehousemen no more than that to which they are already entitled under the Bankruptcy Code.

29. Absent payment of prepetition Customs Duties and Transit Claims, common carrier or freight forwarders are unlikely to release the Surcharged Goods and the Common Carriers and Warehousemen are likely to retain the Debtors' goods in their possession, which goods have a value, the Debtors believe, greatly exceeding these outstanding claims. Indeed, the Debtors submit that the prepetition Customs Duties and Transit Claims, estimated not to exceed the aggregate amount of \$806,000, are de minimis in comparison to the value that the Debtors' estates will receive from an uninterrupted supply of imported goods.

30. Other courts have granted similar relief in other large Chapter 11 cases. *See, e.g., In re Enron Corp., et al.*, Case No. 01-16034 (Bankr. S.D.N.Y. 2001); *In re Bethlehem Steel Corp., et al.*, Case No. 01-15288 (Bankr. S.D.N.Y. 2001); *In re AI Realty Marketing of New*

² Under Section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that

York, Inc., et al., Case No. 01-40252 (Bankr. S.D.N.Y. 2001).³ The Debtors submit that similar authorization is appropriate in these Chapter 11 cases.

**Applicable Banks Should Be Authorized to Honor and
Pay Checks Issued and Make Other Transfers in Respect of
the Prepetition Customs Duties and Prepetition Transit Claims**

31. If the Court grants the relief sought herein, the Debtors request that all applicable banks and other financial institutions be authorized and directed when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor and pay any and all checks drawn on the Debtors' accounts to pay the prepetition Customs Duties and Transit Claims, whether those checks were presented prior to or after the Petition Date, and make other transfers provided that sufficient funds are available in the applicable accounts to make the payments. The Debtors represent that each of these checks can be readily identified as relating directly to the authorized payments of prepetition Customs Duties and Transit Claims. Accordingly, the Debtors believe that checks and transfers other than those relating to such authorized payments will not be honored inadvertently.

32. Authorization of the payment of the prepetition Transit Claims shall not be deemed to constitute the postpetition assumption of any executory contract between the Debtors and their Common Carriers and Warehousemen pursuant to Section 365 of the Bankruptcy Code. The Debtors are in the process of reviewing these matters and reserve all of their rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay the prepetition Customs Duties and Transit Claims shall not affect the Debtors' right to contest the amount or validity of any such charges, in whole or in part.

acquires rights in such property before the date of perfection. . . ." 11 U.S.C. § 546(b)(1)(A).

³ Copies of these unpublished orders are included for the Court's convenience in a separate binder.

33. 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

34. 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

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PROPOSED ATTORNEYS FOR THE DEBTORS

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

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

**ORDER GRANTING MOTION OF THE DEBTORS FOR ORDER
PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AUTHORIZING
PAYMENT OF PREPETITION CUSTOMS DUTIES AND CLAIMS OF COMMON
CARRIERS AND WAREHOUSEMEN AND AUTHORIZING AND DIRECTING
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
CHECKS AND TRANSFERS RELATED TO SUCH CLAIMS**

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 pay certain prepetition customs duties and claims of common carriers and warehousemen (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 prepetition obligations arising from customs duties and claims of common carriers and warehousemen, as more particularly described in the Motion in amounts no to exceed those set forth in the budget supplied in connection with the Court's interim order authorizing the Debtors to obtain post-petition financing, as such order may be amended or finalized, but in no event to exceed \$35,000 for Customs Duties, \$251,000 for Prepetition Common Carrier Claims, and \$520,000 on account of Prepetition Warehouseman Claims, as those are defined in the Motion. The Debtors' banks are authorized to process, honor and pay any and all checks issued to honor transfers in connection with customs duties and claims of such common carriers and warehousemen.
3. The banks and other financial institutions that process, honor and pay any and all checks on account of Prepetition Customs Duties or Prepetition Transit Claims may rely on the representation 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 customs duties or claims of common carriers or warehousemen shall not preclude the Debtors from contesting the validity or amount due to those creditors.
5. 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.

6. 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.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE

Prepared and Presented by:

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