

**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 FOR AUTHORITY TO RETAIN
ERNST & YOUNG LLP AS AUDIT AND TAX ADVISORS 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.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. By this Motion, the Debtors respectfully request the entry of an order, pursuant to Section 327(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, authorizing them to employ Ernst & Young LLP as their audit and tax advisors in these bankruptcy cases and other proceedings. Debtors seek to employ Ernst & Young LLP to perform audit and tax services for the Debtors effective as of the petition date.

Basis for Relief

17. Ernst & Young LLP is an international accounting and financial advisory services firm with offices located at 202 CentrePort Drive, Suite 200, Greensboro, North Carolina 27409. Ernst & Young LLP's professionals have extensive experience in providing audit and tax services in reorganization proceedings.

18. Before filing their bankruptcy petitions, Debtors employed Ernst & Young LLP to provide audit, tax, and benefit plan audit services. Ernst & Young LLP has provided services to Debtors for several years, and as a result it has developed a great deal of institutional knowledge regarding Debtors' operations, practices, data systems, and procedures. That knowledge and experience will be valuable to the Debtors as they pursue reorganization. Accordingly, Debtors seek to continue their engagement of Ernst & Young LLP. The proposed engagement would be

in accordance with the letter agreements dated March 22, 2004, between Debtors and Ernst & Young LLP, copies of which are attached as Exhibit A.

19. Subject to further order of this Court, the Debtors have requested that Ernst & Young LLP continue to provide such audit, tax and benefit plan audit services as Ernst & Young LLP and the Debtors deem appropriate and feasible in order to advise the Debtors in the course of these Chapter 11 cases, including, but not limited to, the following:

I. Accounting and Auditing

- (a) Audits of the financial statements of the Debtors as may be required from time to time and assistance in the preparation of the Debtors' financial statements and disclosures;
- (b) Assistance in the preparation and review of all reports or filings as required by the Bankruptcy Court or the Office of the United States Trustee, including any monthly operating reports;
- (c) Analysis and advice regarding the preparation of financial information for distribution to creditors and other parties-in-interest, including cash receipts and disbursements analysis, legal entity financial statements, analysis of various asset and liability accounts, and analysis of proposed transactions for which Bankruptcy Court approval is sought;
- (d) Performance of audits of employee benefit plans as necessary and to comply with the applicable rules, laws, and regulations of various governmental and regulatory bodies;
- (e) Performance of quarterly review procedures on Debtors' consolidated financial statements;
- (f) Consultations on accounting and reporting issues and matters as requested by the Debtors; and
- (g) Provide additional follow-up on procedures relative to the audit of the January 3, 2004 financial statements of the Debtors.

II. Tax Advisory

- (a) Review and assistance in the preparation and filing of Federal Forms 5471 Information Return of U.S. Persons With Respect to Certain Foreign Corporations;
- (b) Advice and assistance to the Debtors regarding tax planning issues, including assistance in estimating net operating loss carry-forwards, and federal, state and local taxes;
- (c) Any assistance required regarding existing and future IRS, state and/or local tax examinations;
- (d) Any assistance regarding state and local tax planning opportunities resulting from bankruptcy filings; and
- (e) Any and all other tax advise and assistance as may be requested from time to time.

20. The Debtors will not require services of Ernst & Young LLP that coincide or overlap with services performed by its financial advisors, Conway, Del Genio, Gries & Co., LLC, or its restructuring advisors, Ernst & Young Corporate Finance, LLC.

21. The Debtors' engagement of Ernst & Young LLP as their audit and tax advisors will save significant cost and time that otherwise would be required to be expended were the Debtors required to retain new professionals to become familiar with and educated about the variety of complex matters, some of which remain outstanding, that Ernst & Young LLP has handled for the Debtors in the past. Ernst & Young LLP is both well qualified and uniquely able to represent Debtors as audit and tax advisors during these Chapter 11 cases in an efficient and timely manner.

22. Ernst & Young LLP has stated its desire and willingness to continue to act as the Debtors' audit and tax advisors and render the necessary professional services required by the Debtors.

23. To the best of the Debtors' knowledge, and except as disclosed in the Affidavit and Disclosure Statement of Richard B. Wimmer in support of this Motion, attached to this Motion as Exhibit B, the partners and professionals employed by Ernst & Young LLP do not have any connection with the Debtors, their creditors, or any other party in interest, or their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee. Ernst & Young LLP does not hold or represent any interest adverse to the Debtors or their estates with respect to the matters on which it is being employed. Accordingly, Ernst & Young LLP is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code, as modified by Section 1107(b) of the Bankruptcy Code.

24. Pursuant to Section 328(a) of the Bankruptcy Code, the Debtors may retain Ernst & Young LLP on any reasonable terms and conditions. The Debtors and Ernst & Young LLP have agreed that Ernst & Young LLP will be compensated for services at hourly rates and reimbursed for reasonable and necessary expenses, subject to approval of the Court under Section 330 of the Bankruptcy Code. Ernst & Young LLP has stated present professional service fee rates of \$135 - \$600 per hour. Rates may be adjusted from time to time. Ernst & Young LLP will file fee applications with the Court in accordance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, and orders of this Court.

25. During the ninety days immediately preceding the Petition Date, the Debtors made payments to Ernst & Young LLP totaling \$175,000 on account of services rendered prior thereto.

26. The Debtors' employment of Ernst & Young LLP is necessary and in the best interests of the administration of these Chapter 11 cases. The Debtors believe that Ernst & Young LLP is uniquely qualified to represent the Debtors as their audit and tax advisors to perform the services described above.

27. In addition to authority to employ Ernst & Young LLP, the Debtors seek a shortened objection period. Ernst & Young LLP requires that it be retained on a final basis in order for it to issue the audit opinion for the Debtors' 2003 financial statements. To complete filings in compliance with SEC regulations, the Debtors must have access to that audit opinion on or before April 17, 2004. Therefore, the Debtors seek an order approving Ernst & Young LLP's retention on a final basis by that date. To facilitate such an order, the Debtors request that this Court shorten the period in which parties may object to Ernst & Young LLP's retention to 15 days.

Notice

28. 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

**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 AUTHORIZING DEBTORS TO EMPLOY
ERNST & YOUNG LLP AS AUDIT AND TAX ADVISORS**

This matter is before the Court on the Motion of Dan River Inc. and its debtor affiliates (collectively, the “Debtors”) for authority to employ Ernst & Young LLP as audit and tax advisors (the “Motion”).

The Court has considered the Motion, the Declaration of Barry Shea in Support of First-Day Applications and Motions, the Declaration of Richard B. Wimmer, 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 on an interim basis.

2. The Debtors are authorized to employ Ernst & Young LLP as their audit and tax advisors on the terms and conditions set forth in the Motion and Engagement Letter. Services performed by Ernst & Young LLP shall not overlap with or duplicate those provided by Conway, Del Genio, Gries & Co., LLC, Ernst & Young Corporate Finance LLC, or any other professionals retained by the Debtors.

3. 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.

4. Any objection to the relief requested in the Motion shall be filed with the Court, 18 Greenville Street, PO Box 1408, Newnan, Georgia 30263, within 15 days after entry of this order (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.

5. If no objection is timely filed and served by the Objection Deadline, this Order shall be deemed a final order, and no further hearing on the Motion shall be held.

6. Ernst & Young LLP shall be compensated upon appropriate application in accordance with Sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, and orders of this Court.

7. Ernst & Young LLP is authorized to apply the retainer received from the Debtors to pay any fees, charges, costs, or expenses relating to services rendered to the Debtors prior to the Petition Date and shall hold the remaining portion of such retainer to secure the payment of fees, charges, costs, and expenses relating to services rendered after the Petition Date.

8. 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:

KING & SPALDING LLP

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