

**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
<hr style="width:40%; margin-left:0;"/>)	

**MOTION OF THE DEBTORS FOR DECLARATORY ORDER
ENFORCING SECTIONS 362 AND 525 OF THE BANKRUPTCY CODE**

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 seek a declaratory order enforcing Sections 362 and 525 of the Bankruptcy Code. Such an order is necessary to apprise certain domestic and foreign parties affected by Sections 362 and 525 of the existence and the effect of these Code provisions and, in particular, the protections that such provisions provide the Debtors.

Basis For Relief

17. As a result of the commencement of the Debtors' Chapter 11 cases, and by operation of Section 362 of the Bankruptcy Code, an automatic stay generally enjoins all persons and governmental units from, among other things: (i) commencing or continuing any judicial, administrative or other proceeding against the Debtors that was or could have been commenced before the above-captioned cases were commenced, or recovering upon a claim against any of the Debtors that arose before the commencement of the Debtors' Chapter 11 cases; and (ii) taking any action to collect, assess or recover a claim against any of the Debtors that arose before the commencement of the above-captioned Chapter 11 cases. 11 U.S.C. § 362.

18. In addition, Section 525 of the Bankruptcy Code prohibits and enjoins any and all governmental units from, among other things, denying, revoking, suspending, or refusing to renew any license, permit, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, the Debtors solely because the Debtors: (a) are

debtors under the Bankruptcy Code; (b) may have been insolvent before the commencement of these Chapter 11 cases; or (c) are insolvent during the pendency of these Chapter 11 cases. 11 U.S.C. § 525.

19. The injunctions contained in Sections 362 and 525 of the Bankruptcy Code are self-executing. They constitute fundamental debtor protections which, in combination with other provisions of the Bankruptcy Code, provide the Debtors with the “breathing spell” that is essential to the Debtors’ ability to make a smooth and orderly transition into Chapter 11. *See, e.g., In re Patterson*, 967 F.2d 505, 512 n.9 (11th Cir. 1992).

20. Notwithstanding the fundamental nature of these statutory protections, not all parties affected or potentially affected by the commencement of a Chapter 11 case are aware of these Bankruptcy Code provisions. Neither are all parties cognizant of their significance and impact. Experience has shown that it is often necessary to advise third parties formally and explicitly of the existence and effect of Sections 362 and 525 of the Bankruptcy Code. Occasionally, it is necessary to commence proceedings in bankruptcy court to enforce the protections contained therein. For those reasons, it is not uncommon for a bankruptcy court to issue a separate order embodying and restating the provisions of Sections 362 and 525 of the Bankruptcy Code.

21. Such an order is particularly appropriate in the Debtors’ Chapter 11 cases. This is because the Debtors conduct business with a wide variety of parties in many jurisdictions around the world. Some of the parties affected by Sections 362 and 525 likely are not aware of the significant and necessary protection these sections provide to the Debtors or may not respect these provisions in the absence of an express order enforcing them. In addition, the Debtors are subject to rules and regulations of numerous governmental authorities, including those in foreign

jurisdictions, that may not be familiar with U.S. bankruptcy law and that, absent such an order, may take precipitous action against the Debtors in violation of those Code provisions, necessitating legal proceedings here and elsewhere to enforce these protections. Accordingly, the Debtors respectfully request that this Court issue a declaratory order that restates the applicable provisions of Sections 362 and 525 of the Bankruptcy Code.

22. The order, by simply restating the safeguards which Sections 362 and 525 of the Bankruptcy Code provide for the Debtors, will help protect the Debtors from unwitting violations of these crucial provisions by creditors and other parties. It also will spare the Debtors from the burden of commencing proceedings to enforce the protections that the Bankruptcy Code provides. Consequently, the proposed order will assist the Debtors in maximizing the value of their estates for their creditors.

23. Relief similar to that requested herein has previously been granted to assist the reorganization of a debtor with non-U.S. operations, both within and without this jurisdiction. *See, e.g., In re iPCS, Inc.*, Case No. 03-62695-97 (Bankr. N.D. Ga. Jun. 24, 2003) (Drake, J.); *In re The Singer Co., N.V.*, Case Nos. 99-10578 to 99-10605 (Bankr. S.D.N.Y. Sept. 13, 1999).²

24. Accordingly, the granting of the relief requested herein will facilitate a smooth and orderly transition of the Debtors' operations into Chapter 11 and minimize the disruption of their business affairs, without violating either the policies of Chapter 11 or the rules of this Court. The Debtors therefore request that this Court grant the requested relief.

Notice

25. 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'

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

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

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

**ORDER ENFORCING SECTIONS 362 AND 525
OF THE UNITED STATES BANKRUPTCY CODE**

This matter is before the Court on the motion of Dan River Inc. and its debtor affiliates (collectively, the “Debtors”) requesting an entry of an order pursuant to Sections 362 and 525 of title 11 of the Bankruptcy Code, enforcing the Bankruptcy Code’s automatic stay and anti-discrimination provisions. The Court has considered the Motion, the Declaration of Barry 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 to 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.
2. Except as provided under the Bankruptcy Code, all persons (including individuals, partnerships and corporations, and all those acting for or on their behalf), and all

foreign or domestic governmental units (and all those acting for or on their behalf), are hereby stayed, restrained and enjoined from taking the following actions without further order of this Court:

- (a) Commencing or continuing any judicial, administrative or other proceeding against the Debtors, including the issuance or employment of process, that was or could have been commenced before any of the Debtors' Chapter 11 cases were commenced, or recovering a claim against any of the Debtors that arose before the commencement of any of their Chapter 11 cases;
- (b) Enforcing a judgment obtained before the commencement of any of the Debtors' Chapter 11 cases against any of the Debtors or against property of any of the Debtors;
- (c) Taking any action to obtain possession of property of any of the Debtors or of property from any of the Debtors or taking any action to exercise control over property of any of the Debtors;
- (d) Taking any action to create, perfect or enforce any lien against property of any of the Debtors, to the extent that such lien secures a claim that arose before the commencement of any of the Debtors' Chapter 11 cases;
- (e) Taking any action to collect, assess or recover a claim against any of the Debtors that arose before the commencement of any of their Chapter 11 cases;
- (f) Offsetting any debt owing to any of the Debtors that arose before the commencement of any of the Debtors' Chapter 11 cases against any claim against any of the Debtors; and/or

- (g) Commencing or continuing any proceeding before the United States Tax Court concerning any of the Debtors.

3. Except as provided under the Bankruptcy Code, all persons and all foreign and domestic governmental units, and all those acting on their behalf, including sheriffs, marshals, constables, and other or similar law enforcement officers and officials are stayed, restrained and enjoined from, in any way, seizing, attaching, foreclosing upon, levying against or in any other way interfering with any and all of the property of any of the Debtors, wherever located, absent further order of this Court.

4. Nothing in this Order shall affect the exceptions to the automatic stay contained in Section 362(b) of the Bankruptcy Code or the right of any party in interest to seek relief from the automatic stay in accordance with Section 362(d) of the Bankruptcy Code, or other specific sections of the Bankruptcy Code that contain exceptions to the automatic stay, including without limitation, Sections 555, 556, 559, and 560 of the Bankruptcy Code.

5. Pursuant to Section 525 of the Bankruptcy Code, all governmental units are prohibited and enjoined from denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, any of the Debtors solely because one or all of the Debtors: (i) are debtors under the Bankruptcy Code; (ii) may have been insolvent before the commencement of the Debtors' Chapter 11 cases; or (iii) may be insolvent during the pendency of the Debtors' Chapter 11 cases.

6. This Order is intended to be declarative of and coterminous with, and shall neither abridge, enlarge nor modify, the rights and obligations of any party under Sections 362 and 525 of the Bankruptcy Code.

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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