

ORIGINAL

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

In re:

DAN RIVER, INC.,

DEBTOR

NORFOLK SOUTHERN  
RAILWAY COMPANY

PLAINTIFF,

v.

DAN RIVER, INC., RAPOCA  
SALES CO., UNTIED COAL CO.,  
AND RAPOCA ENERGY CO.

DEFENDANTS.

CHAPTER 11

CASE NO.: 04-10990(WHDD)

ADVERSARY NO.:

04-1708

COMPLAINT FOR INTERPLEADER  
AND DECLARATORY JUDGMENT

\$150

FILED IN CLERK'S OFFICE  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT  
OF GEORGIA  
2004 APR -2 PM 3:32  
W. YOUNG EVANS  
CLERK  
BY DEPT. OF FRK

# 14172

Norfolk Southern Railway Company, ("Plaintiff") by and through its counsel, Janssen

Keenan & Ciardi P.C., and Crowley & Clarida, LLP, alleges as follows:

**PARTIES**

1. Norfolk Southern Railway Company, ("Plaintiff") is a Virginia engaged in the interstate transportation of freight by rail subject to the jurisdiction and regulation of the United States Surface Transportation Board.

2. Defendants.

a. Dan River, Inc., ("Debtor") is the Debtor in this Chapter 11 Bankruptcy proceeding.

b. Rapoca Sales Company, ("Rapoca Sales") is a Virginia corporation which processes and sells coal.

c. United Coal Company, ("United Coal") is a Virginia corporation which processes and sells coal.

d. Rapoca Energy Company, ("Rapoca Energy") is a Virginia corporation which processes and sells coal.

e. Rapoca Sales, Rapoca Energy, and United Coal are referred to collectively as Rapoca Defendants.

f. The Plaintiff reserves its right to amend this complaint to add as defendants such other creditors of the Debtor or interested parties who claim an interest in the subject matter of this adversary proceeding.

### **JURISDICTION**

3. This adversary proceeding is a core proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. §§157, 1334 and 2201. Pursuant to Fed. R. Civ. P. 57, the Plaintiff requests an expedited trial on the merits.

4. This Court has jurisdiction over the property to be deposited into the registry of this Court and Plaintiff consents to such jurisdiction.

5. This Court has jurisdiction over the Debtor, Plaintiff, and the Defendants because of their claims of interest in the property to be deposited into the registry of the Court.

6. Venue is proper pursuant to 28 U.S.C. §1397 and 1409.

### **COUNT I INTERPLEADER**

7. One March 31, 2004 a voluntary Chapter 11 petition was filed by the Debtor.

8. Prior to the Petition Date, Debtor and the Rapoca Defendants entered into an agreement under which the Rapoca Defendants were to deliver coal to Debtor F.O.B. Rapoca's facility. The delivery of the coal from Rapoca's facility to Danville, Virginia was arranged through Plaintiff with Debtor responsible for all freight charges.

9. Approximately thirty cars were loaded by the Rapoca Defendants at the Rapoca facility and Plaintiff commenced transportation to Debtor.

10. Prior to the Petition Date, six cars of coal were delivered to Debtor's Danville facility.

11. Twenty four (24) cars of coal remain in transit on Plaintiff's tracks.

12. Subsequent to the Petition Date, the Rapoca Defendants exercised their right to redirect the coal in transit. Attached as Exhibit "A" is a copy of the correspondence from the Rapoca Defendants to Debtor and Plaintiff.

13. On March 31, 2004, notice of reclamation was sent by the Rapoca Defendants to Debtor. A copy of that notice is attached as Exhibit "B".

14. The Debtor has verbally advised Plaintiff that it believes the coal is its property and has requested delivery of the coal.

15. The Rapoca Defendants have advised Plaintiff that one of their customers has a desperate need for the coal which would cause a shutdown of that customer's plant.

16. By reason of these conflicting claims, Plaintiff is in great doubt as to which claimants are entitled to receive all or a portion of the coal. Plaintiff needs to deliver the coal immediately to prevent harm to Debtor and Rapoca and to prevent delay along the railway.

17. Plaintiff is indifferent as to which of the competing claims are successful relative to the coal, so long as Plaintiff is appropriately directed on delivery of the coal and its freight charges are paid.

18. Plaintiff is entitled to constructively interplead the coal into the registry of the Court for direction, and to be directed as to its appropriate owner. Plaintiff is also entitled to declaratory and injunctive relief protecting Plaintiff from liability on to whom the coal should be delivered.

19. Plaintiff has incurred and will continue to incur reasonable attorneys' fees, costs and related expenses in connection with this proceeding. Pursuant to equity, Plaintiff is entitled to recover these attorney fees, costs and expenses from the property that has been interpleaded under this action.

## **COUNT II DECLARATORY JUDGMENT**

20. Paragraphs 1 through 19 are incorporated herein as if fully set forth.

21. The Debtor and the Rapoca Defendants are parties to a contract requiring delivery of coal.

22. The Debtor and the Rapoca Defendants have a dispute as to title.

23. The Plaintiff is holding the coal in its capacity as a rail carrier, but does not claim legal title to the coal.

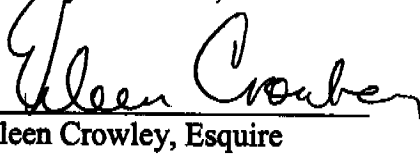
24. The Plaintiff requests a declaratory judgment establishing the rights and obligations of the parties to the coal and to whom it should be delivered.

WHEREFORE, Norfolk Southern Railway Company prays for an Order or Orders:

- A. Discharging and releasing Plaintiff and/or affiliates from all liability to the Debtor and the Rapoca Defendants for delivery of the coal to the appropriate person;
- B. Entering a declaratory Judgment determining who has title to the coal, and to whom Plaintiff should deliver coal;
- C. Requiring payment of Plaintiff's freight or other charges upon delivery of the coal;
- D. Awarding Plaintiff all of its attorneys' fees, cost, and related expenses incurred in connection with the interpleader herein, and ordering the Debtor or the Rapoca Defendants to pay the same; and
- E. Granting Plaintiff such other and further relief as this Court deems proper .

Dated: April 2, 2004

Crowley & Clarida, LLP



Eileen Crowley, Esquire  
Georgia Bar: 198650  
2255 Cumberland Parkway  
Building 1700, Suite 100  
Atlanta, Georgia 30339  
Phone: 678-888-0036  
Fax: 678-888-0045

Janssen Keenan & Ciardi, P.C.



Albert A. Ciardi, III, Esquire  
One Commerce Square, Suite 2050  
2005 Market Street  
Philadelphia, PA 19103  
Attorneys for Norfolk Southern Railway Company

# FAX

Date 03/31/04

Number of pages including cover sheet 3

To: **NORFOLK SOUTHERN**

John Sublett

From: **UNITED COAL COMPANY**

Kathy Woodson

Phone \_\_\_\_\_

Fax Phone 800-821-1221

CC: \_\_\_\_\_

Phone \_\_\_\_\_

270-889-9188

Fax Phone \_\_\_\_\_

270-889-9171

☐ Urgent

☐ For your review

☐ Reply ASAP

☐ Please comment

Attached are the Dan River terms and conditions that we spoke about earlier.

Notice Item #13 which shows that Raposa still owns the coal in those railcars

I am also sending the fax that was sent to Dan River earlier explaining to them that any coal in railcars is not available for sale to them.

Another point to make is that Raposa has sold the coal in those railcars to another customer who is running out of coal at their plant. If this coal is not delivered timely, their plant may be damaged.



# FAX

Date 03/31/04

Number of pages including cover sheet 1

To: Dan River

Dennis Johnson

From: United Coal Company

Kathy Woodson

Phone \_\_\_\_\_

Fax Phone 434-792-4928

CC: \_\_\_\_\_

Phone 270-889-8188

Fax Phone 270-889-2871

☐ Urgent ☐ For your review ☐ Reply ASAP ☐ Please comment

Any Rapoon Sales coal not yet placed at the Dan River - Danville facility is not available for sale to Dan River. Dan River is to return any railcars with Rapoon Sales coal that they have not unloaded yet at their facility back to Norfolk Southern immediately.

Rapoon Sales Company

by: Kathy Woodson  
President

# FAX

215 665-8887

Date 03/31/04

Number of pages including cover sheet 1

To: NORFOLK SOUTHERN

Randy Carter

Randy McParland

Phone \_\_\_\_\_

Fax Phone 540-685-6388

CC: \_\_\_\_\_

From: UNITED COAL COMPANY

Kathy Woodson

Phone 270-882-0186

Fax Phone 270-882-2871

4 Pages 4:20

To Bill Johnson

To John Lubeck

533-4943

INSTRUCTIONS

☐ Urgent

☐ For your review

☐ Reply ASAP

☐ Please comment

Attached is the copy of the Dan River Inc. terms and conditions:

Please note Item #13 that shows proof that we are the owner of the coal.

Rapoca still owns the coal.

We have made arrangements to move this coal to one of our other customers that are running out of coal.

Please call me and let me know how we need to rebill these cars to our other customer.

Rapica Sales Company  
by: Kampha  
President



# United Coal Company



A RAPCOA COMPANY

March 31, 2004

2700 Lee Highway  
Bristol, Virginia 24202

Dan River, Inc. (Debtor)  
P.O. Box 281  
Danville, VA 24543  
Attention: Dennis Johnson

Re: Reclamation of Goods Sold On or After March 12, 2004

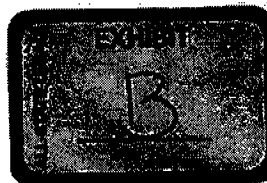
Dear Debtor:

This is to provide notice pursuant to 11 U.S.C. § 546(c) of the reclamation of all goods sold and delivered to you from Rapcoa Sales Company (United Coal Company on behalf of Rapcoa Energy Co.) after March 12, 2004. These goods should be immediately separated from your other inventory and set aside for pickup by Rapcoa Sales Company.

Please let me know the date and time when we can arrange to get possession of these goods.

Sincerely yours,  
Rapcoa Sales Company  
By [Signature]  
United Coal Company  
By [Signature]  
Rapcoa Energy Co.  
By [Signature]

**Note:** All coal on Norfolk Southern tracks has been rerouted pursuant to paragraph 13 of the Dan River Purchase Order



Tel: (276) 466-0014

Fax: (276) 689-2671

E-Mail: [uncccoal@ncsc.net](mailto:uncccoal@ncsc.net)



555 -

NORFOLK SOUTHERN

Screen 1

of 4

- 555

SERIAL NUMBER 3279420766

IMAGE ID 14032414266810

\* NON-REVENUE WAYBILL \*

EDI-BOL UNIT TRAIN WAYBILL

\*\*\*\*REPRINT\*\*\*\*

03/31/04 04:45P

W20

NW 144469 H350 PLATE B CAR

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03/24/04 229663

VERSION 2 EDI

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51560 DANVILLE  
Fl-Help

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VA

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ATLANTA AOC

GA

61160091

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RAPOCA ENERGY CO  
2700 LEE HIGHWAY

NS

BRISTOL

VA242025873

59290042

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DAN RIVER INC  
ATTN CATHERINE HANDY  
1100 WEST MAIN ST  
DANVILLE

VA245414708

SER# 3279420651|WB 229663|ID NS 0320500

COLLECT NO

CELCO

VA

251,700  
62,800

188,900

ICC - -C-08735

1121290

1225 WELLMORE #7

VAX5

1CARCOAL  
RIVER PERMIT NUMBER: VAX59  
SANDUSKY GROUND STORAGE: VAX59

SCA 188900MULTIPLE CAR WAYBILL FOR CAR MOVE  
MENT ONLY. FOR REVENUE CHARGES SE  
NS 0000320500  
WAYBILL#:229663 SERIAL#:3279420651

188900 TOTAL