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

IN RE:) CASE NO. 04-10990-WHD through
) 04-10993-WHD (Joint Administration)
DAN RIVER, INC. et. al.)
) CHAPTER 11
Debtor)
) JUDGE DRAKE
)

EMERGENCY MOTION TO RECLAIM GOODS AND BRIEF IN SUPPORT THEREOF

COMES NOW, RAPOCA SALES COMPANY, UNITED COAL COMPANY AND RAPOCA ENERGY CO. (collectively referred to as "Sellers") and files this, its Emergency Motion to Reclaim Goods Pursuant to 11 U.S.C. § 546(c) and Brief in Support thereof and respectfully shows the

Court the following:

1.

Debtors filed their request for relief under Title 11 of the U.S. Code on March 31, 2004 (the "Filing Date"). The Court granted Debtors' request for Joint Administration by Order entered on April 1, 2004 (docket no. 41).

2.

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. § 1409.

3.

Debtor, Dan River, Inc., purchased 30 cars of coal from Sellers on March 24, 2004. Each car

contains 100 tons of coal. The car number and identifying data are on an exhibit attached hereto. Twenty-Six or Twenty-Eight of these cars were not received by Debtor by the Filing Date and the remaining two or four cars had not been unloaded as of the Filing Date. Copies of the shipping confirmation and Purchase Order are also attached hereto.

4.

Debtor, Dan River, Inc. purchased additional coal which was delivered between March 12, 2004 and March 31, 2004. Copies of the shipping confirmation and Purchase Order are also attached hereto.

5.

O.C.G.A. § 11-2-702 provides for the Sellers' remedies on discovery of a buyer's insolvency. (2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the tenday limitation does not apply.

(3) The seller's right to reclaim under subsection (2) of this Code section is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this article....

A similar statute is in effect in Virginia. Code of Va. §8.2-702.

6.

Section 546(c) provides that the Debtors may not avoid Sellers right to reclaim goods, the coal, pursuant to *O.C.G.A.* § 11-2-702 (2003) and similar Virginia law because the Debtor, expressly, does not take the rights as a "good faith purchaser," "buyer in the ordinary course of business," or "lien creditor" as to the rightfully reclaimed coal. "The rights and powers of the [Debtor-in-Possession] … are subject to any statutory or common-law right of a seller of goods that has sold goods to the debtor, in the ordinary

course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, but –

- (1) such a seller may not reclaim any such goods unless such seller demands in writing reclamation of such goods -
 - (A) before 10 days after receipt of such goods by the debtor; or
 - (B) if such 10-day period expires after the commencement of the case, before 20 days after receipt of the goods by the debtor;....

11 U.S.C. §546(c).

7.

This Court has previously determined that in order to be entitled to reclaim goods, the Seller must comply with both the provisions of 11 U.S.C. §546(c) and *O.C.G.A.* § 11-2-702. When these statutes are considered together, however, a seller of goods to a debtor in bankruptcy is not entitled to the protections offered to a seller under Georgia law based on misrepresentations of insolvency that take the 10 day period back to a 3 month period, but the seller is otherwise entitled to its rights to reclamation under State law in the bankruptcy case. *In re Leeds Building Products, Inc.*, 141 B.R. 265, 267 (Bankr. N.D.Ga. 1992)(B.J. Drake).

8.

All of the coal sold and/or shipped to Debtor, which was insolvent at the time, were shipped and purchased in the ordinary course of the Sellers' business and affairs.

9.

The coal is not subject to any other security interest, and, accordingly, under state law, Sellers are entitled to reclaim the coal.

On March 31, 2004, Sellers forwarded the letter attached hereto demanding the reclamation of all coal delivered after March 12, 2004. This letter further requests that this coal be immediately separated from any other coal inventory and set aside for pick-up by Sellers and return delivery by Norfolk Southern Railway Co. Upon information and belief, all of the demanded coal is already isolated.

11.

There were 26 or 28 cars of coal in transit at the time of filing. Norfolk Southern Railway Co., which was transporting this coal, filed an Interpleader Action with the Court on April 2, 2004 requesting direction from the Court as to where the coal in transit should be delivered. Adversary Proceeding No. 04-1708.

12.

Paragraph 13 of the Dan River Purchase Order with Sellers provides that title to the coal in transit with Norfolk Southern Railway Co. remains with Sellers.

13.

This Court has previously held that in order to prove an entitlement to reclaim goods, Sellers must establish:

- 1. That they have a statutory or common law right to reclaim the goods;
- 2. Debtor's insolvency at the time it received the goods; and
- 3. A written demand for reclamation made within ten days after Debtor's receipt of the goods.

 In re Leeds Building Prod., 141 B.R. at 267.

Sellers have a clear right to the goods according to state law under the Uniform Commercial Code, applicable in both Virginia and Georgia, as set forth above. Debtor was insolvent at the time it received the goods. In fact 26 or 28 cars of coal were in transit at the time of the filing and had not yet been received by the Debtor and title to this coal remained with Sellers at the time of filing. Finally, Sellers sent Debtor a timely written demand for reclamation within ten days of Debtor's receipt of the goods and prior to Debtor's receipt of the goods with respect to the cars still in transit at the time of filing. Accordingly, Sellers are entitled to reclamation and possession of the coal.

15.

Sellers are entitled to emergency relief because the coal is needed by other customers who are almost out of coal and will be required to shut down their plant if the coal is not delivered to them immediately. Further, Norfolk Southern Railway Co. is in need of free freight cars to haul other cargo so that the cars of coal that are the subject of this motion may be used for other business.

16.

Sellers request an Emergency Hearing on this Motion so that its rights may be fully protected and so that other third parties do not suffer any harm from a delay in these proceedings.

WHEREFORE, Sellers request that the Court

- (a) Set this Motion down for immediate hearing (which may be telephonic or in person);
- (b) Uphold and honor Sellers rights to reclaim the coal delivered within its rights to reclaim the goods as set forth herein;
- (c) Enter an Order compelling Debtors to immediately surrender, turn-over and return, all coal sold and delivered to Debtors from Sellers as identified herein;

- (d) Enter an Order establishing that title to the coal in transit, that is subject to the Norfolk-Southern interepleader action is held by Sellers and require its return to Sellers; and
- (e) Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Steinfeld & Steinfeld, P.C.
/s/ Shayna M. Steinfeld
Shayna M. Steinfeld, State Bar No. 622895
P.O. Box 49446, Atlanta, Georgia 30359
(404)636-7786, shayna@steinfeldlaw.com
Attorneys for RAPOCA SALES CO., UNITED COAL
CO. and RAPOCA ENERGY CO.

United Coal Company



A RAPOCA COMPANY

March 31, 2004

2700 Lee Highway Bristol, Virginia 24202

Dan River, Inc.(Debtor)
P.O. Box 261
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. ¹ 546(c) of the reclamation of all goods sold and delivered to you from Rapoca Sales Company(United Coal Company on behalf of Rapoca Energy Co.) after March 12, 2004. These goods should be immediately separated from your other inventory and set aside for pickup by Rapoca Sales Company.

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

Sincerely yours,

Rapoca Sales Company

United Coal Company

Rapoga Energy Co.

Rapoca Energy Co.

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) 669-2671 E-Mail: ucccoal@naxs.net

i d' boi sent List





Correct Shipment Instruction with sequence number 00000025 Rapoca Energy Company Lead Equipment NS 320500

Print

General Information

Unit Train Bill

Bill Of Lading # WG00000025 Released as Billing Data:

Collect Shipment

Carrier Scale Weight

Shipper RAPOCA ENERGY CO 2700 LEE HIGHWAY

BRISTOL VA 242025873

Loaded

Bill Of Lading To NS 03-24-04 13:41

SECTION 7 - Not In Effect

Consignee DAN RIVER INC

ATTN CATHERINE HANDY 1100 WEST MAIN ST **DANVILLE VA 245414708**

Route Information

Rail Origin: STRIC VA

Type of Route: Shipper

Rail Destination : DANVILLE VA

Route Starting Carrier: NS

Contract Information Contract/Ref Numbers

CT: 8735

Special Handling

WL.

Pricing Authority

Commodity Information

STCC **Packages** 1121290

1

Qualifier CLD

Description

COAL

Coal Information

Permit Number:

VAX59

Class:

Train Number:

Mine Number:

1225

Loading Starts: Loading Ends:

NW

NS

NW

13310

300621

144150

Equipment Information

Number	Weight	Qualifer
320500	100	E
331528	100	E
10568	100	Ε
132515	100	E
4416		E
12753	100	Ε
11477	100	E
11180		Ε
120456		E
3535		É
144469	100	E
498290	100	E
144774	100	E
145918	100	E
116584	100	E
5579	100	E
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12659	100	Ē
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100

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Seals

3-24-04 30 cars VAX-59

EEE

04

15:00

Dan River Inc. PURCHASE ORDER 1245910 **VENDOR 109253**

> RAPOCA SALES COMPANY (INITED COAL CO.) ANNA COM SPECIALIZATION CONTRACTOR AND CONTRACTOR A BRISTOL, VA 24262

CONDITIONS PURCHASE ORDER HUMBER Man appear on all impiers, puckages, and convergendance aduling to this

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DAN RIVER, INC. (#01 STORES) SER TO: SCHOOLFIELD DIV. 1100 WEST MAIN ST., GATE 1 DANVILLE VA 24541

BILL TO: DAN RIVER INC. ACCOMMING DAVARID P 0 NOX 261 DANVILLE, VA 24543

Dennis Johnson TRITYER: NAME -PHONE-C124-700-72240 WAW-414-700-4002

089	ER DATE 27/2004	NET 10 DAYS	rom	Date Of Shipment*	FOR POOR	Mines	Norfolk/Southern		93/31/2004
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						RILFUR: -1% GRIND: 63 - 65 FUSHKON: 2700 DPERATING CO: UNITED COAL CO	L		
	77					MINE: WELLMORE, VA BEAMS: BLAIR & HAGY SHIPPING POINT: NSF 1225 SHACKER II DISTRICT			
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PURCHASING

Dan River Inc. PURCHASE ORDER 1245916 **VENDOR 199253**

> RAPOCA SALES COMPANY (UNITED COAL CO.) FIRE LEE BRUNSTAY BRISTOL, VA 24202

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PURCHASE ORDER 1245916

PAGE: 2

DAN RIVER, INC. (#01 STORES) SHIP TO: SCHOOLFIELD DIV.

1160 WEST MAIN ST., GATE 1

DANVILLE VA 24541

DAN RIVER INC. BILL TO:

MALANIA BITTANA

P O BOX 261

DANVILLE, VA 24543

Dennis Johnson MITTER NAME -PHICHE. (434-799-7334) FAX-434-799-4992

01/27/2004	NET 10 DAYS			FOR ROW!		Norfolk/Southern		03/31/2004
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- 4. Packing, Shipment, Storage. Saller shall package and ship all shipments hereunder in accordance with the requirements specified in this order without additional cost to Buyer, or, if such are not specified, in accordance with atlandard commercial process. Saller shall package and ship all shipments hereunder in accordance with the requirements specified in this order without additional cost to Buyer, or, if such are not specified, in accordance with atlandard commercial process. Saller shall package and ship all shipments must contain a packing ist indicating purchase order numbers, quantities and other identifying information corresponding to that set out on the face of this order. Buyer shall not be practiced at lowest available cost. Each shipment must contain a packing ist indicating purchase order numbers, quantities and other identifying information corresponding to that set out on the face of this order. Buyer shall not be practiced and other identifying information corresponding to that set out on the face of this order. Buyer shall not be practiced and other identifies and
- 5. Price. Unless specifically staked otherwise on the face of this order, all prices specified on the face of this purchase order, are for goods delivered F.O.B. Buyer's Plant and represent the entire cost to Buyer, except for those taxes which in the
- 6. Compliance with Laws. Regulations and Codes.

 Seller warrants that all goods furnished berearder will comply with, and be manufactured, priced, sold and labeled in compliance with applicable isderal, state and local laws, codes, rules, regulations, and standards. Without lensing the heapping. Sales agrees not to decriments against any simple as the codes of instances, including, Without similation, and security codes and local laws, regulations and security codes and local laws, regulations and security in the code in the code of the cod
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To the follows extent permetted by new, Searchard incurringly and hold narraces surger, as ourscanned and checkers, officers, organization and damage to Buyer's property or farificer or the property of surfaces or the property of the prop

- 9. Insurance. Seller shall meintain adequate fiability, employer's and automobile fiability and workers' compensation insurance to protect Buyer and its agents, employees and contractors with respect to the indemnity contained is learn 8 and any claims under workers' compensation, safety and health and similar laws and regulations. If requested, Seller shall furnish evidence of such insurance in form and substance satisfactory to Buyer. 10. Time of the Essence. Time is of the essence. All goods shall be delivered and services rendered within the time or times specified in this order. Buyer reserves the right to cancel any portion of this order and/or any undelivered belance if delivery is not made as appendiced.
- 1]. Termination. In the event that Seiler does not comply with the terms of this purchase order, Bayer may terminate this order at any time, in whole or in part, by providing written notice of termination to Seller, such termination respecting specified in the fictice but not earlier than two days after the notice is received by Seller. Buyer shall be entitled to terminate writhout fee or charge, and upon termination, Seller shall reimburse Buyer for any payments made prior to termination respecting than two days after the notice is received by Seller. Buyer shall be entitled to terminate writhout fee.
- 12. Bankrupkly. Subject to applicable bankruptcy law, in the event of any proceeding by or against Seller in bankruptcy, reorganization or insolvency or for the appointment of a receiver or any assignment for the banefit of creditors. Buyer may terminate this order without further liability except for conforming deliveries previously made.
- 13. Title and Security Interests. If full or partial payment is made to Seller prior to the delivery of all goods or the performance of all services hereusder, title to all goods identified to this order at the time of such payment or thereafter shall pass to maintain insurance through the goods are delivered to the destination epecified breain and accepted. Seller agrees to maintain insurance through the goods are delivered to the destination epecified breain and accepted. Seller agrees to maintain insurance through the goods are delivered to the destination epecified breain and accepted. Seller agrees to maintain insurance through the goods are delivered to the destination epecified breain and accepted. Seller agrees to maintain insurance through the goods are delivered to the goods are delivered to the goods are the goods and title shell remain in the Bayer to goods are the goods are the goods and title shell remain in the Bayer through the goods are the goods are the goods are through the goods are the goods are the goods and title shell remain in the Bayer through the goods are the goods are the goods are through the goods are the goods are through the goods are through the
- 14. Intellectual Property. Seller shall respect all trademark, suppright and patent rights of have Buyer, elbast disactly or indirectly, any goods ordered haveby which display or incorporate any of Buyer's trademark, suppright and patent rights or disactly or indirectly, any goods ordered haveby which display or incorporate any of Buyer's trademark, suppright and patent is an interpret of any supprise to supprise the supprise of the supprise

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

IN RE:) CASE NO. 04-10990-WHD through
) 04-10993-WHD (Joint Administration)
DAN RIVER, INC. et. al.)
) CHAPTER 11
Debtor)
) JUDGE DRAKE
)

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all parties (or the parties themselves if not represented by counsel) in the foregoing matter with a copy of Emergency Motion to Reclaim Goods by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon addressed as follows:

Eileen Crowley, Esq. Crowley & Clarida, LLP Building 1700- Suite 100 2255 Cumberland Parkway, Suite 2000 Atlanta, GA 30339-4514

Plus the Debtor's 30 largest Creditors as set forth on the list attached hereto

James Pardo, Jr., Esq. King & Spalding 191 Peachtree Street, N.E.

Atlanta, GA 30303-1763

R. Jeneane Treace, Esq.
Office of the U.S. Trustee
362 Richard B. Russell Building
75 Spring Street, SW.
Atlanta, GA 30303

This 5th day of April, 2004.

Steinfeld & Steinfeld, P.C. /s Shayna M. Steinfeld
Shayna M. Steinfeld
State Bar No. 622895

P.O. Box 49446 Atlanta, Georgia 30359 (404)636-7786; shayna@steinfeldlaw.com Attorneys for RAPOCA SALES COMPANY, UNITED COAL COMPANY and RAPOCA ENERGY COMPANY

HSBC Bank USA SunTrust Bank, Trustee Richard L. Williams Attn: Mr. Frank Godino Attn: Ms. Nancy Harrison 59 Warren Place 452 Fifth Avenue 919 E. Main Street Montclair, NJ 07042 New York NY 10018-2706 Richmond, VA 23219 American Electric Power Kmart Corp. 1300 West Big Beaver P.O. Box 24404 1426 Main St. Troy, MI 48084 Canton, OH 44701-4404 Columbia, SC 29201 P. Kaufman, Inc. Teijin Akra, S.A. de C.V. EuroVista Attn: Mr. Peter Higgins Attn: Mr. Grover Smith Attn: Mr. Lath P.O. Box 19173-A 1100 Matamoros St. Newark, NJ 07195-0173 Laredo, TX 78040 Nanya Plastic Corp. America Spider-Man Merchandising L.P. Robert S. Small Attn: Mr. John Freeman Mitchell McDiffett 14 Mt. Vere Ct P. O. Box 1067 Greenville SC 29607 10202 W. Washington Blvd. Charlotte, NC 28201 Culver City, CA 90232 Elliot H. Baum Wellman Inc. Grover S. Elliot 2905 Round Hill Rd Attn: W.E. Wolcenhauer P.O. Box 26376 Greensboro, NC 27408 5146 Parkway Plaza Blvd. Charlotte, NC 28217 Lester A. Hudson, Jr. Honeywell/Allied Signal Inc. Cht. R. Beitlich Corp. 517 McDaniel Ave Attn: William Doughty, CBF Attn: Jim Ogle Greenville SC 29605 P.O. Box 33051 P.O. Box 60768 Newark, NJ 07188-0051 William J. Mika Inland Paperboard & Pkg. Inc. Attn: Mr. Tommy Hancock 321 Connestee Trail 222 Jarvis Street 102368 Annex 68 Brevard NC 28712 Toronto ONT M5B 2B8 Atlanta, GA 30368 City of Danville Div. Cent. Coll. Alpha Decade First Attn: Jonathan Lee Attn: Mr. Paul Kalv 60B Commerce Place PO Box 3308 PO Box 77138

Hicksville, NY 11801

Noveon, Inc. Attn: Mr. Howard Brink P.O. Box 73605-N Cleveland, OH 44193-0941

Hearst Magazine Brand Dev. Attn: Glen Ellen Brown 1790 Broadway, 12th floor New York, NY 10019

Danville, VA 24543-3308

NASCAR Licensing Group Attn: Mr. Mark Dyer 1 First Union Center Charlotte, NC 28202

Robert C. Crawford 1001 Botany Road Greenville SC 29615 Scana Energy Marketing, Inc. Attn: Mr. Wayne Mills Palmetto Center MC 072

40 Wall Street, 23 rd Floor New York, NY 10005-1339

Greenville SC 29616

Charlotte, NC 28260

Attn: Mr. Frances Magliocchi

Sunstates Maintenance Corp. Attn: Mr. Donnie Williamson Greensboro, NC 27417

Progressive Screen Engraving Attn: Mr. Mike Phillips P.O. Box 65680 Charlotte, NC 28265

Cargill Cotton Attn: Mr. Gary Taylor - CEO P.O. Box 751992

Charlotte, NC 28275-1992

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

IN RE:	CASE NO. 04-10990-WHD through04-10993-WHD (Joint Administration)				
DAN RIVER, INC. et. al. Debtor) O4-10993-WHD (Joint Administration)) CHAPTER 11) JUDGE DRAKE _)				
NOTICE OF ASSIG	GNMENT OF HEARING				
NOTICE IS HEREBY GIVEN that a	hearing will be held on the day of April, 2004 in				
Courtroom, in	on the Emergency Motion to				
Reclaim Goods filed by RAPOCA SALES COM	MPANY, UNITED COAL COMPANY and RAPOCA				
ENERGY COMPANY.					
Counsel for RAPOCA SALES COMP	ANY, UNITED COAL COMPANY and RAPOCA				
ENERGY COMPANY is hereby directed to ser	ve a copy of this Notice on Counsel for Debtors, the U.S.				
Trustee and Counsel for Norfolk-Southern and to	o file a certificate of service with the Court.				
	W. HOMER DRAKE Judge, U.S. Bankruptcy Court				

Prepared by:
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