

**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 ten-day 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.

10.

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.

14.

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 interpleader 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. § 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
By [Signature]
United Coal Company
By [Signature]
Rapoca Energy Co.
By [Signature]

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

: / / bo1_sent_List

Page 1 of 2

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 InformationContract/Ref Numbers

CT: 8735

Special Handling

WL

Pricing Authority**Commodity Information**

STCC	Packages	Qualifier	Description
1121290	1	CLD	COAL

Coal Information

Permit Number:	VAX59	Class:	Train Number:	Mine Number:	1225
Loading Starts:					
Loading Ends:					

Equipment Information

Initial	Number	Weight	Qualifier	Seals
NS	320500	100	E	
NS	331528	100	E	
NW	10568	100	E	
NW	132515	100	E	
NW	4416	100	E	
NW	12753	100	E	
NW	11477	100	E	
NW	11180	100	E	
NW	120456	100	E	
NW	3535	100	E	
NW	144469	100	E	
CR	498290	100	E	
NW	144774	100	E	
NW	145918	100	E	
NW	116584	100	E	
NW	5579	100	E	
NW	6436	100	E	
NW	12659	100	E	
NW	118208	100	E	
NW	10973	100	E	
NW	145897	100	E	
CR	498314	100	E	
NW	13310	100	E	
NS	300621	100	E	
NW	144150	100	E	

3-24-04
 30 cars
 VAX-59



Dan River Inc.
PURCHASE ORDER 1245910
VENDOR 109253

RAPOCA SALES COMPANY
(UNITED COAL CO.)
2700 E. 55th HIGHWAY
BRISTOL, VA 24202

CONDITIONS
 1. PURCHASE ORDER NUMBER Must appear on all invoices, packages, and correspondence relating to this order.
 2. DO NOT BILL SALES TAX if shipped to:
 North Carolina-Certificate of Authority No. 454
 Tennessee-Bill No. 68 Sales Tax Reg. No. 100100359
 Virginia-Direct Pay Permit No. 0000000173
 South Carolina-Direct Pay Permit No. 16000004004
 Georgia-Direct Pay Permit No. 000-79-02902-8

PURCHASE ORDER 1245910

PAGE: 1

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

BILL TO: **DAN RIVER INC.**
ACCOUNTS PAYABLE
P O BOX 261
DANVILLE, VA 24543

BUYER: NAME - Dennis Johnson
PHONE - (434-799-7334) FAX-434-799-4992

ORDER DATE 02/27/2004		BILLING TERMS NET 10 DAYS		From Date Of Mine Shipment*		FOB POINT FOB Mines		SHIP VIA Norfolk/Southern		MATERIAL USED DATE 03/31/2004	
LINE	DR ITEM NO.	QUANTITY	UOM	VENDOR PART NO.	VENDOR PART DESCRIPTION				UNIT PRICE (USD)	EXTENDED PRICE (USD)	
10	1001989		TON	RAW A&B&F MINE BLENDED	CONFIRMATION - TRAVIS HUTTON - FAX 776-669-2871 NUT/SLACK COAL - 2" X 0" - SCHOOLFIELD SPECIFICATIONS AS FOLLOWS: MOISTURE: 6% ASH: 10% BTU: 13000 SULFUR: -1% GRIND: 63 - 65 FUSION: 2700 OPERATING CO: UNITED COAL CO. MINE: WELLMORE, VA GRAMS: BLAIR & HAGY SHIPPING POINT: NS# 1225 THACKER II DISTRICT 1. THE TERM OF AGREEMENT 3/1/04 THROUGH 3/31/04 2. TONNAGE IS ESTIMATED - BASED ON MARCH LOAD REQUIREMENTS. THIS AMOUNT MAY BE REDUCED AS NEEDED BY DAN RIVER.				55.00000	385,000.00	
times rail cars are delivered within 5 days from mine shipment. 03-02-04A08:49 RCVD											

Regardless of whether Seller has signed this order, Seller's receipt of goods from Buyer, commencement of work on goods, commencement of services or shipment of goods, whichever occurs first, shall be deemed acceptance of Buyer's offer to purchase on the terms and subject to all of the conditions contained in this purchase order (including those on the back of or attached to this order). Any acceptance of this purchase order is limited to acceptance of the express terms of the offer contained on the face and back hereof, and in the attachments hereto, including without limitation, Buyer's Additional Terms and Conditions for Third Party Manufacturing Operations and Additional Terms and Conditions for Contractors Performing Work on Dan River Inc. Premises, as well as choice of applicable law and consent to jurisdiction of the Virginia courts. Any proposal for additional or different terms or any attempt by Seller to vary, in any degree, any of the terms of this offer in Seller's acceptance shall not be binding upon Buyer and shall not operate as a rejection of this offer, unless such variance is in the terms of the description, quantity, price or delivery schedule of the goods or services to be performed, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Seller, such acceptance is expressly conditional on Seller's assent to any additional or different terms contained therein and to rejection of any additional or different terms contained in Seller's offer.

ADDITIONAL TERMS AND CONDITIONS ON REVERSE SIDE OF THIS FORM OR ATTACHED HERETO ARE INCORPORATED BY REFERENCE HEREIN AS SET FORTH ABOVE. IF SELLER HAS PREVIOUSLY ACKNOWLEDGED RECEIPT OF THIS FORM AND CONDITIONS REFERENCED HEREIN, SELLER AGREES TO BE BOUND BY SUCH TERMS AND CONDITIONS WHETHER OR NOT THEY ARE ATTACHED TO OR REPRODUCED AS A PART OF THIS ORDER.

Figure 2



Dan River Inc.
PURCHASE ORDER 1245916
VENDOR 199253

**RAPOCA SALES COMPANY
(UNITED COAL CO.)
2700 LEE HIGHWAY
BRISTOL, VA 24202**

CONFIDENTIAL

1. **PURCHASE ORDER NUMBER** Must appear on all invoices, packages, and correspondence relating to this order.
2. **DO NOT BILL SALES TAX** if shipped to:
North Carolina-Office of Auditing No. 454
Tennessee-Rule No. 48 Sales Tax Reg. No. 1621955-59
Virginia-Client Pay Permit No. 990300875
South Carolina-Client Pay Permit No. 160983-004
Georgia-Client Pay Permit No. 660-75-42962-5

PURCHASE ORDER 1245916

PAGE: 2

SHIP TO:

DAN RIVER, INC. (#81 STORES)
SCHOOLFIELD DIV.
1160 WEST MAIN ST., GATE 1
DANVILLE VA 24541

BILL TO:

DAN RIVER INC.
ACCOUNTS PAYABLE
P O BOX 261
DANVILLE, VA 24543

BUYER: NAME - Dennis Johnson
PHONE - (434-799-7334) **FAX -** 434-799-4992

ORDER DATE 02/27/2004		BILLING TERMS NET 10 DAYS		FOB POINT FOR Mines		SHIP VIA Norfolk/Southern		MATERIAL NEED DATE 03/31/2004	
LINE	DR ITEM NO.	QUANTITY	UOM	VENDOR PART NO.	VENDOR PART DESCRIPTION	UNIT PRICE (USD)		EXTENDED PRICE (USD)	
					REPLACES PURCHASE ORDER NO. 1242796.				
					TOTAL US Dollar				385,000.00

Notwithstanding whether Seller has signed this order, Seller's receipt of goods from Buyer, commencement of work on goods, commencement of services or shipment of goods, whichever occurs first, shall be deemed acceptance of Buyer's offer to purchase on the terms and subject to all of the conditions contained in this purchase order (including those on the back of or attached to this order). Any acceptance of this purchase order is limited to acceptance of the express terms of the offer contained on the face and back hereof, and in the attachments hereto, including without limitation, Buyer's Additional Terms and Conditions to Third Party Manufacturing Operations and Additional Terms and Conditions for Contractors Performing Work on Dan River. The terms, as well as choice of applicable law and consent to jurisdiction of the Virginia courts. Any proposal for additional or different terms or any attempt by Seller to vary, in any degree, any of the terms of this offer in Seller's acceptance shall not be binding upon Buyer and shall not operate as a rejection of this offer, unless such variation is in the terms of the description, quantity, price or delivery schedule of the goods or services to be performed, but shall be deemed a rejection of the offer and this offer shall be deemed accepted by Seller without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Seller, such acceptance is expressly conditional on Seller's assent to any additional or different terms contained herein and to rejection of any additional or different terms contained in Seller's offer.

ADDITIONAL TERMS AND CONDITIONS ON REVERSE SIDE OF THIS FORM OR ATTACHED HERETO ARE INCORPORATED BY REFERENCE HEREIN AS SET FORTH ABOVE. IF SELLER HAS PREVIOUSLY ACKNOWLEDGED RECEIPT OF ALL OF THE TERMS AND CONDITIONS PERTAINING HEREIN, SELLER AGREES TO BE BOUND BY SUCH TERMS AND CONDITIONS WHETHER OR NOT THEY ARE ATTACHED TO OR REPRODUCED AS A PART OF THIS ORDER.

MAR 31 '04 (WED) 15:01

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**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
Attn: Mr. Frank Godino
452 Fifth Avenue
New York NY 10018-2706

SunTrust Bank, Trustee
Attn: Ms. Nancy Harrison
919 E. Main Street
Richmond, VA 23219

Richard L. Williams
59 Warren Place
Montclair, NJ 07042

Kmart Corp.
1300 West Big Beaver
Troy, MI 48084

American Electric Power
P.O. Box 24404
Canton, OH 44701-4404

Scana Energy Marketing, Inc.
Attn: Mr. Wayne Mills
1426 Main St.
Palmetto Center MC 072
Columbia, SC 29201

P. Kaufman, Inc.
Attn: Mr. Peter Higgins
P.O. Box 19173-A
Newark, NJ 07195-0173

Teijin Akra, S.A. de C.V.
Attn: Mr. Grover Smith
1100 Matamoros St.
Laredo, TX 78040

EuroVista
Attn: Mr. Lath
40 Wall Street, 23rd Floor
New York, NY 10005-1339

Nanya Plastic Corp. America
Attn: Mr. John Freeman
P. O. Box 1067
Charlotte, NC 28201

Spider-Man Merchandising L.P.
Mitchell McDiffett
10202 W. Washington Blvd.
Culver City, CA 90232

Robert S. Small
14 Mt. Vere Ct
Greenville SC 29607

Elliot H. Baum
2905 Round Hill Rd
Greensboro, NC 27408

Wellman Inc.
Attn: W.E. Wolcenhauer
5146 Parkway Plaza Blvd.
Charlotte, NC 28217

Grover S. Elliot
P.O. Box 26376
Greenville SC 29616

Lester A. Hudson, Jr.
517 McDaniel Ave
Greenville SC 29605

Honeywell/Allied Signal Inc.
Attn: William Doughty, CBF
P.O. Box 33051
Newark, NJ 07188-0051

Cht. R. Beitlich Corp.
Attn: Jim Ogle
P.O. Box 60768
Charlotte, NC 28260

Inland Paperboard & Pkg. Inc.
Attn: Mr. Tommy Hancock
102368 Annex 68
Atlanta, GA 30368

William J. Mika
321 Connestee Trail
Brevard NC 28712

Attn: Mr. Frances Magliocchi
222 Jarvis Street
Toronto ONT M5B 2B8

Alpha Decade First
Attn: Jonathan Lee
60B Commerce Place
Hicksville, NY 11801

City of Danville Div. Cent. Coll.
Attn: Mr. Paul Kalv
PO Box 3308
Danville, VA 24543-3308

Sunstates Maintenance Corp.
Attn: Mr. Donnie Williamson
PO Box 77138
Greensboro, NC 27417

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

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

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

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

Robert C. Crawford
1001 Botany Road
Greenville SC 29615

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 through
)	04-10993-WHD (Joint Administration)
DAN RIVER, INC. et. al.)	
)	CHAPTER 11
Debtor)	
)	JUDGE DRAKE
_____)	

NOTICE OF ASSIGNMENT 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 COMPANY, UNITED COAL COMPANY and RAPOCA ENERGY COMPANY.

Counsel for RAPOCA SALES COMPANY, UNITED COAL COMPANY and RAPOCA ENERGY COMPANY is hereby directed to serve a copy of this Notice on Counsel for Debtors, the U.S. Trustee and Counsel for Norfolk-Southern and to file a certificate of service with the Court.

W. HOMER DRAKE
Judge, U.S. Bankruptcy Court

Prepared by:
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.