

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

In re: ) Chapter 11  
 )  
FIBRANT, LLC, *et al.*,<sup>1</sup> ) Case No. 18- 10274  
 )  
 )  
Debtors. ) (Joint Administration Requested)  
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**DEBTORS’ EMERGENCY MOTION FOR AUTHORITY TO CONTINUE  
PRE-EXISTING INSURANCE PROGRAMS AND TO PAY PRE-  
PETITION PREMIUMS AND RELATED OBLIGATIONS**

Fibrant, LLC and its affiliated debtors-in-possession (the “Debtors”) file this *Emergency Motion for Authority to Continue Pre-Existing Insurance Programs and to Pay Pre-Petition Premiums and Related Obligations* (this “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 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.

2. The statutory predicates for the relief requested herein are Sections 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”).

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if any), are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).



## **BACKGROUND**

### **A. The Debtors and these Bankruptcy Cases**

3. On February 23, 2018 (the “Petition Date”), the Debtors filed voluntary petitions with the Court under chapter 11 of the Bankruptcy Code.

4. The factual background relating to the Debtors’ commencement of these cases is set forth in detail in the *Declaration of David Leach in Support of First-Day Motions and Applications* (the “First-Day Declaration”),<sup>2</sup> filed on the Petition Date and incorporated herein by reference.

5. The Debtors have continued in possession of their properties and continue to operate and manage their business as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

6. As of the date of this filing, no official committee of unsecured creditors has been appointed in these cases, and no request has been made for the appointment of a trustee or examiner.

### **B. The Debtor’s Business Insurance Programs**

7. In connection with their business, the Debtors maintain various insurance policies and programs through different insurance carriers (the “Insurance Carriers”). All insurance policies covering the Debtors are listed on the attached Exhibit A, together with a list of the Insurance Carriers, policy terms, and the premiums due thereunder.

8. The Debtors’ insurance policies and programs include liability and property insurance policies, which provide the Debtors with insurance coverage relating to, among other

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<sup>2</sup> Capitalized terms that are used but not defined in this Motion have the meanings ascribed to such terms in the First-Day Declaration.

things, general liability, general property, automobile liability, workers' compensation, fiduciary liability, and directors' and officers' liability.

9. As of the Petition Date, the Debtors believe that they are current on their insurance premiums with respect to the pre-petition period. However, to the extent there is an outstanding insurance policy premium that relates (in whole or in part) to the pre-petition period, the Debtors seek authority to pay these pre-petition premiums in the ordinary course as such payments are necessary to keep their insurance policies and programs in force.

**C. The Claims Administration Process**

10. In certain of the Debtors' insurance policies, there are certain self-insured retention and deductible amounts set forth in the policy language for each claim.

11. If there are deductible amounts set forth in the policy language for each claim, these claims for losses and expenses are paid by the Insurance Carriers directly to claimants, attorneys, and investigators, as incurred. The Insurance Carriers then bill the Debtors for reimbursement of losses and expenses that fall under the deductible amounts set forth in the policy.

12. Paying expenses such as attorneys' fees and costs of investigation that may fall within the self-insured retention or deductible under the Debtors' insurance policies is necessary to ensure that the Insurance Carriers will continue to address and process claims.

**D. Workers' Compensation Program**

13. Under Georgia law, the Debtors are required to maintain workers' compensation policies and programs to provide their employees with coverage for claims arising from or related to their employment with the Debtors.

14. Historically, and until June 30, 2017, the Debtors “self-insured” their workers’ compensation obligations as permitted by Georgia law. As part of their previous self-insurance program, the Debtors arranged to have a letter of credit issued by Citibank for \$880,000 with beneficiary Georgia Self-Insurers Guaranty Trust Fund, to cover any run-off claims with a self-insured retention of \$500,000 (the “Self-Insurance Program”). This letter of credit is still in place. The Debtors stopped self-insuring their workers’ compensation obligations as of June 30, 2017, and the Debtors do not seek to continue to self-administer the claims stemming from the Debtors’ Self-Insurance Program. Instead, the Debtors anticipate that following the Petition Date these claims will be administered by the Georgia Self-Insurers Guaranty Trust Fund.

15. Since July 1, 2017, the Debtors have maintained a workers’ compensation policy (the “Workers’ Compensation Program”) with Granite State Insurance Company (policy # WC055816187). The annual premium for the Workers’ Compensation Program is \$222,298. There is no self-insured retention amount. The Debtors seek to continue their Workers’ Compensation Program for claims arising from and after July 1, 2017. The Debtors will not, however, continue to administer their Self-Insurance Program for claims arising prior to July 1, 2017.

**E. Stop Loss Insurance**

16. As discussed in the Debtors’ *Emergency Motion to Authorize Payment of Pre-Petition Wages, Payroll Taxes, Certain Employee Benefits, and Related Expenses, and Other Compensation to Employees*, the Debtors formerly maintained a self-insured health plan for its employees through 2017. The Debtors maintain a stop loss insurance contract (the “Stop Loss Policy”) with Symetra for claims made under the health plan that exceed \$150,000. The plan costs \$150.45 per employee per month. The annual premium paid from January 1, 2017 through

December 31, 2017 was \$178,283. The Stop Loss Policy ended on December 31, 2017, and has a run-off period of three months.

**F. Other Liability Insurance**

17. As set forth on Exhibit A, the Debtors also maintain director and officer liability insurance (“D&O Insurance”) and fiduciary liability insurance (“Fiduciary Insurance”). These policies are set to expire on August 1, 2018. Prior to the filing of these chapter 11 cases, the Debtors added a tail to the D&O Insurance policy through AIG (Netherlands) to extend coverage to July 31, 2024, with a policy limit of €25 million, and also added a tail to the Fiduciary Insurance policy to extend coverage to July 31, 2024, with a policy limit of \$10 million.

**RELIEF REQUESTED**

18. By this Motion, the Debtors seek an order (a) authorizing them to maintain their insurance programs, insurance policies, Workers’ Compensation Program for claims arising after July 1, 2017, and any related agreements, as such practices, programs, and policies were in effect as of the Petition Date and to pay, in their sole discretion, pre-petition amounts accrued in connection therewith, and (b) authorizing the Debtors’ banks and other financial institutions to receive, process, and pay any and all checks and other transfers related to such claims.

**BASIS FOR RELIEF**

19. This Court has the authority to grant the relief requested herein pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code. Section 363(b)(1) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Moreover, Section 105(a) allows the Court to authorize payments on account of certain pre-petition claims when necessary. Section

105(a) provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

20. The Debtors seek authorization to continue their insurance policies and programs and the Workers’ Compensation Program (other than the Self-Insurance Program) (collectively, the “Insurance Programs”) on an uninterrupted basis, consistent with pre-existing practices, and pay, when due, and in the ordinary course of the Debtors’ businesses, all pre-petition premiums, administrative fees, and other pre-petition obligations (collectively, the “Insurance Obligations”)<sup>3</sup> to either the insurance broker, the Insurance Carriers, or otherwise to the extent due and payable post-petition.

21. As stated above and set forth on Exhibit A, some of the Debtors’ insurance policies involve either deductible amounts or a self-insured retention for each claim that is submitted. To the extent a deductible payment, self-insured retention payment, or reimbursement relating to a period prior to the Petition Date is outstanding with respect to any of the insurance policies, the Debtors seek authority, in their discretion, to make such payments in the same manner that such payments were made prior to the Petition Date.

22. It is essential to the Debtors’ efforts in these chapter 11 cases that the Insurance Programs be maintained on an ongoing and uninterrupted basis. The failure to pay premiums when due may affect the Debtors’ ability to renew the insurance policies. If the insurance policies are allowed to lapse, the Debtors could be exposed to substantial administrative liability for damages resulting to persons and property of the Debtors and others. Such exposure would place the Debtors’ assets at risk.

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<sup>3</sup> “Insurance Obligations” does not include an obligations related to the Debtors’ Self-Insurance Program.

23. Continued effectiveness of directors' and officers' liability policies is necessary to the retention of qualified and dedicated senior management and directors.

24. Finally, pursuant to the guidelines established by the United States Trustee, the Debtors are obligated to remain current with respect to certain of their primary insurance policies.

25. The amounts the Debtors propose to pay in respect of the Insurance Programs are minimal in light of the size of the Debtors' estates and the potential exposure of the Debtors, absent insurance coverage. Therefore, it is critical that the Debtors continue to maintain their Insurance Programs on an uninterrupted basis and be permitted to pay any obligations in the ordinary course of business and consistent with pre-petition practices. Relief similar to that requested herein has been granted by courts in other substantial chapter 11 cases in Georgia. *See, e.g., In re Cagle's, Inc.*, No. 11-80202 (Bankr. N.D. Ga. Oct. 20, 2011) (Bihary, J.) [Docket No. 28]; *In re Sea Island Co.*, Case No. 10-21034 (Bankr. S.D. Ga. Aug. 12, 2010) (Dalis, J.) [Docket No. 64]; *In re AtheroGenics, Inc.*, Case No. 08-78200 (Bankr. N.D. Ga. Oct. 16, 2008) (Massey, J.) [Docket No. 55]; *In re Pike Nursery Holding, LLC*, Case No. 07-79129 (Bankr. N.D. Ga. Nov. 16, 2007) (Diehl, J.) [Docket No. 34]; *In re Foamex Int'l Inc.*, Case No. 05-12685 (Bankr. D. Del. Sept. 21, 2005) (Walsh, J.) [Docket No. 41]; *In re Allied Holdings, Inc.*, Case Nos. 05-12515–05-12537 (Bankr. N.D. Ga. Aug. 1, 2005) (Drake, J.) [Docket Nos. 56 and 62]; *In re Centennial HealthCare Corp.*, Case No. 02-74974 (Bankr. N.D. Ga. Dec. 20, 2002) (Massey, J.) [Docket No. 48]. Given the crucial nature of the Debtors' insurance coverage, the Debtors submit that similar relief is appropriate in these chapter 11 cases.

26. The maintenance of the Workers' Compensation Program is likewise justified because applicable state law mandates this coverage, and 28 U.S.C. § 959(b) requires the

Debtors to comply with valid state laws. In addition, the Debtors' employees all depend on the protection that the Workers' Compensation Program provides.

27. Authorization of the payment of the Insurance Obligations should not be deemed to constitute the post-petition assumption of any executory contract pursuant to Section 365 of the Bankruptcy Code. The Debtors are in the process of reviewing these matters and reserve all rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay the Insurance Obligations should not affect the Debtors' right to contest the amount or validity of any such charges, in whole or in part.

28. If the Court grants the relief sought herein, the Debtors request that their bank and other financial institutions be authorized when requested by the Debtors and in the Debtors' sole discretion, without any duty of inquiry or liability to any party for following the Debtors' instructions, to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts to pay the Insurance Obligations, whether those checks were presented prior to or after the Petition Date, and make other transfers provided that sufficient funds are available in the applicable accounts to make the payments.

29. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and their creditors, and should be granted in all respects.

30. The facts cited herein and in the *Declaration of David Leach in Support of First-Day Motions and Applications*, filed contemporaneously herewith, illustrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Based on the foregoing, Bankruptcy Rule 6003, to the extent it is applicable, has been satisfied.

31. To the extent the fourteen-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Motion, the Debtors request that such stay be waived.

**NOTICE**

32. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; (m) the Insurance Carriers; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that this Court:

- (a) enter an order in the form attached hereto as Exhibit B; and
- (b) grant the Debtors such other and further relief as is just and proper.

Dated: February 23, 2018  
Augusta, Georgia

Respectfully submitted,

KING & SPALDING LLP

*/s/ Paul K. Ferdinands*

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PROPOSED COUNSEL FOR THE  
DEBTORS-IN-POSSESSION

**EXHIBIT A**

Fibrant, LLC  
U.S. Schedule of Insurance  
2017 - 2018

Coverage	Policy Term	Policy Number	Insurer	Limits	Retention / Deductible	Premium
U.S. Workers Comp.	7/01/17 - 7/1/18	WC055818187	Granite State Insurance Company	Workers Comp Employers Liability Bodily Injury by Accident each Accident Bodily Injury by Disease each Employee Bodily Injury by Disease Policy Limit	Statutory \$1,000,000 \$1,000,000 \$1,000,000	\$222,298
U.S. Auto Liability	7/01/17 - 7/1/18	CA 2820267	Illinois National Insurance Co. (AIG)	Liability Limit "Any Auto" Auto Medical Pay each person Auto Physical Damage	\$1,000,000 \$10,000 Lessor of Actual Cash Value or Repair Costs	Guaranteed Cost (except \$1,000 physical damage) \$56,388
U.S. Local General Liability (Claims-Made)	11/1/17-11/1/18	99504857	Great Northern	General Aggregate Limit Products/Completed Operation Aggregate Limit Personal Injury & Advertising Injury Aggregate Limit Each Occurrence Damages to Rented Premises (any one premise) Medical Expenses (any one person) Employee Benefits Errors or Omissions-Aggregate Limit Employee Benefits Errors or Omissions-Each Claim Limit	\$2,000,000 \$2,000,000 \$1,000,000 \$1,000,000 \$1,000,000 \$10,000 \$1,000,000 \$1,000,000	\$150,000 \$13,037
U.S. Local Umbrella	11/1/17-11/1/18	79899657	Federal Insurance	Each Occurrence Other Aggregate	\$10,000,000 \$10,000,000	\$0 \$20,085
Nurses Professional (Claims-Made)	8/1/17 - 8/1/18	FLP0058769-02	Arch Specialty Insurance Company	Each Occurrence Other Aggregate	\$1,000,000 \$3,000,000	\$0 \$5,750
Environmental - XL (Claims-Made)	8/1/18 - 8/1/18	PEC0046417 01	Indian Harbor Ins. Co (XL Catlin) 2 year premium provided	Each Occurrence Other Aggregate	\$3,000,000 \$8,500,000	\$250,000 \$32,395
Property	8/1/17-8/1/18	1029473	FM Global	Each Occurrence	\$98,540,499	Property Damage: USD 300,000 Business Interruption: 10 days \$58,868
Director & Officer	8/1/17 - 8/1/18 8/1/18 - 7/31/24	58802600	National Union Fire Insurance Company of Pittsburgh, PA (AIG) -- Tail Policy: AIG Europe (Netherlands)	Each Occurrence Tail Coverage	\$10,000,000 € 25,000,000	Retention: \$114,000 \$5,382 \$267,054
Employment Practice Liability	8/1/17 - 8/1/18	06-880-26-04	National Union Insurance Company of Pittsburgh, PA (AIG)	Each Occurrence	\$1,140,900	Retention/Deduction: \$85,568 \$2,990
Crime and Fiduciary	8/1/17 - 8/1/18 8/1/18 - 7/31/24	01-615-75-74	National Union Fire Ins. Co. of Pittsburgh, PA (AIG)	Each Occurrence - Crime Each Occurrence - Fiduciary Aggregate Tail Coverage	\$5,000,000 \$10,000,000 \$10,000,000 \$10,000,000	Crime \$150,000 Fiduciary \$50,000 \$31,318 \$36,484
Environmental Liability Primary & 1st	8/01/17 - 7/31/18	36950121	XL Insurance Co			\$28,570
Employment Practice Liability Primary	8/01/17 - 8/01/18	301614272	AIG Europe (Netherlands)			\$4,573

Director & Officer 1st, 2nd & 3rd Excess	8/01/17 - 7/31/18	MH402451; KDL017PD445; 91006251	Swiss Re International; Navigators Underwriters; QBE Insurance (Europe)				\$515
Business Travel Accident Insurance	1/1/18 - 1/1/19	9907-90-12	Federal Insurance Company				\$1,463

**EXHIBIT B**  
**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>FIBRANT, LLC, et al.,</b>	)	<b>Case No. 18-<u>10274</u></b>
	)	
<b>Debtors.<sup>1</sup></b>	)	<b>Jointly Administered</b>
)		

**ORDER AUTHORIZING DEBTORS TO CONTINUE PRE-EXISTING  
INSURANCE PROGRAMS AND TO PAY PRE-PETITION PREMIUMS  
AND RELATED OBLIGATIONS**

This Matter is before the Court on the *Emergency Motion for Authority to Continue Pre-Existing Insurance Programs and to Pay Pre-Petition Premiums and Related Obligations* (the “Motion”) of Fibrant, LLC and its affiliated debtors-in-possession (the “Debtors”). All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if any), are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

The Court has considered the Motion, the *Declaration of David Leach in Support of First-Day Motions and Applications*, and the matters reflected in the record of the hearing held on the Motion on [\_\_\_\_], 2018. 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 (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicaInvest Holding, B.V.; (m) the Insurance Carriers; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002; 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 (Docket No. \_\_\_\_ ) is GRANTED.
2. The Debtors are authorized, but not directed, to pay premiums and other amounts necessary to maintain the Insurance Programs.
3. The Debtors' Workers' Compensation Program may be continued for claims arising from and after July 1, 2017.
4. The Debtors' banks are authorized and directed to honor any check or draft made in connection with the Insurance Programs that may be presented for payment and to make other

transfers necessary to implement these transactions, provided that sufficient funds are available in the applicable accounts to make the payments and transfers. The Debtors are further authorized to pay any cost or penalty incurred in the event that a check issued by the Debtors for payment of an Insurance Program obligation is inadvertently not honored because of the filing of the Debtors' bankruptcy cases.

5. The banks and other financial institutions that process, honor, and pay any and all checks on account of the Insurance Program obligations shall rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

6. Neither this Order, nor the Debtors' payment of any amounts authorized by this Order, shall (i) result in any assumption of any executory contract by the Debtors; (ii) result in a commitment to continue any plan, program, or policy of the Debtors; or (iii) impose any administrative, pre-petition, or post-petition liabilities upon the Debtors.

7. To the extent the 14-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Order, such stay is hereby waived.

8. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

9. Counsel for the Debtors are directed to serve a copy of this Order on: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States

Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; (m) the Insurance Carriers; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002, within three days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

END OF DOCUMENT

Prepared and presented by:

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