

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

In re:)	Chapter 11
)	
FIBRANT, LLC, et al.,¹)	Case No. 18-10274
)	
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION FOR AUTHORITY TO RETAIN AND COMPENSATE
PROFESSIONALS USED IN THE ORDINARY COURSE OF BUSINESS**

Fibrant, LLC (“Fibrant”) and its affiliated debtors-in-possession (the “Debtors”) file this *Motion for Authority to Retain and Compensate Professionals Used in the Ordinary Course of Business* (the “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(a), 327(a), 327(e), and 330 of title 11 of the United States Code (the “Bankruptcy Code”).

BACKGROUND

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*

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

Applications (the “First-Day Declaration”),² filed on the Petition Date and incorporated herein by reference.

5. The Debtors have continued in possession of their properties and have continued to operate and manage their business as a 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.

RELIEF REQUESTED

7. By this Motion, the Debtors respectfully request the entry of an order, pursuant to Sections 105(a), 327(a), 327(e), and 330 of the Bankruptcy Code, authorizing the Debtors to retain and compensate professionals used by the Debtors in the ordinary course of business as of the Petition Date and thereafter (collectively, the “Ordinary Course Professionals”), subject to certain monthly expenditure limitations.

BASIS FOR RELIEF

8. The Debtors desire to continue to employ the Ordinary Course Professionals to render services to their estates similar to those services they provided prior to the Petition Date. These services include services regarding (i) pre-petition environmental non-bankruptcy litigation, (ii) tax matters, (iii) intellectual property, (iv) accounting, (v) environmental services, (vi) employee benefits consulting services, and (vii) other corporate matters. Attached hereto as Exhibit A is a list of the Ordinary Course Professionals identified by the Debtors as of the Petition Date.

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

9. Prior to the Petition Date, the Debtors used the Ordinary Course Professionals to provide professional services required on a day-to-day basis to manage the Debtors' affairs. The Debtors submit that, in light of the costs associated with the preparation of employment applications for professionals who will receive relatively small fees, it would be impractical, inefficient, and unnecessarily costly for the Debtors to submit individual applications and proposed retention orders for each professional. Furthermore, it would not be practical for the Debtors' general bankruptcy counsel to handle all of the Debtors' legal matters. Accordingly, the Debtors request that this Court dispense with the requirement of individual employment applications, retention orders, and fee applications (subject to the limitation described below) with respect to each Ordinary Course Professional, and that the Debtors be permitted to employ the Ordinary Course Professionals from time to time as their services are needed.

10. The Debtors propose that each Ordinary Course Professional be required to file a declaration, substantially in the form of Exhibit B, stating that such professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matters on which such professional is to be employed (the "Retention Declaration"). The Debtors will not make any payment to any Ordinary Course Professional until such professional has filed a Retention Declaration.

11. The Debtors propose that they be permitted to pay each Ordinary Course Professional, without prior application to the Court by such professional, all of the fees and disbursements owed to such Ordinary Course Professional, upon the submission to and approval by the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and disbursements actually incurred; *provided, however*, that if any Ordinary Course Professional's fees and disbursements exceed \$30,000 in a particular month, then the

payment to such Ordinary Course Professional for any amount in excess of \$30,000 per month shall be subject to the prior approval of the Court in accordance with Sections 330 and 331 of the Bankruptcy Code.

12. The Debtors propose that approximately thirty days after the expiration of every ninety days (commencing ninety days from the date of the granting of this Motion), the Debtors will file a statement with the Court, and serve the same on the Office of the United States Trustee and counsel for any official committee appointed in these cases, certifying the Debtors' compliance with the terms of the relief requested herein, which statement shall include the following information: (a) for each Ordinary Course Professional paid during the prior ninety-day period: (i) the name of the Ordinary Course Professional, and (ii) the aggregate amounts paid as compensation for services rendered and for reimbursement of expenses incurred by such Ordinary Course Professional during such ninety-day period; and (b) a list of any additional Ordinary Course Professionals retained or used after the Petition Date that have not been reported to the Court previously.

13. Although certain of the Ordinary Course Professionals may hold unsecured claims against the Debtors with respect to pre-petition services rendered to the Debtors, the Debtors do not believe that any of the Ordinary Course Professionals have an interest materially adverse to the Debtors or their estates as to the matters for which they are to be engaged, and thus none would be retained who do not meet, if applicable, the retention requirement of Section 327(e). Moreover, the employment of ordinary course professionals is contemplated by Section 363 of the Bankruptcy Code as an ordinary use of estate assets.

14. The proposed ordinary course retention and payment procedures set forth herein will not apply to those professionals for whom the Debtors have filed separate applications for approval of employment.

15. The Debtors desire to continue to employ the Ordinary Course Professionals to render services to their estates similar to those services rendered prior to the Petition Date. It is essential that the employment of the Ordinary Course Professionals, who are already familiar with the Debtors' affairs, be continued on an ongoing basis to enable the Debtors to conduct, without disruption, their ordinary business affairs. The relief requested will save the Debtors the expense of separately applying for the employment of each professional.

16. Furthermore, relieving the Ordinary Course Professionals of the requirement of preparing and prosecuting fee applications will save the estates additional professional fees and expenses and encourage the Ordinary Course Professionals to continue their relationships with the Debtors. Likewise, the procedure outlined above will spare the Court and the United States Trustee from having to consider numerous fee applications involving relatively modest amounts of fees and expenses. The Debtors submit that the proposed employment of the Ordinary Course Professionals and the payment of compensation on the basis set forth above are in the best interests of the Debtors' estates and their creditors.

17. Relief similar to that requested herein has been granted by courts in this state in other substantial chapter 11 cases. *See, e.g., In re Cagle's Inc.*, Case No. 11-80202 (Bankr. N.D. Ga. Nov. 28, 2011) (Bihary, J.) [Docket No. 158]; *In re Sea Island Co.*, Case 10-21034 (Bankr. S.D. Ga. Sept. 10, 2010) (Dalis, J.) [Docket No. 170]; *In re TitleMax Holdings, LLC*, Case No. 09-40805 (Bankr. S.D. Ga. Apr. 23, 2009) (Davis, J.) [Docket No. 266]; *In re AtheroGenics, Inc.*, Case No. 08-78200 (Bankr. N.D. Ga. Oct. 16, 2008) (Massey, J.) [Docket No. 51]; *In re*

Atlantis Plastics, Inc., Case No. 08-75473 (Bankr. N.D. Ga. Sept. 3, 2008) (Bonapfel, J.) [Docket No. 151]; *In re Allied Holdings, Inc.*, Case No. 05-12515 (Bankr. N.D. Ga. Aug. 2, 2005) (Drake, J.) [Docket No. 55]; *In Friedman's Inc.*, Case No. 05-40129 (Bankr. S.D. Ga. Jan. 20, 2005) (Davis, J.) [Docket No. 80]; *In re Rhodes, Inc.*, Case No. 04-78434 (Bankr. N.D. Ga. Nov. 5, 2004) (Diehl, J.) [Docket No. 53]; *In re Centennial HealthCare Corp.*, Case No. 02-74974 (Bankr. N.D. Ga. Dec. 23, 2002) (Massey, J.) [Docket No. 51]; *In re Durango Georgia Paper Co.*, Case No. 02-21669 (Bankr. S.D. Ga. Nov. 26, 2002) (Davis, J.) [Docket No. 158]; *In re The New Power Co.*, Case No. 02-10835 (Bankr. N.D. Ga. July 24, 2002) (Drake, J.) [Docket No. 200].

NOTICE

18. Notice of this Application 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 the "first-day" motions filed by the Debtors; (k) Koninklijke DSM, N.V. ("DSM") and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any other 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 C authorizing the Debtors to retain and compensate professionals used in the ordinary course of business; and
- (b) grant the Debtors such other and further relief as is just and proper.

Dated: February 28, 2018
Augusta, Georgia

Respectfully submitted,

KING & SPALDING LLP

/s/ Paul K. Ferdinands

Paul K. Ferdinands
Georgia Bar No. 258623
pferdinands@kslaw.com
Jonathan W. Jordan
Georgia Bar No. 404874
jjordan@kslaw.com
Sarah L. Primrose
Georgia Bar No. 532582
sprimrose@kslaw.com
1180 Peachtree Street
Atlanta, Georgia 30309-3521
Telephone: (404) 572-4600
Facsimile: (404) 572-5100

and

KLOSINSKI OVERSTREET, LLP

James C. Overstreet Jr.
Georgia Bar No. 556005
jco@klosinski.com
1229 Augusta West Parkway
Augusta, GA 30909
Telephone: (706) 863-2255
Facsimile: (706) 863-5885

PROPOSED COUNSEL FOR THE
DEBTORS-IN-POSSESSION

EXHIBIT A**List of Ordinary Course Professionals**

<u>ORDINARY COURSE PROFESSIONAL</u>	<u>SERVICE PROVIDED</u>
BUCK CONSULTANTS, LLC	Global HR benefits and human resource consulting firm. Used as actuarial
CHERRY BEKAERT	401(K) audit for Fibrant LLC
ERNST & YOUNG	Financial statement auditor
GEOSYNTEC CONSULTANTS, INC.	Environmental consulting services
HUNTER MICHAEL INVESTMENT ADVISORS	Benefits consulting. 401(K) investment consultant
KILPATRICK TOWNSEND & STOCKTON LLP	Legal advice on employee, benefits, compensatory matters, and ERISA
MANAGEMENT ANALYSIS & UTILIZATION	Employee placement services
MERCER INC.	Healthcare consulting services
REFERENCE SERVICES INC.	Background checks for ASC new hires
ROSS, BURRISS & HANDELMAN, LLC	General liability and workers' compensation legal defense throughout Georgia
THOMAS M KELLER	Provides sampling and geologic oversight
THOMPSON HINE LLP	Full-service law firm
TIGER VALUATION SERVICES, LLC	Appraisal and liquidation services
TROY A. LANIER	Litigation and corporate law firm
WQR INC.	Environmental consulting services

EXHIBIT B
Retention Declaration

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

In re:)	Chapter 11
)	
FIBRANT, LLC, et al.,¹)	Case No. 18-10274
)	
Debtors.)	Jointly Administered
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**DECLARATION AND DISCLOSURE STATEMENT OF _____
ON BEHALF OF [FIRM]**

I, _____, hereby state and declare as follows:

1. I am a [partner] in the firm of _____, a _____ firm that maintains an office at _____ (the "Firm"). I am duly authorized to make this Declaration on behalf of the Firm, and I make this Declaration pursuant to the *Order Authorizing Debtors to Retain and Compensate Professionals Used in the Ordinary Course of Business* entered in these cases. The facts set forth in this Declaration are personally known to me and, if called as a witness, I could and would testify thereto.

2. The Firm has been engaged by Fibrant, LLC, and its affiliated debtors-in-possession (the "Debtors") to provide the following services: _____.

3. The Firm's current customary rates, subject to change from time to time, are _____. In the normal course of business, the Firm revises its billing rates on ____ of each year and requests that, effective _____ of each year, the aforementioned rates be revised to the regular hourly rates which will be in effect at that time.

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

4. The Firm may have performed services in the past and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are parties-in-interest in the Debtors' chapter 11 cases. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be claimants, employees of the Debtors, or other parties in interest in these chapter 11 cases. The Firm does not perform services for any such person in connection with these chapter 11 cases. In addition, the Firm does not have any relationship with any such person, their attorneys, or their accountants that would be adverse to the Debtors or their estates.

5. Neither I nor any partner in or professional employed by the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the partners and regular employees of the Firm.

6. Neither I nor any partner in or professional employed by the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates.

7. The Debtors owe the Firm \$_____ for services rendered prior to the Petition Date.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on _____, 201[], at _____.

[Name]

EXHIBIT C
Proposed Order

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

In re:)	Chapter 11
)	
FIBRANT, LLC, et al.,)	Case No. 18-10274
)	
)	
Debtors.)	Jointly Administered
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**ORDER AUTHORIZING DEBTORS TO RETAIN AND COMPENSATE
PROFESSIONALS USED IN THE ORDINARY COURSE OF BUSINESS**

This Matter is before the Court on the *Motion for Authority to Retain and Compensate Professionals Used in the Ordinary Course of Business* (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.

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 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 the "first-day" motions filed by the Debtors; (k) Koninklijke DSM, N.V. ("DSM") and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any other party that has requested notice pursuant to Bankruptcy Rule 2002; that no further notice is necessary; 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 to retain the Ordinary Course Professionals without further application to or approval of this Court, except as otherwise indicated in paragraph 4 below.
3. Each Ordinary Course Professional shall file with this Court a Retention Declaration, substantially in the form of Exhibit B attached to the Motion, stating that such professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matters on which such professional is to be employed.
4. The Debtors are authorized to compensate and reimburse expenses of each of the Ordinary Course Professionals retained pursuant to this Order in the customary manner, in the full amount billed by each such professional, upon receipt of a reasonably detailed invoice

indicating the nature of the services rendered and calculated in accordance with such professional's standard billing practices (without prejudice to the Debtors' rights to dispute any such invoices), up to \$30,000 per month per such professional (the "Fee Cap"). Any payment in excess of the Fee Cap to any Ordinary Course Professional shall be subject to the prior approval of this Court in accordance with Sections 330 and 331 of the Bankruptcy Code.

5. The Debtors shall not make any payment to an Ordinary Course Professional who has not filed a Retention Declaration.

6. Thirty days after the expiration of every ninety days (commencing ninety days from the date hereof), the Debtors shall file a statement with this Court certifying their compliance with this Order, which statement shall include the following information: (a) for each Ordinary Course Professional, (i) the name of such Ordinary Course Professional and (ii) the aggregate amounts paid as compensation for services rendered and for reimbursement of expenses incurred by such Ordinary Course Professional during such ninety-day period; and (b) a list of any additional Ordinary Course Professionals who are retained or used after the Petition Date and that have not been reported to the Court previously. Such statement shall be served on the Office of the United States Trustee and on counsel for any official committee appointed in these cases.

7. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of this Court.

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

9. Counsel to the Debtors is 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 the "first-day" motions filed by the Debtors; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicaInvest Holding, B.V.; and (m) any other party that has requested notice pursuant to Bankruptcy Rule 2002, within three (3) 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:

KING & SPALDING LLP

/s/ Paul K. Ferdinands

Paul K. Ferdinands

Georgia Bar No. 258623

pferdinands@kslaw.com

Jonathan W. Jordan

Georgia Bar No. 404874

jjordan@kslaw.com

Sarah L. Primrose

Georgia Bar No. 532582

sprimrose@kslaw.com

1180 Peachtree Street

Atlanta, Georgia 30309-3521

Telephone: (404) 572-4600

Facsimile: (404) 572-5100

and

KLOSINSKI OVERSTREET, LLP

James C. Overstreet Jr.

Georgia Bar No. 556005

jco@klosinski.com

1229 Augusta West Parkway

Augusta, GA 30909

Telephone: (706) 863-2255

Facsimile: (706) 863-5885

PROPOSED COUNSEL FOR THE
DEBTORS-IN-POSSESSION

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

In re:)	Chapter 11
)	
FIBRANT, LLC, et al.,¹)	Case No. 18-10274
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Debtors.)	Jointly Administered
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**ORDER AUTHORIZING DEBTORS TO RETAIN AND COMPENSATE
PROFESSIONALS USED IN THE ORDINARY COURSE OF BUSINESS**

This Matter is before the Court on the *Motion for Authority to Retain and Compensate Professionals Used in the Ordinary Course of Business* (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.

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

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

on the Motion on April 24, 2018. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that 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 the "first-day" motions filed by the Debtors; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; and (m) any other party that has requested notice pursuant to Bankruptcy Rule 2002; that no further notice is necessary; 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. 30) is GRANTED.
2. The Debtors are authorized to retain the Ordinary Course Professionals without further application to or approval of this Court, except as otherwise indicated in paragraph 4 below.
3. Each Ordinary Course Professional shall file with this Court a Retention Declaration, substantially in the form of Exhibit B attached to the Motion, stating that such professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matters on which such professional is to be employed.

4. The Debtors are authorized to compensate and reimburse expenses of each of the Ordinary Course Professionals retained pursuant to this Order in the customary manner, in the full amount billed by each such professional, upon receipt of a reasonably detailed invoice indicating the nature of the services rendered and calculated in accordance with such professional's standard billing practices (without prejudice to the Debtors' rights to dispute any such invoices), up to \$30,000 per month per such professional (the "Fee Cap"). Any payment in excess of the Fee Cap to any Ordinary Course Professional shall be subject to the prior approval of this Court in accordance with Sections 330 and 331 of the Bankruptcy Code.

5. The Debtors shall not make any payment to an Ordinary Course Professional who has not filed a Retention Declaration.

6. Thirty days after the expiration of every ninety days (commencing ninety days from the date hereof), the Debtors shall file a statement with this Court certifying their compliance with this Order, which statement shall include the following information: (a) for each Ordinary Course Professional, (i) the name of such Ordinary Course Professional and (ii) the aggregate amounts paid as compensation for services rendered and for reimbursement of expenses incurred by such Ordinary Course Professional during such ninety-day period; and (b) a list of any additional Ordinary Course Professionals who are retained or used after the Petition Date and that have not been reported to the Court previously. Such statement shall be served on the Office of the United States Trustee and on counsel for the Official Committee of Unsecured Creditors.

7. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of this Court.

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

9. Counsel to the Debtors is directed to serve a copy of this Order on all parties listed on the Master Service List within three (3) 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:

KING & SPALDING LLP

/s/ Paul K. Ferdinands

Paul K. Ferdinands
Georgia Bar No. 258623
pferdinands@kslaw.com
Jonathan W. Jordan
Georgia Bar No. 404874
jjordan@kslaw.com
Sarah L. Primrose
Georgia Bar No. 532582
sprimrose@kslaw.com
1180 Peachtree Street
Atlanta, Georgia 30309-3521
Telephone: (404) 572-4600
Facsimile: (404) 572-5100

and

KLOSINSKI OVERSTREET, LLP

James C. Overstreet Jr.
Georgia Bar No. 556005
jco@klosinski.com
1229 Augusta West Parkway
Augusta, GA 30909
Telephone: (706) 863-2255
Facsimile: (706) 863-5885

COUNSEL FOR THE
DEBTORS-IN-POSSESSION