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PROPOSED ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

_____)	
In re)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590(DML)11
)	Jointly Administered
Debtors.)	
_____)	Hearing Date and Time: To Be Set

**MOTION OF THE DEBTORS FOR AN ORDER DIRECTING PARTIES TO
COMPLY WITH SECTIONS 362 AND 525 OF THE BANKRUPTCY CODE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors and debtors-in-possession, file this motion for entry of an order under sections 105, 362 and 525 of title 11 of the United States Code (the “Bankruptcy Code”) for the issuance of an order directing parties to comply with sections 362 and 525 of the Bankruptcy Code and in support thereof state as follows:

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. On July 14, 2003 (the "Petition Date"), each of the Debtors filed a voluntary petition in this court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. Joint Administration Request is Pending. Concurrently with the filing of the Motion, the Debtors have moved the court to jointly administer the bankruptcy estates of the Debtors.

4. The Creditors' Committee. No creditors' committee has yet been appointed in these cases by the United States Trustee. Further, no trustee or examiner has been requested or appointed in any of the Debtors' chapter 11 cases.

RELIEF REQUESTED

5. As a result of the commencement of the Debtors' chapter 11 cases, and by operation of law pursuant to section 362 of the Bankruptcy Code, the automatic stay under section 362 enjoins all persons and all governmental units from, inter alia, (i) commencing or continuing any judicial, administrative or other proceeding against the Debtors that was or could have been commenced before the commencement of these chapter 11 cases, or recovering upon a claim against the Debtors that arose before the commencement of such cases; and (ii) taking any action to collect, assess, or recover a claim against the Debtors that arose before the

commencement of these chapter 11 cases.

6. In addition, section 525 of the Bankruptcy Code prohibits and enjoins any and all governmental units from, among other things, denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, the Debtors solely because the Debtors: (a) are debtors under the Bankruptcy Code; (b) may have been insolvent before the commencement of these chapter 11 cases; or (c) are insolvent during the pendency of these cases.

7. The injunctions contained in sections 362 and 525 of the Bankruptcy Code are self-executing and constitute fundamental debtor protections, which, in combination with other provisions of the Bankruptcy Code, provide the Debtors with the “breathing spell” that is essential to the Debtors’ ability to reorganize.

8. As fundamental as the foregoing protections may be, and notwithstanding that they arise as a matter of law upon commencement of a chapter 11 case, not all parties affected or potentially affected by the commencement of a chapter 11 case are aware of the Bankruptcy Code provisions or cognizant of their significance and impact. Experience has shown that it is often necessary to advise third parties of the existence and effect of sections 362 and 525 of the Bankruptcy Code and, occasionally, it is necessary to commence proceedings in the bankruptcy court to enforce the protections contained therein.

9. The Debtors operate worldwide with activity primarily in Asia, Europe, and the Caribbean as well as the United States. Due to the international nature of the Debtors’ businesses, the Debtors believe that many parties will be unaware of or simply choose to ignore the automatic stay imposed by section 362 or the protections of section 525. See Underwood v.

Hilliard (In re Rimsat, Ltd.), 98 F.3d 956, 962 (7th Cir. 1996). Indeed, the Debtors believe that it is likely that, given the opportunity, many parties may choose to exploit the international nature of these chapter 11 cases and attempt to seize the Debtors' assets located outside of the United States to the detriment of the estates and other creditors.

10. Courts addressing whether section 362 applies extraterritorially have held that it indeed does apply extraterritorially. See, e.g., Lykes Bros. Steamship Co., Inc. v. Hanseatic Marine Service (In re Lykes Bros. Steamship Co., Inc.), 207 B.R. 282, 287 (Bankr. M.D. Fla. 1997) ("The automatic stay imposed by 11 U.S.C. § 362 extends beyond the territorial boundaries of the United States."); Nakash v. Zur (In re Nakash), 190 B.R. 763, 768 (Bankr. S.D.N.Y. 1996) ("The Court finds . . . that based upon the applicable Code sections, other indicia of congressional intent and case law in this district, the automatic stays applies extraterritorially."); In re McLean Industries, Inc., 74 B.R. 589, 601 (Bankr. S.D.N.Y. 1987) ("The automatic stay applies extraterritorially.").

11. Bankruptcy courts presiding over chapter 11 cases involving debtors with assets outside of the United States have also recognized the need to issue emergency orders declaring the applicability of the automatic stay in order to assure that the debtors' rights to use property of the estate is not disturbed or impaired. See, e.g., In re Lykes Bros. Steamship Co., Inc., 191 B.R. 935 (Bankr. M.D. Fla. 1995). Accordingly, the Debtors believe that under the circumstances of these chapter 11 cases, entry of the annexed proposed order (the "Order"), which in large measure is a restatement of the applicable provisions of sections 362 and 525 of the Bankruptcy Code, may increase substantially the efficiency of the administration of these cases. Importantly, the Order provides that the relief granted thereby shall not affect the exceptions to the automatic stay in section 362(b) or any other section of the Bankruptcy Code.

12. The Debtors submit that this Court has ample authority to grant the relief sought herein. Pursuant to section 105(a) of the Bankruptcy Code, this Court may enter such orders as may be necessary or appropriate to carry out and effectuate the provisions of the Bankruptcy Code.

13. Under section 105(a) of the Bankruptcy Code, “the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The purpose of section 105(a) is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy ¶105.01 at 105-6 (15th ed. 1999) (collecting cases). This is consistent with the broad equitable authority of the bankruptcy courts. See, e.g., United States v. Energy Resources Co., Inc., 495 U.S. 545, 549 (1990). Among those equitable powers is the bankruptcy court’s broad ability to issue injunctions to enforce a stay, or even to reimpose a lapsed stay. See Wedgewood Investment Fund, Ltd. v. Wedgewood Realty Group, Ltd. (In re Wedgewood Realty Group, Ltd.), 878 F.2d 693, 701 (3d Cir. 1989) (finding court has authority to reimpose a lapsed stay).

NOTICE

14. Notice of this Motion has been provided to the Office of the United States Trustee for the Northern District of Texas, and the holders of the fifty (50) largest unsecured claims on a consolidated basis against the Debtors. The Debtors submit that no other or further notice need be provided.

15. No previous motion for the relief sought herein has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request entry of an order directing parties to comply with sections 362 and 525 of the Bankruptcy Code and granting such other and further relief as the Court deems just and proper.

Dated: Fort Worth, Texas
July 15, 2003

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MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590(DML)11
)	Jointly Administered
Debtors.)	
_____)	

**ORDER DIRECTING PARTIES TO COMPLY WITH
SECTIONS 362 AND 525 OF THE BANKRUPTCY CODE**

Upon the annexed Motion, dated July 15, 2003, of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), for an order pursuant to sections 105, 362 and 525 of title 11 of the United States Code (the “Bankruptcy Code”) directing parties to comply with sections 362 and 525 of the Bankruptcy Code; and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors and their

estates and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is

FOUND, that:

1. The Debtors have filed petitions for reorganization under chapter 11 of the United States Code (1 U.S.C. §§ 101 et seq.) (the “Bankruptcy Code”) and intend to continue in the management and possession of their respective businesses and properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

2. This Court, pursuant to 28 U.S.C. §§ 1334 and 157, has exclusive jurisdiction of all of the property of the Debtors, wherever located, and, pursuant to sections 105(a) and 362 of the Bankruptcy Code, this Court may issue any order, process or judgment including, without limitation, this order directing parties to comply with sections 362 and 525 of the Bankruptcy Code, as may be necessary or appropriate to carry out the provisions of the Bankruptcy Code; and

3. An order directing parties to comply with sections 362 and 525 of the Bankruptcy Code is proper under the circumstances and facilitates the purposes of the Bankruptcy Code; it is therefore

ORDERED, ADJUDGED AND DECREED:

A. That all persons (including individuals, partnerships and corporations, and all those acting for or on their behalf), and all governmental units (including the United States of America and any State, Commonwealth, District, Territory, municipality, department, agency or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, a foreign state, or other foreign or domestic governments, and all those acting for or on their behalf) are stayed, restrained and enjoined from:

- (a) Commencing or continuing, including the issuance or employment of process, any judicial, administrative or other proceeding against any of the Debtors, that was or could have been commenced before the commencement of the Debtors' chapter 11 cases, or recovering a claim against any of the Debtors that arose before the commencement of their chapter 11 cases;
- (b) Enforcing, against any of the Debtors or against property of any of the Debtors, a judgment obtained before the commencement of these chapter 11 cases;
- (c) Taking any act to obtain possession of property of any of the Debtors or of property from any of the Debtors;
- (d) Taking any act to create, perfect or enforce against property of any of the Debtors, any lien to the extent that such lien secures a claim that arose before the commencement of their chapter 11 cases;
- (e) Taking any act to collect, assess or recover a claim against any of the Debtors that arose before the commencement of their chapter 11 cases;
- (f) Offsetting any debt owing to any of the Debtors which arose before the commencement of their chapter 11 cases against any claim against any of the Debtors; and
- (g) Commencing or continuing any proceeding before the United States Tax Court concerning the Debtors.

B. That all persons and all governmental units, and all those acting for or on their behalf, including sheriffs, marshals, constables and other or similar law enforcement officers and officials are stayed, restrained and enjoined from, in any way, seizing, attaching, foreclosing upon, levying against or in any other way interfering with any and all of the property of any of the Debtors, wherever located.

C. That pursuant to section 525 of the Bankruptcy Code, all governmental units are prohibited and enjoined from denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise or other similar grant, or to condition such a grant to, or discriminate with respect to such a grant against, any of the

Debtors solely because one or all of the Debtors: (i) are debtors under the Bankruptcy Code; (ii) may have been insolvent before the commencement of the Debtors' chapter 11 cases; or (iii) may be insolvent during the pendency of the Debtors' chapter 11 cases.

D. This Order shall not affect the exceptions to the automatic stay contained in section 362(b) or any other section of the Bankruptcy Code or the right of any party in interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code.

End of Order

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she provided true and correct copies of the foregoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the attached Service List via facsimile or email transmission, where indicated, or via overnight courier, on the 15th day of July, 2003.

/s/ Judith Elkin

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