
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE: §
§
MIRANT CORPORATION § Case No. 03-46590-DML
§ (Jointly Administered)
§ Chapter 11
Debtor §
§ **Hearing Set:**
§ **7-14-04 @ 10:30 A.M.**
§

**AMENDED APPLICATION OF JAMES A. WARD FOR
PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT **501 W. TENTH STREET, FORT WORTH, TEXAS 76102** BEFORE 4:00 P.M. ON THE 12th DAY OF JULY, 2004, WHICH IS AT LEAST TWENTY (20) DAYS (PLUS THREE DAYS FOR MAILING) FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE MUST BE IN WRITING AND FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED, A HEARING WILL BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

JAMES A. WARD (“Ward”), by and through his undersigned attorneys, Bodo, Burnside, Burge & Agnew, P.C., files this Application for Payment of an Administrative Expense Claim pursuant to 11 U.S.C. § 503(a) and (b) and § 507(a)(1) against MIRANT Corporation, and states in support thereof as follows:

STATEMENT OF FACTS

1. On July 14, 2003 (the “Petition Date”), Mirant Corporation (“Debtor”) filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code.
2. On or about August 28, 2002, Ward entered into that certain consulting agreement and general release of all claims (the “Agreement”) with Mirant Corporation and Mirant Services LLC (“Mirant LLC”). A copy of the Agreement is attached hereto and marked **Exhibit A**. Under the terms of the Agreement, Ward agreed to (i) release certain entities, including Debtor from certain claims, (ii) maintain the confidentiality of certain information, (iii) be available to Debtor up through September 30, 2003 to consult with Debtor and Mirant LLC on various matters, and (iv) cooperate in the defense of any action that may arise against Debtor or Mirant LLC.
3. The Agreement called for Ward to receive on September 30, 2003 a periodic payment in the amount of \$83,333.33 less normal withholdings covering services rendered for the months of July, August and September, 2003. Debtor failed to make the required payment. As such, Ward contends that the pro-rata portion of the payment that covers services rendered post-petition is entitled to treatment as an administrative expense claim under 11 USC §§ 503(b) and 507(a)(1).

JURISDICTION, VENUE AND PREDICATES

4. This Court has jurisdiction over this motion pursuant to 28 USC § 157 and 1334. This proceeding is a core proceeding under 28 USC § 157(b)(2)(A) and (B).
5. The predicates for relief sought herein are 11 USC §§ 503(a) and (b), and 507(a)(1).

**CONSULTING AGREEMENT AND
GENERAL RELEASE OF ALL CLAIMS**

This Agreement is entered into by and between James A. Ward ("Ward") and Mirant Corporation and Mirant Services LLC, a subsidiary of Mirant Corporation (hereinafter jointly referred to as "Mirant").

Whereas, Ward has been employed with Mirant; and

Whereas, Ward would like to retire from active employment with Mirant; and

Whereas, Mirant is willing to provide Ward benefits to which he is not otherwise entitled and would not normally receive in this situation and which are in exchange for Ward signing the Agreement; and

Whereas, the parties to this Agreement desire to resolve all issues between them relating to Ward's employment, termination of employment and retirement.

Now, therefore, in consideration of the foregoing and of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Ward and Mirant agree as follows:

1. **RETIREMENT.** Mirant and Ward have discussed his resignation as Controller effective August 30, 2002. Since Ward will be entitled to additional retirement benefits if he remains a Mirant employee until September 11, 2002, and therefore he will remain an employee of the Company until September 11, 2002, at which time he will retire from Mirant.

2. **Consulting Agreement.** Ward will be entitled to receive consulting payments of \$25,000, minus normal withholdings on October 31, November 30 and December 31, 2002 and \$83,333.33, minus normal withholdings on March 31, 2003; on June 30, 2003 and on September 30, 2003, if he has been in full compliance with the

terms of paragraph 5.3 of this Agreement at the time the consulting payments are due. Mirant will have the sole discretion of determining whether Ward has complied with paragraph 5.3 but, it will not unreasonably withhold such payments. Should Mirant determine that Ward is in breach of paragraph 5.3, Mirant agrees to immediately notify Ward and give him 30 days to cure such breach.

3. GENERAL RELEASE.

Ward, for himself, his successors, heirs and assigns, hereby forever releases and discharges Mirant Corporation, Mirant Services, LLC, Mirant Mid-Atlantic Services, LLC and other entities or related business entities of the Mirant Corporation System and its past, present and future officers, directors, employees, agents, attorneys, predecessors and successors (hereinafter "Releasees") (for purposes of this Agreement "related business entity" includes, but is not limited to, The Southern Company and any entity that was a subsidiary or affiliate of The Southern Company for periods prior to April 2, 2001 (hereinafter "Southern Business Entity")), from any claims, causes of action, contracts or liabilities whatsoever, in law or in equity, whether known or unknown or suspected to exist by Ward, which Ward has had or may now have against Releasees, including but not limited to those claims arising from or connected with Ward's employment with Mirant or the termination of that employment. Such claims or causes of action shall include, but not be limited to, claims under Title VII of the Civil Rights Act of 1964, The Americans With Disabilities Act or any other federal, state or local laws dealing with employment discrimination, and any claims or causes of action for wrongful discharge or breach of contract. Without limiting the generality of the foregoing, Ward hereby acknowledges and covenants that he has knowingly relinquished and forever released any and all

remedies which might otherwise be available to him, including claims for back pay, liquidated damages, recovery of interest, costs, punitive damages, compensatory damages or attorney's fees, and any claims for reinstatement to a regular position with Mirant. Ward specifically agrees that the Release extends to all claims of every nature and kind whatsoever, known or unknown, past or present, which existed prior to the execution of this Agreement, including, but not limited to, all claims involving or arising out of Ward's employment or the termination of such employment. Ward further agrees and covenants not to sue any of the Releasees on the basis of any action predating this Agreement.

This Agreement does not release claims to benefits to which Ward may be entitled under the Mirant Services LLC Employee Health and Welfare Benefits Plan for Non-Union Employees, the Mirant Services LLC Pension Plan, the Mirant Services LLC Employee Health and Welfare Benefits Plan for Retirees. However, nothing contained herein is intended to or shall be construed to require Mirant to institute or continue in effect any particular plan or benefit sponsored by Mirant and it hereby reserves the right to amend or terminate any of its benefit programs at any time and in accordance with the procedures set forth in such plans.

4. RETURN OF MATERIALS AND PROPERTY.

Ward agrees that he has delivered or will deliver to Mirant: (1) all materials of Mirant's or of any corporate affiliate, including documents, correspondence, plans, records, notes, drawings or papers and any copies thereof in Ward's possession or control, including in particular all notes or records Ward has, irrespective of how the information was maintained, related to Mirant, made or compiled by or delivered to Ward; (2) all property of Mirant, including all credit or charge cards and keys; (3) all Mirant owned

telephones, beepers, computer software, computer discs, copies thereof, hard copies of computer reports, computer passwords, other passwords, and any other Mirant owned computer or telecommunications-related information or sources of information concerning any aspect of the business of Mirant.

5. ADDITIONAL COVENANTS.

5.1 Confidentiality of this Agreement. Ward agrees to keep the terms and conditions of this Agreement confidential and not to disclose its terms and conditions to any other person or entity, except as may be required to enable Ward to fulfill his legal and contractual obligations hereunder, for Ward to communicate with his immediate family, or for Ward to communicate with legal counsel or tax advisors in connection with tax preparation and/or advice.

Notwithstanding the foregoing, nothing in this Agreement is intended to prohibit Ward from performing any duty or obligation that shall arise as a matter of law. Specifically, Ward shall continue to be under a duty to truthfully respond to any legal and valid subpoena or other legal process. This Agreement is not intended in any way to proscribe Ward's right and ability to provide information, pursuant to a valid request, to any federal, state or local government in the lawful exercise of such governments' governmental functions.

5.2 Confidential Information. In exchange for the consideration provided in this Agreement, Ward agrees that for a period of three years from the date of execution of this Agreement, that he will maintain the confidentiality of and not disclose to any individual confidential information to which he was privy while an employee of Mirant unless pursuant to an order of a court with competent jurisdiction. More specifically,

Ward agrees to maintain the confidentiality of records, documents, materials and information not generally known outside of Mirant. This includes, but is not limited to, Mirant's financial, technical, personnel, payroll, budget information, and strategic planning information.

5.3 Duty to Consult and to Cooperate. In consideration for the benefits being provided pursuant to this Agreement, Ward acknowledges and agrees that for a period of three months from the date of execution of this Agreement he will be fully available to provide consulting services and cooperate with Mirant, any of its affiliates, officers, directors or employees in connection with transition matters relating to the business of Mirant. More specifically, Ward Agrees to make himself fully available to assist with KPMG's current audit of Mirant's financial records. For purposes of this Agreement, the term "fully available" means that Ward will make his consulting obligations to Mirant during the remaining months of 2002 a primary business priority. Ward further acknowledges and agrees that until September 30, 2003, he will be available and will cooperate with Mirant, any of its affiliates, officers, directors or employees in connection with transition matters relating to the business of Mirant. For purposes of this Agreement, the parties agree that Ward will make himself available on a reasonable basis until September, 30, 2003, as requested by Mirant.

Additionally, Ward agrees that he will assist and fully cooperate in defending any litigation, claims or administrative proceedings that may arise against Mirant, its affiliates, officers, directors or employees, that are in any way related to his former duties or area of responsibility at Mirant. He agrees to assist in the defense of any such actions for as long as such actions remain pending by making himself available at reasonable

times and places to review documents, and to assist counsel as necessary. Mirant will reimburse Ward for any reasonable out of pocket expenses incurred in such assistance or cooperation.

The parties agree that if Mirant needs Ward's consulting services at the end of the consulting period or increase the scope of this agreement, the parties will meet in good faith to formulate mutually acceptable terms for an extension of the consulting period.

5.4 Nondisparagement. Ward agrees and covenants that he will not make any disparaging statements about or relating to Mirant, its related or affiliated entities, its officers, director's employees or agents, its business practices, its products or its employment practices.

6. NON-ADMISSION OF LIABILITY.

Ward and Mirant agree that this Agreement shall not in any way be construed or interpreted as an admission of liability of wrongdoing by either of them, any such liability or wrongdoing being expressly denied.

7. ACKNOWLEDGMENTS.

7.1 Understanding of Agreement. Ward acknowledges that he fully understands the extent and impact of the provisions of this Agreement (especially that it is intended to release potentially valuable claims). In addition, Ward acknowledges that it has been recommended to him to consult with an attorney regarding this Agreement and that he has been given adequate time to consider this Agreement prior to its execution.

WARD STATES THAT AND ACKNOWLEDGES THAT HE HAS READ THE FOREGOING AGREEMENT AND UNDERSTANDS THAT IT CONTAINS A

GENERAL RELEASE OF ANY AND ALL CLAIMS WHICH HE MIGHT HAVE AGAINST RELEASEES AND THAT HE IS EXECUTING THIS AGREEMENT VOLUNTARILY.

7.2 Severability. The unenforceability or invalidity of any particular provision of this Agreement shall not affect its other provisions, and to the extent necessary to give such other provisions effect, they shall be deemed severable.

7.3 Modifications: Waivers. The Parties acknowledge and agree that the terms of this Agreement may not be modified or waived other than in writing signed by both Parties.

8. DIRECTOR & OFFICER INSURANCE AND INDEMNIFICATION

Mirant agrees that Ward has been and will continue to be covered under the Company's Director and Officer Insurance policy as specifically provided under the terms of such policy including all limitations provided therein. Mirant further agrees that Ward is covered under the indemnification provision of Mirant's Bi-Laws for the time that he was an officer of Mirant.

This section, in no way provides for additional coverage or modifies Mirant's By-Laws or Director & Officer Insurance. Any limitations found within those policies remain in effect and unchanged.

9. APPLICABLE LAW; ENFORCEMENT.

This Agreement is entered into in the State of Georgia and shall be governed by the laws thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

WARD:

James A. Ward [SEAL]
James A. Ward

Date: Aug 28, 2002

MIRANT CORPORATION
MIRANT SERVICES LLC

By: Dan Dwyer

Date: 8/28/02

[Signature]
Witness