

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

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

AWANA C. MARSHALL, CLERK.

THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

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

AMENDED AND RESTATED ORDER APPROVING SPECIFIED INFORMATION BLOCKING PROCEDURES AND PERMITTING TRADING IN THE DEBTORS' SECURITIES, BANK DEBT, PURCHASE OR SALE OF TRADE DEBT AND ISSUING OF ANALYST REPORTS UPON ESTABLISHMENT OF A SCREENING WALL EFFECTIVE JULY 25, 2003¹

Upon the “Emergency Motion for the Entry of an Order Approving Specified Information Blocking Procedures and Permitting Trading of the Debtors’ Securities, Trading Bank Debt Purchase or Sale of Trade Debt and Issuing of Analyst Reports Upon Establishment of a Screening Wall Effective July 25, 2003” (the “Motion”) filed by the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC (the “MAGI Committee”) appointed in these chapter 11 cases concerning the above-captioned debtors (collectively, the Debtors); and joined by the Official Committee of Unsecured Creditors of Mirant Corporation (the “Mirant Committee”); and later including the Official Committee of Equity Security Holders² (the

¹ Upon request by the Debtors and the hearing held on April 7, 2004, the Court approved the amended and restated language to that certain Order Approving Specified Information Blocking Procedures and Permitting Trading in the Debtors’ Securities, Bank Debt, Purchase or Sale of Trade Debt and Issuing of Analyst Reports upon Establishment of a Screening Wall Effective July 25, 2003, dated August 18, 2003.

² Everything contained herein also applies to the Equity Committee by Order of this Court Granting Debtors’ Motion to Make Order Approving Specified Information Blocking Procedures and Permitting Trading in the Debtors’ Securities, Bank Debt, Purchase or Sale of Trade Debt

“Equity Committee” together with the MAGI Committee and the Mirant Committee are collectively referred to as the “Committees”) upon consideration of the response thereto filed by Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession; and adequate notice of the Motion having been given; the relief requested in the Motion being authorized under 11 U.S.C. § 107(b)(1); and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. Subject Material³ provided by the Debtors (or their legal or financial advisors) to the Committees, their respective Members, and Permitted Persons, and the use of such Subject Material, shall be governed by the rules, duties, and obligations set forth in Appendix A hereto, which is incorporated herein as though set forth in full.

2. The information blocking policies and procedures described substantially in the form of declaration annexed hereto as Appendix B (the “Screening Wall Declaration”), which are designed to prevent the misuse of Subject Material are hereby authorized and approved.

3. Members of the Committees⁴ (and their respective organizations), acting in any capacity and engaged in the trading of Securities (defined below) or bank debt, purchasing or selling trade debt and/or issuing Analyst Reports as a regular part of their business, and who seek the protections of paragraph 3 of this Order, will establish, implement, and strictly adhere to the

and Issuing of Analyst Reports upon Establishment of a Screening Wall Effective July 25, 2003, dated September 24, 2003.

³ Unless otherwise defined herein, capitalized terms used herein shall have the same meanings ascribed to them in Appendix A attached hereto.

⁴ As used in this Order, “Members of Committees” shall not mean individuals who serve on Committees. Nothing in the Order shall authorize any individual serving on a Committee to trade in securities of any Debtor or to participate, assist or advise in any such trading. Likewise, nothing herein shall authorize conduct by any other individual who, pursuant to this Order, becomes privy to Subject Material.

information policies and procedures detailed in the Screening Wall Declaration. For purposes of this Order, the term “Securities” is used as such term is defined in Section 2(a)(1) of the Securities Act of 1933, including the following, but only to the extent they constitute securities thereunder: stock; notes; bonds; debentures; participations in, or derivatives based upon or relating to, any of the Debtors’ debt obligations or equity interests. So long as the Members of the Committees and Permitted Persons: (a) comply with the requirements set forth in Appendix A of this Order; and (b) establish, implement and adhere to the information policies and procedures in the Screening Wall Declaration, such Committee Members shall not be deemed to have violated any duties as a Committee Member and, accordingly, the claims held by the Committee Members’ organization will not be subject to possible disallowance, subordination or other adverse treatment and allowance of such claim will not be impacted in any manner as a result of such Committee Members’ trading and Analyst Activities (or that of his/her respective organization).

4. No Member of a Committee, or person that executes a Screening Wall Declaration, or Restricted Entity Committee Personnel, (as such terms are defined in Appendix B) shall be deemed to have breached his/her fiduciary duties (if any), and the Member’s Restricted Entity organization shall not have its claim subordinated, disallowed, or suffer other adverse treatment solely as a result of an inadvertent disclosure of Subject Material so long as such persons and the Restricted Entity exercise reasonable diligence, caution, and care in the exercise and discharge of their obligations set forth herein.

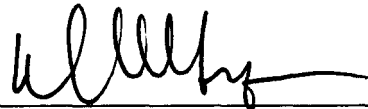
5. Except for paragraph 1 of this Order, which applies to all Committees, Committee Members and Permitted Persons, this Order shall apply only to those Committee Members that are engaged in the trading of Securities or bank debt, the purchase or sale of trade debt or the issuance of Analyst Reports and shall be effective *nunc pro tunc* to July 25, 2003.

6. Any Analyst Report issued by a Member of one of the Committees (or his/her respective organization, or Restricted Entity), who executes a Screening Wall Declaration, must include a conspicuous statement or legend in such report substantially as follows:

“[Name of Restricted Entity] and/or its affiliates hold public securities and/or other debt of Mirant Corporation and/or its affiliates (collectively “Mirant”). An affiliate of [Restricted Entity][in such affiliate’s capacity as _____] is a Member of the Official Committee of Unsecured Creditors of Mirant or Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC and this publication is issued in accordance with the information blocking procedures approved by the United States Bankruptcy Court for the Northern District of Texas in Mirant’s Chapter 11 cases.”

7. The issues raised in the Motion and the relief granted herein are core matters under 28 U.S.C. § 157(b)(2)(A) and this Court shall retain jurisdiction to hear all matters regarding compliance with and interpretation of this Order, and any other matters related hereto.

Dated: Fort Worth, Texas
April 21, 2004



D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

Appendix A

1. In connection with these administratively consolidated bankruptcy cases (the “Cases”), the Debtors will be disclosing to the Committees (which shall include for purposes herein, the members of the Committees) certain information which is confidential and/or proprietary (the “Subject Material”). In recognition of the Debtors’ concern over the sensitivity of the Subject Material, the Committees and each of their constituent members (referred to herein as a “Member”) together with the Committees’ respective legal counsel and advisors retained pursuant to an Order of the Bankruptcy Court, each individual associated with a Member providing assistance to that Member in connection with the Member’s duties as a Member (any such individual, a “Member Assistant”), and each individual Member’s legal counsel (collectively “Permitted Persons”) hereby agree to treat the Subject Material that is received by or is furnished to (whether orally or in writing) the Committees and/or any of their respective Permitted Persons in accordance with the provisions of this Order and to take or abstain from taking certain actions as herein set forth; provided, however, the number of Member Assistants for any Member shall not exceed at any one time five (5) individuals, and no individual shall become a Member Assistant (or a Permitted Person) without advance notice to the Debtors. The term “Subject Material” shall include all information, data, reports, computations, projections, forecasts, records, memoranda, summaries, oral conversations, notes, analyses, compilations, studies, interpretations or other documents or materials in whatever form maintained, whether documentary, computerized or otherwise, whether provided by the Debtors or persons acting on behalf of the Debtors, prepared by the Committees (or one of them) or any of their respective Permitted Persons which contain, reflect or are based upon, in whole or in part, any information received by or furnished to the Committees or their Permitted Persons pursuant hereto. The term “Subject Material” shall not include information which (i) is or becomes generally available to,

or known by, the public other than as a result of the unauthorized disclosure by either Committee or their respective Permitted Persons; or (ii) becomes available to either Committee on a non-confidential basis from a source other than the Debtors or any of their advisors, agents or affiliates, provided that the information from such source is not known after reasonable inquiry or reasonably should have been known by the Committees or their Permitted Persons to be bound by a confidentiality agreement with, or other obligation of secrecy to, whether by a contractual, legal or fiduciary obligation, the Debtors.

2. The Committees hereby agree that they will use, and will direct and cause their Permitted Persons to use (directly or indirectly), the Subject Material obtained herein solely for the purposes of Committee businesses and functions as set forth in 11 U.S.C. § 1103. Without the consent of the Debtors or further order of the Bankruptcy Court, neither the Committees nor any of their respective Permitted Persons will in any way use, directly or indirectly, any of the Subject Material for the purpose of competing with any of the Debtors, improving their competitive position with respect to any of the Debtors, soliciting or seeking business from any of the Debtors' business prospects, customers or former customers, soliciting or seeking to induce any employee or agent of any Debtor, or become employed or engaged in a business relationship with any Member, their affiliates, any Permitted Persons or their affiliates, or giving business to any of the Debtors' suppliers or providers, or for any other purpose not related to the Cases. Except as otherwise set forth in this Order, the Subject Material will be kept confidential by the Committees and each of their respective Permitted Persons; provided, however, that nothing herein shall be deemed to restrict the Committees from disclosing the Subject Material to the Bankruptcy Court orally or in writing provided that, to the extent reasonably practical and so long as the information is otherwise discoverable, the Committees shall provide three days' notice to the Debtors before disclosing such material to the Bankruptcy Court to allow the

Debtors to obtain a protective order (if they choose to do so) and if the Debtors do not obtain a protective order, the Committees shall make any such disclosure under seal, unless the Court orders otherwise.

3. Each Member and Permitted Person, prior to the distribution of any Subject Material, shall be (i) informed of the confidential nature of the Subject Material, (ii) informed of this Order, and (iii) bound by the terms and provisions of this Order to treat such information confidentially in the manner provided in, and subject to the terms of, this Order.

4. If the Debtors believe in good faith that an actual conflict of interest exists between the Debtors and a particular Member or Member's Permitted Persons as to a particular issue, and that existing procedures are not adequate to protect against the risk posed by such conflict of interest, the Debtors may request of the particular Committee that information pertinent to that issue not be viewed by, nor its substance revealed to, a specified Member or such Member's Permitted Persons (collectively, the "Excluded Persons"). The Debtors shall clearly designate any such information in advance and specify the Members that shall not be permitted to have access thereto and shall inform counsel for the particular Committee in advance of the specific reason therefor. The particular Committee, other than the Excluded Persons, shall consider any such requests in good faith and inform the Debtors of its decision whether or not to withhold such information from an Excluded Person. The particular Committee is permitted to inform the Excluded Persons of the Debtors' request and, unless directed to the contrary by the Debtors for good and reasonable business purposes, the basis therefor provided by the Debtors. The particular Committee shall afford the Debtors at least three business days to seek a protective order before delivering such information to an Excluded Person. Excluded Persons retain all rights and remedies to seek access to the information through application to the Bankruptcy Court.

5. Notwithstanding anything contained in this Order or in any other document, agreement or understanding relating hereto, each party (and each employee, representative, or other agent of such party) is authorized to disclose to any and all persons the tax treatment and, tax structure of any transaction being considered by either Committee, and all materials of any kind (including opinions or other tax analyses) that are provided to such party (or any employee, representative, or other agent of such party) relating to such tax treatment and tax structure, except to the extent that such disclosure is subject to restrictions reasonably necessary to comply with securities laws. For purposes of this authorization, the “tax treatment” of a transaction means the purported or claimed U.S. federal income tax treatment of the transaction, and the “tax structure” of a transaction means any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of the transaction.

6. Receipt of the Subject Material constitutes the an acknowledgement by the Committees and their respective Permitted Persons that they are aware that applicable securities laws may impose restrictions on the Committees and their respective Permitted Persons from trading in securities of the Debtors and the Committees and their respective Permitted Persons, agree as to themselves not to trade in securities of the Debtors in violation of applicable securities laws.

7. Unless specifically provided or acknowledged by the Debtors to the contrary, each Permitted Person understands that no materials included in the Subject Material should be relied upon as an accurate representation or assurance of future results. Each Permitted Person further acknowledges that the Debtors and their affiliates, representatives and advisors are not making any representation or warranty, either express or implied, as to the accuracy or completeness of any Subject Material. Nothing in this paragraph shall limit the Debtors’ duties to the Committees under applicable law, and, upon request of either of the Committees or any

Member regarding specific Subject Material which may be relied upon for Committee business or functions, the Debtors will make good faith and reasonable efforts to indicate whether such information is reliable. Each Permitted Person agrees, to the fullest extent permitted by law, that neither the Debtors nor any of their affiliates, representatives or advisors, in connection herewith, shall have any liability to any Permitted Person, affiliates, representatives or advisors on any basis (including, without limitation, in contract, tort, under federal or state securities laws or otherwise) resulting from the review or use of the Subject Material by the Committees or any of their Permitted Persons. Nothing herein limits either Committee from seeking relief in the Bankruptcy Court with respect to accuracy or completeness of the Subject Material provided by the Debtors.

8. In the event that the Committees or their Permitted Persons are required (or requested (i) by a court of competent jurisdiction, (ii) in connection with a foreign proceeding or litigation, or (iii) or by a federal, state or local governmental or regulatory body) to disclose any Subject Material supplied to the Committees or their respective Permitted Persons, such party will provide the Debtors with prompt written notice of such request or requirements so that the Debtors and/or their affiliates may seek an appropriate protective order and/or seek appropriate approvals from this Court. In the absence of a protective order or the receipt of a waiver hereunder, a Committee or its respective Permitted Persons may disclose that portion of the Subject Material which its counsel advises to be disclosed to such tribunal or governmental authority without liability hereunder. To the extent that a Member is subject to examination by a regulatory authority or bank auditors, it shall not be in breach of its obligations hereunder if it permits such authority or bank auditors to review Subject Material, without notice to any persons, in connection with a review of such Member's files.

9. Upon the Effective Date of any Plan of Reorganization, (the "Termination Date"), and following a written request from the Debtors, the Committees and their respective Permitted Persons shall, in the Debtors' discretion, either (i) destroy the Subject Material in their possession or (ii) (a) return the Subject Material received from the Debtors, their counsel or advisors to the Debtors' counsel and (b) destroy all other Subject Material in their position; provided, however that all parties acknowledge that electronic copies will be deleted but may remain on backup tapes, hard drives, and similar formats (but upon the request of the Debtors, commercially reasonable, good faith efforts will be made to delete such back-up information). Neither the Committees, nor any Permitted Persons, will retain any copies, extracts or other reproductions in whole or in part of the Subject Material except as otherwise permitted herein. Promptly after the date a Member ceases to be a Member or any Permitted Person ceases to be a Permitted Person, such Member or Permitted Person, as the case may be, shall, in the Debtors' option, either (i) destroy the Subject Material in their possession or (ii) return the Subject Material to the Debtors' counsel. All documents, memoranda, notes and other writings whatsoever prepared by, or caused to be prepared by, either Committee or any of their Permitted Persons, based on the information in the Subject Material shall be destroyed on the Termination Date, or as soon thereafter as is practicable, and such destruction shall be certified in writing to the Debtors. Promptly after the date a Member ceases to be a Member or any Permitted Person ceases to be a Permitted Person, as the case may be, all documents, memoranda, notes and other writings whatsoever prepared by or caused to be prepared by any Committee, or their respective Permitted Persons, based on the information on the Subject Material, in the possession of such Member or Permitted Person, shall be destroyed on such date, or as soon thereafter as is practicable, and such destruction shall be certified in writing to the Debtors. The delivery or destruction of Subject Material shall not relieve either Committee, or their respective Permitted

Persons, of their confidential obligations under this Order. Notwithstanding anything herein to the contrary, if any applicable non-bankruptcy law requires the preservation or retention of the Subject Material beyond the Termination Date, then such material shall be destroyed or turned over to Debtors' counsel in accordance with this paragraph by such later date in accordance with applicable non-bankruptcy law. The confidentiality provisions contained herein shall survive for a period of one year after the Termination Date; provided, however, that the confidentiality provisions related to trade secrets, confidential research, development, or commercial information shall remain and survive forever.

10. The Debtors shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach of the provisions of this Order, in addition to all other remedies available at law or in equity. It is further understood and agreed that no failure or delay by the Debtors with respect to rights and obligations set forth in this Order will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any right, power or privilege hereunder.

Appendix B

FORM OF DECLARATION OF [DECLARANT]

I, [DECLARANT], hereby declare:

1. I have personal knowledge of each of the facts stated in this Declaration, except for those facts stated on information and belief, and, as to those facts, I am informed and believe them to be true. I am submitting this Declaration on behalf of [INSTITUTION] (“Restricted Entity”), in order to advise the United States Trustee for the Northern District of Texas of the information blocking procedures designed to prevent Restricted Entity trading personnel, analysts and its investment advisory personnel from receiving any non-public information concerning the chapter 11 cases of the above-captioned debtors (the “Debtors”) through Restricted Entity’s representative (the “Member”) on the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC, and each Member Assistant (as defined in the “Order Approving Specified Information Blocking Procedures And Permitting Trading In The Debtors’ Securities, Bank Debt, Purchase Or Sale Of Trade Debt And Issuing Of Analyst Reports Upon Establishment Of A Screening Wall Effective July 25, 2003” entered August ___, 2003) (the “Order”) (collectively, the “Restricted Entity Committee Personnel”) and to prevent Restricted Entity Committee Personnel from receiving information regarding Restricted Entity’s trading in Securities of the Debtors in advance of such trading.

2. I am a [TITLE] of Restricted Entity, which (i) serves as an investment adviser on behalf of certain client accounts that beneficially own securities or other claims or interests in Debtors’ chapter 11 cases and/or (ii) beneficially owns such securities, in its own name or in the name of one or more funds or accounts. In that capacity, I am a representative that serves on committees in out-of-court restructurings and chapter 11 reorganization cases. [DESCRIBE OTHER RELEVANT DUTIES].

3. In conjunction with Restricted Entity's existing information blocking procedures and this Declaration, Restricted Entity has established and will maintain the following internal procedures: (i) Restricted Entity Committee Personnel shall execute an internal memorandum (the "Procedures Memorandum") acknowledging that they may receive non-public information and that they are aware of the information blocking procedures which are in effect with respect to the Debtors' Securities and will follow these procedures; (ii) subject to paragraph 4 hereof, Restricted Entity Committee Personnel will not directly or indirectly share any non-public information generated by, received from or relating to the Debtors, Committee activities or Committee membership ("Information") with any other Person (defined as a "person, corporation, partnership, business association, governmental entity, or entity similar to any of the foregoing") including employees, representatives or agents of Restricted Entity, including Restricted Entity's investment advisory personnel or analysts issuing reports to the public or to such Committee member's clients, except Restricted Entity Committee Personnel (a) may share information with any other Restricted Entity Committee Personnel; and (b) disclose publicly available information to any persons and such disclosure will not be breach of its duties contained herein; (iii) Restricted Entity Committee Personnel will maintain all files containing information received in connection with or generated from committee activities in secured cabinets inaccessible to other Persons, including employees of Restricted Entity; (iv) Restricted Entity Committee Personnel will not receive any information regarding Restricted Entity's trades in the Debtors' Securities or bank debt except to the extent such information is received in the ordinary course of the Restricted Entity's business; (v) Restricted Entity's compliance personnel shall review on a quarterly basis Restricted Entity's trades of the Debtors' Securities or bank debt to determine if there is any reason to believe that such trades were not made in compliance with the information blocking procedures and shall maintain records of such review (if any such

records are created); (vi) Restricted Entity shall take those steps necessary to restrict the exchange of Information through electronic means between Restricted Entity Committee Personnel and all other Restricted Entity personnel in a manner consistent with the foregoing procedures, which shall be monitored by Restricted Entity's compliance personnel; and (vii) so long as Restricted Entity is a member of the Committee, it shall confirm to the Committee counsel and the United States Trustee on a quarterly basis in a declaration continued compliance with the procedures described herein, and shall immediately disclose to the Committee's counsel and the United States Trustee any breaches of such procedures.

4. Notwithstanding any of the above, Restricted Entity Committee Personnel may share Information with (a) senior management of Restricted Entity who, due to their duties and responsibilities, have a legitimate need to know such Information provided that such individuals use such Information only in connection with their senior managerial responsibilities and comply with (y) any applicable trading restrictions until such time as the information provided to them under this paragraph becomes public information and (z) the confidentiality provision of Appendix A to the Order; and (b) regulators of the Restricted Entity; (c) to the extent reasonably necessary, auditors, legal and compliance personnel to the Restricted Entity for the purpose of rendering advice or services (or other necessary purposes) to the Restricted Entity's business; provided, such auditors, legal and compliance personnel shall maintain confidentiality in accordance with the provisions of Appendix A of the Order, and (d) to the extent that such Information may be accessible by internal computer systems, Restricted Entity administrative personnel who service and maintain such systems, each of whom, by internal policy or agreement, will agree not to share Information with other employees and will keep such Information in files inaccessible to other employees. Any individual that becomes a Restricted Entity Committee Personnel shall only thereafter be considered as such and subject to the terms,

duties, and obligations hereof until the Information received by such Restricted Entity Committee Personnel becomes public.

5. The Restricted Entity Committee Personnel assigned to act as a Committee representative will be myself and [SECOND REPRESENTATIVE], who is [TITLE] of Restricted Entity. [SECOND REPRESENTATIVE] will submit a separate Declaration affirming [his/her] intention to comply with the screening procedures described herein. In the event any other individual Restricted Entity representative is chosen to act as a Committee representative on behalf of Restricted Entity in the Debtors' chapter 11 cases, such individual will also submit a Declaration affirming [his/her] intention to comply with the screening procedures described herein prior to accepting any responsibilities in connection therewith.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ___ day of [MONTH], 2003, at [CITY], [STATE].

[DECLARANT]