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**COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF MIRANT CORPORATION, ET AL.**

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

IN RE: § Chapter 11  
MIRANT CORPORATION, *et al.*, §  
§ Case No. 03-46590-DML-11  
§  
§ Jointly Administered  
Debtors. §  
§

**APPLICATION PURSUANT TO BANKRUPTCY CODE  
SECTIONS 328 AND 1103 AND RULE 2014 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE FOR ENTRY OF AN ORDER AUTHORIZING THE  
EMPLOYMENT OF SHEARMAN & STERLING LLP AS CO-COUNSEL TO THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MIRANT  
CORPORATION, ET AL., EFFECTIVE AS OF MAY 5, 2004**

TO THE HONORABLE D. MICHAEL LYNN,  
UNITED STATES BANKRUPTCY JUDGE:

The official committee of unsecured creditors of Mirant Corporation, *et al.* (the “Mirant Committee”) hereby files this application (this “Application”) pursuant to sections 328 and 1103 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) seeking the entry of an order authorizing the employment of Shearman & Sterling LLP (“Shearman & Sterling”) as co-counsel to the Mirant Committee, effective as of May 5, 2004, and in support thereof, respectfully states as follows:

### **Jurisdiction**

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Application is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Introduction**

2. On July 14-15, 2003 and thereafter (the “Petition Date”), Mirant Corporation (“Mirant”) and certain of its affiliates (collectively, the “Debtors”) filed petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”). The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On July 25, 2003, the Office of the United States Trustee (the “UST”) convened an organizational meeting for the formation of an official committee of unsecured creditors. Ultimately, two official creditor committees were appointed: one for the creditors of Mirant and its affiliates, and one for the creditors of Mirant Americas Generation, LLC (“MAGI”) and its subsidiaries (the “MAGI Committee”). Immediately after the organization meeting, the Mirant

Committee retained the law firms Andrews Kurth LLP (“Andrews Kurth”) and Simpson Thacher & Bartlett (“Simpson Thacher”) as its co-counsel. On September 18, 2003, the UST appointed an official committee of equity holders (the “Equity Committee”) to serve in these cases.

4. On April 7, 2004, the Court entered an order directing the UST to appoint an examiner (the “Examiner”) in these cases, and accordingly, on April 13, 2004, the UST appointed William K. Snyder as Examiner.

5. Prior to the commencement of the Debtors’ chapter 11 cases, Citibank, N.A. (“Citibank”), the current chair of the Mirant Committee, and Credit Suisse First Boston, in their role as agents for Mirant’s prepetition lenders (together, the “Prepetition Agents”), engaged in extensive negotiations with the Debtors regarding a potential out of court restructuring or prepackaged chapter 11 case. In connection with such negotiations and their analysis of the Debtors’ businesses, the Prepetition Agents retained Shearman & Sterling as counsel (such retention, the “Prepetition Agent Engagement”). Shearman & Sterling has served as counsel to the Prepetition Agents since that time, including in connection with the Debtors’ cases. As a result, Shearman & Sterling is fully familiar with the status of these cases.

6. On May 5, 2004, Simpson Thacher filed a motion requesting authorization to withdraw as counsel to the Mirant Committee. The Mirant Committee believes it is necessary and appropriate to continue to retain co-counsel to advise the Mirant Committee in these cases. To that end, the Mirant Committee has contacted Shearman & Sterling and inquired as to whether Shearman & Sterling would agree to serve as co-counsel to the Mirant Committee. Shearman & Sterling has indicated that it is willing to serve in such capacity and the Prepetition Agents have agreed to release Shearman & Sterling from their Prepetition Agent Engagement to provide such services. Accordingly, the Mirant Committee files this Application.

**Relief Requested**

7. By this Application, the Mirant Committee respectfully requests entry of an order authorizing the retention of Shearman & Sterling as co-counsel to the Mirant Committee. The Mirant Committee has selected Shearman & Sterling based upon the firm's significant expertise in the bankruptcy, restructuring and energy fields, as well as in matters involving derivative financial instruments and corporate matters generally, and the firm's strong familiarity with these cases and the issues presented herein.

8. Shearman & Sterling's representation of the Mirant Committee, as co-counsel with Andrews Kurth, will include the following:

- (a) advising and consulting with the Mirant Committee concerning (i) legal questions arising in administering the Debtors' estates and (ii) unsecured creditors' rights and remedies in connection with the estates;
- (b) analyzing the various facets of the Debtors' assets and liabilities, including present and historical matters and inter-company relationships;
- (c) working with the Debtors concerning the administration of these chapter 11 cases;
- (d) preserving, protecting and maximizing the value of the Debtors' assets;
- (e) preparing pleadings, motions, answers, notices, orders, and reports that are necessary or required for the protection of the Mirant Committee's interests and the orderly administration of the Debtors' estates;
- (f) working to formulate, prepare and confirm a chapter 11 plan of reorganization for the Debtors which maximizes value to creditors;
- (g) protecting and maximizing the value of MAGI's assets and business for the benefit of Mirant creditors; and
- (h) performing any and all other legal services for the Mirant Committee that the committee determines are

necessary and appropriate to faithfully discharge its duties or otherwise relevant to these chapter 11 cases.

9. To the best of Mirant Committee's knowledge and belief, except as set forth in the S&S Rule 2014 Statement (as defined below), Shearman & Sterling and its lawyers neither hold nor represent any entity having an adverse interest in connection with these cases.

#### **Shearman & Sterling's Connections With Parties**

10. Shearman & Sterling's compliance with the requirements of sections 1103 and 504 of the Bankruptcy Code and Bankruptcy Rule 2014, and Shearman & Sterling's "connections" to parties in these cases, are set forth in detail in the Declaration of Fredric Sosnick in Support of the Application Pursuant to Bankruptcy Code Sections 328(a) and 1103 and Rule 2014 of the Federal Rules of Bankruptcy Procedure For Entry of an Order Authorizing the Employment and Retention of Shearman & Sterling LLP as Co-Counsel to the Official Committee of Unsecured Creditors of Mirant Corporation, *et al.*, Effective as of May 5, 2004 (the "S&S Rule 2014 Statement"). Although all of the "connections" to the parties in these cases that are described in the S&S Rule 2014 Statement are important for consideration of this Application (and all interested parties are advised to review the S&S Rule 2014 Statement with care), there are two specific connections that are highlighted below for the benefit of the Court:

- a) **Representation of Prepetition Agents** – As the Court is well aware, Shearman & Sterling has served as counsel to the Prepetition Agents in connection with these cases. The involvement of Shearman & Sterling since the inception of these cases (and indeed during the prepetition negotiations) makes the firm uniquely qualified to fill the vacancy created by the withdrawal of Simpson Thacher. The Prepetition Agents have released Shearman & Sterling from such engagement so that Shearman & Sterling may be retained by the Mirant Committee. Shearman & Sterling will resign from the Prepetition Agent Engagement effective upon the entry of an order approving its retention as co-counsel to the Mirant Committee. As described in further detail below, the Agents have not fully paid all amounts due to Shearman & Sterling for services rendered during the pendency of these cases. Shearman & Sterling expects that such amounts will continue to be paid in the ordinary course and will be paid in full in the near future.

- b) **Representation of Mirant Asia-Pacific Ltd.** – Shearman & Sterling, through attorneys located in its Hong Kong and Singapore offices, represented Mirant Asia-Pacific Ltd. (“MAPL”), a non-debtor affiliate of Mirant, in matters unrelated to these cases. Specifically, Shearman & Sterling provided general corporate advice to MAPL in connection with certain financing arrangements and certain minority shareholder put agreements. Shearman & Sterling’s representation of MAPL was limited in scope to matters directly affecting MAPL and, as noted above, all services were provided by Shearman & Sterling attorneys stationed in Asia. In connection with the Prepetition Agent Engagement, Shearman & Sterling implemented an ethical screening wall that has been in place since February 2003. Shearman & Sterling has informed MAPL that it will cease representing MAPL on an ongoing basis, although it will endeavor to assist MAPL in transitioning files and other knowledge to new counsel designated by MAPL. Shearman & Sterling will continue to maintain an ethical screening wall between the attorneys at Shearman & Sterling who were previously involved in the MAPL representation and those who will represent the Mirant Committee. In addition, because Shearman & Sterling is proposed to be co-counsel with Andrews Kurth, in the event the Mirant Committee becomes adverse to MAPL, the Mirant Committee believes that Andrews Kurth would be in a position to advise the committee in connection therewith.

**Retention of Shearman & Sterling as Co-Counsel to the  
Mirant Committee is Necessary and Appropriate**

11. The Mirant Committee believes that the employment and retention of Shearman & Sterling to serve as co-counsel with Andrews Kurth is necessary and appropriate under the circumstances. Many complex questions and issues have arisen and will continue to arise in these cases – including, but not limited to, corporate governance, corporate finance, federal and state securities laws, energy and energy trading and the federal regulations and procedures applicable thereto, bankruptcy, tax and labor and employment, to name a few – and it is essential that the Mirant Committee be able to quickly and efficiently secure answers to the questions raised and/or take the appropriate action in order to swiftly move the Debtors’ cases through the chapter 11 process. The Debtors have retained many counsel and other professionals to handle such issues, and have also sought to hire myriad ordinary course professionals in connection therewith. Counsel serving the Mirant Committee must be able to review, focus upon and understand these same issues. Thus, due to the breadth of practice disciplines and expertise

within Andrews Kurth and Shearman & Sterling, combined with the nature of their respective prepetition relationships to the Debtors' restructuring and Shearman & Sterling's representation of the Prepetition Agents in these cases, the Mirant Committee believes that pooling the resources of Andrews Kurth and Shearman & Sterling will foster this goal, serve economies of scale and work to the benefit of the Mirant Committee and its constituents.

12. These cases are large and complex. There are presently 83 Debtors who collectively have multiple thousands of creditors, over \$20 billion in assets and over \$11 billion in liabilities. Excluding debt at MAGI of approximately \$2.8 billion as of the Petition Date (which is represented by a separate official committee) the Mirant Committee's constituents hold claims aggregating in excess of \$7.2 billion. The Mirant Committee believes that a division of labor and a work plan between two firms will serve the interest of creditors and otherwise conserve resources, due to the fact that key issues can and will be addressed in "real time" on an immediate basis, with each firm taking the lead on certain issues while coordinating their efforts in general. The Mirant Committee is informed, and believes, that duplication of effort between Andrews Kurth and Shearman & Sterling will be minimized, and that they will work closely together to ensure minimal duplication.

13. With a case of this magnitude and the number of creditors involved, potential conflicts of interest may surface. A review of the various retention applications filed by the Debtors illustrates this situation, and the Debtors have specifically sought to hire special conflicts counsel. By hiring Shearman & Sterling as co-counsel with Andrews Kurth, aside from the benefits and reputation brought to the table by these two firms, either firm will be able to handle any matter if the other firm has a potential conflict.

14. In light of the size of these cases, the large amount of complex work that will need to be performed – including investigations of intercompany claims and potential avoidance actions, and the negotiation of a plan or plans of reorganization – and the vast amounts of funded debt that may be restructured, the Mirant Committee respectfully submits that the services of both Andrews Kurth and Shearman & Sterling are necessary and appropriate to ensure that the committee's interests are fully protected.

### **Compensation**

15. Shearman & Sterling intends to apply to the Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and any applicable local rules and orders of this Court. The Mirant Committee understands that Shearman & Sterling will bill at its customary hourly rates and seek reimbursement of expenses, as customarily charged to their non-bankruptcy clients. The hourly billing rates for attorneys at Shearman & Sterling are set forth in the accompanying S&S Rule 2014 Statement. The Mirant Committee understands that the rates charged by Shearman & Sterling may be adjusted from time to time and are usually adjusted on an annual basis.

16. As of the date of this Application, Shearman & Sterling was owed approximately \$700,000 by the Prepetition Agents for services provided. In order to expedite the retention process, Shearman & Sterling has not requested immediate payment of this sum, however, Shearman & Sterling anticipates that the Prepetition Agents will pay such sum to Shearman & Sterling in the ordinary course of business.

17. Finally, the Mirant Committee respectfully requests that the retention of Shearman & Sterling be effective as of May 5, 2004, the date that Shearman & Sterling was engaged by the Mirant Committee.

**Notice**

18. Notice of this Application has been provided to the Debtors, the UST, counsel to the MAGI Committee and the Equity Committee and all parties who have filed a notice of appearance and request for service of pleadings in these chapter 11 cases. The Mirant Committee respectfully submits that such notice is appropriate under the circumstances and that no other or further notice is necessary or required.

**WHEREFORE**, the Mirant Committee respectfully requests that this Court enter an order (i) authorizing the retention of Shearman & Sterling as counsel for the Mirant Committee on the terms set forth herein, effective as of May 5, 2004, and (ii) granting such other and further relief as may be just and proper.

Respectfully submitted this 6th day of May, 2004.

**THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF MIRANT CORPORATION, ET AL.**

**By: /s/ John Dorans**

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**John Dorans, Chairman**

**Certificate of Service**

The undersigned hereby certifies that on the 6<sup>th</sup> day of May, 2004, she caused a true and correct copy of the foregoing document to be served on the parties appearing on the Debtors' Master Service List via first class U.S. Mail, postage prepaid.

/s/ Monica S. Blacker  
Monica S. Blacker

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

<b>IN RE:</b>	§	<b>Chapter 11</b>
	§	
<b>MIRANT CORPORATION, <i>et al.</i>,</b>	§	<b>Case No. 03-46590-DML-11</b>
	§	
	§	<b>Jointly Administered</b>
<b>Debtors.</b>	§	
	§	

**ORDER GRANTING APPLICATION TO EMPLOY  
SHEARMAN & STERLING LLP AS CO-COUNSEL TO THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MIRANT  
CORPORATION, ET AL., EFFECTIVE AS OF MAY 5, 2004**

Upon the Application (the “Application”) of the Official Committee of Unsecured Creditors of Mirant Corporation, *et al.* (the “Mirant Committee”), Pursuant to Sections 328 and 1103 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) Authorizing the Employment of Shearman & Sterling LLP as Co-Counsel to the Mirant Committee, Effective as of May 5, 2004; and the Court having jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Application being a core proceeding under 28 U.S.C. § 157(b)(2); and it appearing that notice of the Application was sufficient under the circumstances; and after due consideration of the Application and good cause appearing therefor, it is

ORDERED that the Application be, and it hereby is, granted, and the Mirant Committee is hereby authorized to employ and retain Shearman & Sterling as co-counsel on an interim basis; and it is further

ORDERED that parties in interest shall have twenty-six (26) days from the entry of this Order to file an objection to the permanent retention of Shearman & Sterling. If no

objections are filed and received, on the 27<sup>th</sup> day from the entry of this Order this Order shall become a final order without any further action or order of the Court; and it is further

ORDERED that Shearman & Sterling shall apply to this Court for compensation and reimbursement of expenses in accordance with the terms of the Bankruptcy Code, the Bankruptcy Rules, the local rules and Orders of this Court; and it is further

ORDERED that the retention of Shearman & Sterling shall be effective as of May 6, 2004.

SIGNED this \_\_ day of \_\_\_\_\_, 2004

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HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE