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PROPOSED ATTORNEYS FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MIRANT AMERICAS GENERATION, LLC.

**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)
)	
Debtors)	Jointly Administered

**APPLICATION FOR APPROVAL OF THE EMPLOYMENT AND RETENTION OF
CADWALADER, WICKERSHAM & TAFT LLP, EFFECTIVE AS OF
JULY 25, 2003, AS ATTORNEYS FOR THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF MIRANT AMERICAS GENERATION, LLC**

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

The Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC (“MAGI”) (the “MAGI Committee”), hereby files this application for approval of the employment and retention of Cadwalader, Wickersham & Taft LLP (“CWT”), *nunc pro tunc*, to July 25, 2003, as attorneys for the MAGI Committee (the “Application”). In support of this Application, the MAGI Committee respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Application is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are §§ 327, 328 and

1103(a) 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”).

PROCEDURAL BACKGROUND

2. On July 14, 2003 (the “Petition Date”), Mirant Corporation (“Mirant”) and its affiliated debtors, including MAGI (collectively the “Debtors”), each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing in the management and possession of their properties as debtors in possession. The Debtors’ cases are being jointly administered.

3. On July 25, 2003 (the “Committee Formation Date”), the MAGI Committee was appointed in these cases by the Office of the United States Trustee. The members of the MAGI Committee are California Public Employees Retirement System (“CalPERS”), Elliott Associates, L.P., JPMorgan Chase, Lehman Brothers Inc., Mackay Shields Financial, The Royal Bank of Scotland and Wells Fargo Bank, as Indenture Trustee.

4. Prior to the Petition Date, an informal group (the “Informal Committee”) of holders of senior notes issued by MAGI, including certain members on the MAGI Committee, retained CWT as legal counsel to represent the interests of the Informal Committee. CWT continued to represent the interests of the Informal Committee after the Petition Date up until the date the MAGI Committee was appointed. Through this representation, CWT has become fully informed about these cases, as well as the Debtors’ businesses and the facts and circumstances relating to the commencement of these Chapter 11 cases.

RETENTION OF CWT

5. Sections 328(a) and 1103(a) of the Bankruptcy Code permit a duly appointed committee, with the approval of the Bankruptcy Court, to employ attorneys on any reasonable terms

and conditions of employment to perform services for the committee. *See* 11 U.S.C. §§ 328(a) and 1103(a). On the Committee Formation Date, CWT was selected as counsel for the MAGI Committee. By this Application, the MAGI Committee seeks to employ and to retain CWT as its counsel to perform the legal services that will be necessary during these Chapter 11 cases effective as of the Committee Formation Date. CWT will represent the MAGI Committee along with Cox & Smith Incorporated (“Cox & Smith”), who will act as Texas counsel.

6. The MAGI Committee seeks to retain the firm of CWT as its attorneys because of CWT’s extensive experience, expertise and knowledge in the field of debtors’ and creditors’ rights and business reorganizations under Chapter 11 of the Bankruptcy Code. CWT is a law firm of approximately 500 attorneys, having its principal offices at 100 Maiden Lane, New York, New York, and having offices in Charlotte, North Carolina, Washington, DC and London, England. Partners and associates of CWT’s Financial Restructuring Department represent creditors committees and debtors in many of the largest and most complex U.S. and international reorganizations and financial restructurings. The attorneys of CWT that will be involved in the MAGI Committee representation have substantial expertise and experience in many facets and legal disciplines that will enable CWT to render highly qualified and efficient legal representation to the MAGI Committee. Accordingly, the MAGI Committee believes the retention of CWT will provide the most effective and efficient representation of the interests of the MAGI Committee.

7. Bruce R. Zirinsky, the head of CWT’s Financial Restructuring Department, will have lead responsibility for CWT’s representation of the MAGI Committee. Mr. Zirinsky is a member in good standing of the Bars of the State of New York, the United States District Courts for the Southern and Eastern Districts of New York and the Eastern District of Michigan, the United States Courts of Appeals for the First, Second, Fifth, Sixth and Eleventh Circuits and the United States

Supreme Court. Mr. Zirinsky has over 30 years of experience in financial restructuring and reorganization cases and has played a leading role in the representation of creditors committees, creditors and debtors in large and complex Chapter 11 cases, including Dow Corning Corporation, Montgomery Ward Stores, Olympia & York Realty (USA), Pathmark Stores, Inc., Ach Wireless, Inc., Flag Telecom, Winstar Communications, Continental Airlines Corporation and Owens Corning Corporation, among others. Mr. Zirinsky also had a substantial role in the out of court restructuring of Reliant Resources Inc., a major U.S. and international power company.

8. Mr. Zirinsky will be assisted in this case by Gregory M. Petrick, Mark E. Ellenberg, Angela J. Somers and Ingrid Bagby. Mr. Petrick is a partner in CWT's Financial Restructuring Department and is a member in good standing of the Bars of the State of New York and the United States District Courts for the Southern and Eastern Districts of New York. Mr. Petrick has represented numerous creditors, creditors committees and debtors in Chapter 11 cases, including Flag Telecom, Golden Ocean, Inc., Stellex Technologies, Inc., Florida Coast Paper Company and Amer Reefer. Mr. Petrick has also played a lead role in the insurance insolvency proceedings of Mutual Life Benefit Insurance Company and Confederation Life Insurance Company, U.S. Branch. Mr. Ellenberg, also a partner in CWT's Financial Restructuring Department, is a member in good standing of the Bars of the District of Columbia, the United States District Courts for the Districts of Columbia and Maryland, the United States Courts of Appeals for the Third, Fourth, Fifth, Sixth, Eighth, Tenth, District of Columbia and Federal Circuit, the United States Supreme Court and the Interstate Commerce Commission. Mr. Ellenberg plays a lead role in the representation of debtors and creditors in complex financial restructuring, workout and bankruptcy matters. His diverse experience includes the representation of creditors committees, creditors and debtors in such cases as Geneva Steel, Zenith Laboratories, Inc., Grove Worldwide, Winstar Communications and Jitney

Jungle. In the Enron Chapter 11 cases, Mr. Ellenberg is special counsel to the debtors for trading issues. Ms. Somers, special counsel in CWT's Financial Restructuring Department, has represented numerous official committees of creditors in larger Chapter 11 cases and restructurings, including Manhattan Investment Fund, Columbia Gas System, Federated Department Stores, NVF Company and US Airways. She has also played a leading role in the reorganization of debtors, including RSL COM USA and Phoenix Information Systems, as well as debtors who have restructured outside of Chapter 11. Ms. Bagby, an associate in CWT's Financial Restructuring Department, also has significant experience in Chapter 11 cases and restructurings, including representing the bondholders in GS Technologies, the senior lenders in Flag Telecom and working on behalf of SwissAir in its world-wide restructuring. In addition, other CWT attorneys specializing in trading regulation, litigation, finance and tax will be assisting CWT in connection with its representation of the MAGI Committee.

9. The professional services that CWT will render to the MAGI Committee include, but are not limited to, the following:

- A. to assist, to advise and to represent the MAGI Committee with respect to the administration of this case and the exercise of oversight with respect to MAGI and the other Debtors' affairs, including all issues arising from or impacting MAGI and the other Debtors, the MAGI Committee or this Chapter 11 case;
- B. to provide all necessary legal advice with respect to the MAGI Committee's powers and duties;
- C. to assist the MAGI Committee in maximizing the value of the MAGI's assets for the benefit of all of MAGI's creditors;
- D. to pursue confirmation of a plan of reorganization and approval of an associated disclosure statement with respect to MAGI;
- E. to conduct any investigation, as the MAGI Committee deems appropriate, concerning, among other things, the assets, liabilities, financial condition and operating issues of MAGI;

- F. to commence and prosecute any and all necessary and appropriate actions and/or proceedings on behalf of the MAGI Committee that may be relevant to this case;
- G. to prepare on behalf of the MAGI Committee necessary applications, pleadings, motions, answers, orders, reports and other legal papers;
- H. to communicate with the MAGI Committee's constituents and others as the MAGI Committee may consider desirable in furtherance of its responsibilities;
- I. to appear in Court and to represent the interests of the MAGI Committee; and
- J. to perform all other legal services for the MAGI Committee which are appropriate, necessary and proper in these Chapter 11 cases.

10. CWT has stated its willingness to serve in these cases and render the necessary professional services as attorneys for the MAGI Committee.

11. To the best of the MAGI Committee's knowledge and except as disclosed herein or in the affidavit of Gregory M. Petrick, Esq., (the "Petrick Affidavit"), CWT has not otherwise represented the Debtors, their fifty largest creditors, or other parties-in-interest, or their respective attorneys, in any matters relating to the Debtors or their estates.

12. To the best of the MAGI Committee's knowledge and except as otherwise disclosed in the Petrick Affidavit, (i) CWT does not hold or represent any interest adverse to the MAGI Committee in the matters for which it is retained; (ii) CWT is a "disinterested person" as that phrase is defined in § 101(14) of the Bankruptcy Code, (iii) neither CWT nor its professionals have any connection with the Debtors, the creditors or any other party in interest; and (iv) CWT's employment is necessary and in the best interests of the MAGI Committee and the Debtors' estates. CWT is a large financial services law firm and, in the course of its practice, has represented creditors of the Debtors in matters wholly unrelated to the Debtors or these cases. None of these representations or relationships would be adverse to the MAGI Committee, the Debtors or their estates.

13. As described above and in the Petrick Affidavit, prior to the Petition Date and through the formation of the MAGI Committee, CWT represented the interests of the Informal Committee in connection with these matters. The members of the Informal Committee consisted of AIG Global Investment Corp., Elliott Associates, L.P., DKR Saturn Management, LP, Mackay Shields, LLC, California Public Employees' Retirement System (CALPers), PPM America, Inc., Wexford Capital LLC, Contrarian Capital Advisors and Perry Capital. Prior to the Petition Date, the Debtors had agreed to compensate CWT for its fees and reimburse it for the expenses it incurred in representing the Informal Committee. In connection with this representation, CWT received payment of \$514,312.89 from the Debtors for the work that CWT had performed for the Informal Committee from March 2003 through July 24, 2003.

14. In connection with its representation of the Informal Committee, CWT was also co-counsel in an action filed in Delaware state court (the "Delaware Litigation") by certain members of the MAGI Committee, as set forth in Petrick Affidavit, against Mirant Corporation, Mirant Americas, Inc., Mirant Americas Generation, LLC, and certain of the Debtors' current and former principals, including, S. Marce Fuller, Harvey A. Wagner, Richard Pershing, Raymond D. Hill, Randall E. Harrison, Gary J. Morsches, J. William Holden III, Edwin H. Adams, David J. Lesar, Ray M. Robinson, A.W. Dahlberg, Stuart Eizenstat, Robert F. MacCullough, A.D. Correll, Carlos Ghosn, William M. Hjerpe and James F. McDonald. As a condition to the acceptance of employment as counsel for the MAGI Committee, CWT will cease to represent any individual bondholder or creditor of any of the Debtors including in connection with the Delaware litigation.

15. Subject to Court approval in accordance with § 328(a) of the Bankruptcy Code, compensation will be payable to CWT at its customary hourly rates for services rendered that are in effect from time to time, plus reimbursement of actual, necessary expenses incurred. Mr. Zirinsky's

current standard hourly rate is \$735 per hour and Mr. Petrick's is \$605 per hour. Other attorneys and paralegals may from time to time serve the MAGI Committee in connection with this representation with their hourly rates ranging from \$215 to \$445 for attorneys, \$475 to \$735 for partners and special counsel, and \$130 to \$205 for legal assistants. The MAGI Committee submits that such rates are reasonable and should be approved by the Court subject to a determination of the amounts to be paid to CWT upon applications for allowance.

CONCLUSION

WHEREFORE, the MAGI Committee respectfully requests entry of an order in the form annexed hereto as Exhibit B authorizing the MAGI Committee to employ and retain CWT, *nunc pro tunc*, to July 25, 2003, upon the terms set forth herein and granting such other and further relief as the Court may deem just and proper.

Dated: August 21, 2003

Respectfully submitted,

Official Committee of Unsecured Creditors of
Mirant Americas Generation, LLC

By: /s/ Charles Greer
Charles Greer, Co-Chair

AND

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By: /s/ Thomas Rice
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**PROPOSED ATTORNEYS FOR THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS OF
MIRANT AMERICAS GENERATION, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2003, a true and correct copy of the above and foregoing *Application* was served by electronic mail to the parties listed below and by United States First Class Mail on the parties on the Official Shortened Service List (8/20/03).

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/s/ Thomas Rice
Thomas Rice

**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
	§	
Debtors.	§	Jointly Administered

**INTERIM ORDER PURSUANT TO SECTION 1103(A)
OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT OF
CADWALADER, WICKERSHAM & TAFT LLP AS ATTORNEYS FOR THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF
MIRANT AMERICAS GENERATION, LLC**

Came on for consideration the *Application for Approval of the Employment and Retention of Cadwalader, Wickersham & Taft LLP, Effective as of July 25, 2003, as Attorneys for the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC* (the "Application"). The Court finds that it has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. The Court further finds that this is a core proceeding pursuant to 28 U.S.C. §157. After reviewing the Affidavit of Gregory M. Petrick, a partner in the law firm of Cadwalader, Wickersham & Traft LLP ("CWT"), in support of the Application (the "Petrick Affidavit"), the Court finds that: (i) the proposed employment of CWT as co-counsel for the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC (the "MAGI Committee") is in the best interest of the bankruptcy estates and the MAGI Committee, (ii) CWT and its partners and associates do not represent or hold any interest adverse to the Debtors' estates or the MAGI Committee such that CWT would be disqualified from representing the MAGI Committee in these Chapter 11 cases and (iii) CWT and each of its partners and associates is a "disinterested person" as such term is defined under 11 U.S.C. §101(14). The Court further finds that the Application should be granted. It is therefore

ORDERED that the retention of CWT as co-counsel for the MAGI Committee is hereby granted on an interim basis (the "Interim Order") pursuant to 11 U.S.C. §1103(a) for the purposes set forth in the Application and the Petrick Affidavit, effective as of July 25, 2003 (the "Committee Formation Date"). It is further

ORDERED that within three (3) business days of the entry of this Interim Order, CWT shall serve the Interim Order upon all parties entitled to receive notice of the Application. It is further

ORDERED that CWT shall be compensated in accordance with the procedures set forth in Sections 330 and 331 of the Bankruptcy Code and such Bankruptcy Rules as may then be applicable, from time to time, and such other procedures as may be fixed by order of this Court. It is further

ORDERED that the Interim Order shall be effective from July 25, 2003 through and including the date of final hearing on the Application. It is further

ORDERED that to the extent of any conflict between the terms and conditions of the Application and the Interim Order, the terms and conditions of this Interim Order shall govern. In is further

ORDERED that this Final Interim Order shall become a Final Order on the twenty-seventh (27th) day after entry of the Interim Order without further notice or hearing unless an objection to the Interim Order is timely filed with the Court and served on CWT on or before twenty-six (26) days after entry of the Interim Order.

Dated: _____

**HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE**

Respectfully submitted,

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