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**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
)	
)	Case No. 03-46590 (DML)
MIRANT CORPORATION, <u>et al.</u>,)	
)	Jointly Administered
)	Hearing Date: August 25, 2004
Debtors)	Hearing Time: 10:30 a.m.

**JOINT MOTION PURSUANT TO BANKRUPTCY RULE 9019 FOR APPROVAL OF A
JOINT STIPULATION REGARDING HEDGING MOTION**

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

The Official Committee of Unsecured Creditors (the "MAGI Committee") of Mirant Americas Generation, LLC ("MAGI"), and Mirant Corporation ("Mirant") and its above-captioned affiliated debtors (collectively, the "Debtors") as debtors-in-possession, hereby file this *Joint Motion Pursuant to Bankruptcy Rule 9019 for Approval of a Joint Stipulation*

Regarding Hedging Motion (the “Motion for Approval”). In support of the Motion for Approval, the MAGI Committee and the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

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).

PROCEDURAL AND FACTUAL BACKGROUND

2. On April 7, 2004, this Court authorized the United States Trustee for the Northern District of Texas to appoint Mr. William K. Snyder (the "Examiner") as the examiner in these cases.

3. On July 15, 2004, the MAGI Committee filed its Motion of the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC to Compel Debtors to Enter into Hedging Transaction for the Benefit of Mirant Americas Generation LLC and Mirant Mid-Atlantic, LLC or Alternatively, for a Grant of Authority to the MAGI Committee to Enter Into Such Transactions on MIRMA and MAGI’s Behalf (the “Hedging Motion”). The Hedging Motion sought to compel Mirant Corporation (“Mirant”) and its affiliated debtors (the “Debtors”) to cause Mirant Mid-Atlantic, LLC (“MIRMA”) to enter into certain types of risk-reducing hedging transactions in order to protect or “hedge” MIRMA, a MAGI subsidiary, against a short-term decline in the current market price of power with respect to a significant number of megawatt hours of power, which MIRMA currently sells to Mirant Americas Energy Marketing, LP (“MAEM”) at spot market prices.

4. The MAGI Committee also sought an expedited hearing on the Hedging Motion, This Court denied expedited consideration but ordered that the Examiner was “directed to

establish and maintain the accounting with respect to a notional hedge”¹ from July 21, 2004 forward (the “Notional Hedge”). The Hedging Motion was set for hearing on August 11, 2004.

5. On July 23, 2004, the Official Committee of Equity Holders (the “Equity Committee”) filed its Motion of the Official Committee of Equity Security Holders to Continue the MAGI Committee’s Hedging Motion Until Plan Confirmation and Stay All Related Discover (the “Equity Committee’s Continuance Motion”). Prior to the hearing on the Equity Committee’s Continuance Motion, the MAGI Committee filed its Unopposed Motion for Continuance of the Hedging Motion (the “MAGI Continuance Motion”) seeking a continuance in order to allow the parties an opportunity to conduct discovery on the Hedging Motion. The continuance was necessary due to the unavailability of the Debtors’ witnesses. The MAGI Continuance Motion was granted and the Hedging Motion was re-set for hearing on August 25, 2004.

6. However, on August 11, 2004, the Equity Committee’s Continuance Motion was heard. At the hearing, while denying the Equity Committee’s Continuance Motion, the Court stated: “to the extent that either through the good offices of the examiner or otherwise, if the parties can find a way to defer this issue, I’d encourage that. I think that that is a better rather than a worse thing.”²

RELIEF REQUESTED

7. The Debtors and the MAGI Committee, with the assistance of the Examiner, have found a way to “defer the issue” and to avoid unnecessary litigation and costs attendant thereto. The MAGI Committee has filed under seal a *Joint Stipulation Regarding Hedging Motion* (the “Joint Stipulation”). The Joint Stipulation is Exhibit “1” to this Motion. The Joint Stipulation

¹ Transcript of Hearing held before Hon. D. Michael Lynn on July 21, 2004 at 26.

² Transcript of Hearing held before Hon. D. Michael Lynn on August 11, 2004 at 90.

provides, *inter alia*, that the Hedging Motion is adjourned *sine die* and can be reset without prejudice on twenty (20) days written notice to the Court and all parties and any objection to the Hedging Motion shall be due no less than three business days prior to such hearing. Further, upon such hearing, if the Court grants the substantive relief requested in the Hedging Motion, the Examiner shall determine the amounts due, if any, to each estate pursuant to the accounting system established by the Examiner as of July 22, 2004 as part of the Notional Hedge (the “Claim Amount”). If approved, the Joint Stipulation would mandate that if the Hedging Motion is ultimately granted each Debtor shall have an allowed administrative claim for any Claim Amount, if any, which is owing pursuant to the terms of the Stipulation.

8. This Court is authorized to approve the Stipulation. Section 105 of the Bankruptcy Code provides, in pertinent part, that “[t]he court may issue an order...necessary or appropriate to carry out the provisions of the [Bankruptcy Code]. Bankruptcy Rule 9019 provides that this Court may approve a compromise or settlement. *Official Committee of Unsecured Creditors v. Cajun Electric Power Cooperation, Inc. (In re Cajun Electric Power Cooperative, Inc.)* 119 F.3d 349, 355 (5th Cir. 1997). A decision to accept or to reject a compromise or settlement is within the sound discretion of the Court. *See 9 Collier on Bankruptcy* 9019.02 (15th ed. rev. 2001). “Compromises are favored in bankruptcy” because they minimize the costs of litigation and further parties’ interest in expediting administration of a bankruptcy estate. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (citing *9 Collier on Bankruptcy* 9019.03[1] (15th ed. Rev. 2001)). A settlement need not result in the best possible outcome for a debtor, but must not “fall beneath the lowest point in the range of reasonableness.” *Vaughn v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). In deciding whether to approve a settlement, a bankruptcy

court does not conduct a mini-trial on the merits or engage in an independent investigation into the reasonableness of the proposed settlement, but instead “relies heavily on the trustee” and the court generally defers to the trustee’s judgment provided there is “a legitimate business justification” for the settlement. *Martin*, 91 F.3d at 395. Basic to the process of evaluating proposed settlements, then, is “the need to compare the terms of the compromise with the likely rewards of litigation.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 425 (1968). Courts will approve a debtor’s settlement if the settlement is in the best interest of the estate. *See In re Marvel Entertainment Group, Inc.* 222 B.R. 243, 249 (D.Del. 1998). Bankruptcy courts have applied the following factors in determining whether a settlement should be approved: (1) the probability of success in litigation, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expenses, inconvenience and delay; (3) the proportion of creditors who do not object to, or who affirmatively support the proposed settlement; and (4) the extent to which the settlement is truly the product of arms’ length bargaining and not the product of fraud or collusion. *See In re Cajun Electric Power Cooperative, Inc.*, 119 F.3d at 356.

9. As with any litigation, the Hedging Motion involves a certain amount of risk and uncertainty of outcome for both the Debtors and the MAGI Committee. There is no uncertainty, however, that the Hedging Motion presents very complex legal and factual issues. Indeed, This Court has recognized that resolution of the Hedging Motion presents “some novel issues.”³ Similarly, there is no question that trial of this matter would require a signification amount of this Court’s time. If the Stipulation is approved, it is possible that the Court may never need to hear the Hedging Motion, thus conserving substantial fees and expenses. Similarly, there is no

³ *Id.*

question that the Joint Stipulation is the result of arms' length bargaining - which was encouraged by this Court.

WHEREFORE, the MAGI Committee and the Debtors request that the Court order that the Stipulation filed Exhibit 1 (under seal) be approved. The MAGI Committee, and the Debtors also request such other and further relief as to which they may be entitled.

Dated: August 20, 2004

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EXHIBIT 1

(Filed Under Seal)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a true and correct copy of the foregoing motion to Bankruptcy Services, LLC and directed them to effect service upon all parties listed below via electronic mail and upon all parties on the Limited Service List via email, facsimile or overnight courier on the 20th day of August, 2004:

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