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

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER APPROVING THE
STIPULATION BY AND BETWEEN MIRANT CORPORATION, MIRANT
SERVICES, LLC, AS DEBTOR AND PLAN ADMINISTRATOR, AND THE AMERICAS
BENEFITS COMMITTEE, AS PLAN ADMINISTRATOR, AUTHORIZING PLAN
ADMINISTRATORS TO FILE PROOFS OF CLAIM ON BEHALF OF EMPLOYEES
RECEIVING BENEFITS UNDER CERTAIN EMPLOYEE BENEFIT PLANS**

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

Mirant Corporation (“Mirant”), Mirant Services, LLC (“Mirant Services”), and its affiliated debtors (collectively, the “Debtors”), file this motion (the “Motion”) for entry of an order approving the stipulation by and between Mirant, Mirant Services, as debtor and plan administrator, and the Americas Benefits Committee (the “Benefits Committee”), as plan administrator, authorizing such plan administrators to file proofs of

claim on behalf of employees receiving benefits under certain employee benefit plans (as described herein) (the “Stipulation”), and in support of the Motion, 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). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003 (the “Petition Date”), certain of the Debtors (the “Initial Debtors”) filed a voluntary petition in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”).¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the “New Debtors” and, together with the Initial Debtors, the “Debtors”) commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investments, Inc.; (iii) Wrightsville Power Facility, L.L.C.; and (iv) Wrightsville Development Funding, L.L.C. (collectively, the “Wrightsville Debtors”). The Debtors

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

and the Wrightsville Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, the Court entered the order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. Also on September 8, 2003, the Court granted the motion for an order directing that orders entered in the cases of the Initial Debtors be made applicable to those of the New Debtors. On October 6, 2003, the Debtors filed a motion requesting the joint administration of the cases of the Wrightsville Debtors with those of the Debtors, which is currently pending before the Court. Also on October 6, 2003, the Debtors filed a motion for the entry of an order directing that certain orders entered in the cases of the Debtors be made applicable to the Wrightsville Debtors.

4. The Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of two official unsecured creditors' committees; one for the Debtors (the "Mirant Committee") and the other for Mirant Americas Generation, LLC (the "MAGI Committee" and, together with the Mirant Committee, the "Creditors' Committees"). The appointment lists of members of the Creditors' Committees were filed in their respective chapter 11 cases on July 25, 2003.

5. The Equity Committee. On September 18, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of the official

committee of equity security holders for Mirant Corporation (the “Equity Committee”). The appointment list of the members of the Equity Committee was filed in the chapter 11 case of Mirant Corporation on September 18, 2003.

FACTUAL BACKGROUND

A. The Debtors’ Business Operations

6. Mirant and its direct and indirect subsidiaries comprise one of the world’s largest generators and marketers of electricity. Through its direct and indirect subsidiaries, Mirant produces, sells and delivers reliable energy products and services to utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers and large industrial customers in North America, the Philippines and the Caribbean. Mirant’s core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls more than 21,800 megawatts of electric generating capacity around the world, of which more than 18,000 megawatts is located in the United States. In 2002, Mirant produced 73 million megawatt-hours of electricity, sold 312 million megawatt-hours of electricity and sold or marketed an aggregate average of 21 billion cubic feet per day of natural gas.

7. As of July 31, 2003, Mirant employs about 6,700 employees worldwide. Approximately 1,000 employees are based at Mirant’s corporate headquarters in Atlanta, and approximately 5,700 employees are based at operating facilities. Approximately 1,000 employees are subject to collective bargaining agreements. In 2002, Mirant

recorded a \$542 million loss in earnings before interest, taxes and depreciation on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

B. Facts Relevant to the Motion

8. The Debtors have adopted various employee benefit plans under which certain employees (the “Employees”) participated prior to the Petition Date (each, a “Plan”).

9. Each Plan is administered by a plan administrator. Many, if not all, of the Plans are administered by the Benefits Committee or Mirant Services. The Benefits Committee is comprised of individuals appointed either by the Board of Managers of Mirant Services, for Plans adopted by Mirant Services, or by the Board of Directors of Mirant for Plans adopted by Mirant. The plan administrator interprets the Plan, prescribes, amends or rescinds the rules and regulations relating to the Plan and makes all other determinations necessary or advisable for the administration of the Plan.

10. As a result of the commencement of the Debtors’ chapter 11 cases, the Employees may have claims against Mirant and/or Mirant Services under the Plans. While Employees having claims against Mirant and/or Mirant Services under the Plans are entitled to file proofs of claims on their own behalf, the Debtors believe that this approach will result in an unnecessary and untimely distraction from the Debtors’ efforts to reorganize and ultimately emerge from chapter 11 as the Debtors’ management will be inundated with inquiries by Employees regarding how to file a proof of claim and how to determine the amount of their claims against the Debtors under the various Plans.

11. Accordingly, Mirant, Mirant Services and the Benefits Committee entered into the Stipulation to simplify the claims process for employees participating in the Plan. The Debtors believe that allowing the Plan Administrators to file claims on behalf of employees will enable the Debtors to focus on their reorganization efforts rather than addressing Employees' inquiries and concerns regarding the proof of claim process.

12. The Stipulation provides that, upon its execution and approval by this Court, the Benefits Committee and Mirant Services, as plan administrators, will be authorized to file a proof of claim on behalf of the Employees for claims arising against Mirant and/or Mirant Services prior to the Petition Date under any of the Plans administered by the Benefits Committee and/or Mirant Services including, but not limited to, the following:

- a. Amended and Restated Mirant Corporation Deferred Compensation Plan for Directors and Select Employees, effective April 2, 2001;
- b. Amended and Restated Mirant Services Supplemental Executive Retirement Plan, originally adopted effective June 25, 1998;
- c. Mirant Services Supplemental Compensation Plan, adopted March 28, 2001; and
- d. Mirant Services Supplemental Benefit Plan, effective January 1, 2001.

13. The Stipulation further provides that, to the extent that Employees have claims under a Plan that is administered by the Benefits Committee or Mirant Services

and is not identified therein, the plan administrator of such Plan shall have the same authority granted by the Stipulation, upon its execution and approval by the Court, to file a proof of claim on behalf of the Employees that have claims under such Plan.

RELIEF REQUESTED

14. By this Motion, the Debtors respectfully request entry of an order approving the Stipulation and authorizing, but not requiring, the Benefits Committee and Mirant Services, as plan administrators, to file a proof of claim on behalf of the Employees for claims arising against Mirant and/or Mirant Services prior to the Petition Date under any of the Plans administered by the Benefits Committee and/or Mirant Services, each as a plan administrator.

BASIS FOR RELIEF

15. In an exercise of the Debtors' sound business judgment, the Debtors have determined that it is in the best interest of their estates, their creditors and all parties in interest for the Debtors to enter into the Stipulation authorizing, but not requiring, the Benefits Committee and Mirant Services, as plan administrators, to file a proof of claim on behalf of the Employees for claims arising against Mirant and/or Mirant Services prior to the Petition Date under any of the Plans administered by the Benefits Committee and/or Mirant Services.

16. The Court is authorized to approve the Stipulation under the Court's equitable powers pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." See 11 U.S.C. § 105(a). The Fifth

Circuit has acknowledged that section 105 of the Bankruptcy Code confers broad powers on bankruptcy courts:

[Section] 105 [is] ‘an omnibus provision phrased in such general terms as to be the basis for a broad exercise of power in the administration of a bankruptcy case. The basic purpose of § 105 is to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction. . . .’

Davis v. Davis (In re Davis), 170 F.3d 475, 492 (5th Cir. 1999) (citation omitted). The Debtors recognize that section 105(a) of the Bankruptcy Code “may be used only to carry out the provisions of Title 11.” In re CoServ, L.L.C., 273 B.R. 487, 494 n. 9 (Bankr. N.D. Tex. 2002). The major premise of chapter 11 is the continued and uninterrupted operation of the debtor in possession to the greatest extent possible. The Debtors’ requested relief is consistent with the “furtherance of the provisions of the Bankruptcy Code.” Id. See also In re Southmark Corp., 113 B.R. 280, 281 (Bankr. N.D. Tex. 1990) (“the court may use [section] 105(a) to fashion orders that are necessary or appropriate to further a substantive provision of the Code”).

17. As noted above, the Debtors believe that allowing the plan administrators of the Plans to file proofs of claims on behalf of the Employees will enable the Debtors to focus on their reorganization efforts rather than addressing Employees’ inquiries and concerns relating to the proof of claim process. For these reasons, among others, the Debtors believe that entering into the Stipulation is in the best interest of the Debtors, their estates and their creditors, and will allow the Debtors to continue to operate their businesses with minimal disruption. Accordingly, authorizing the Debtors to enter into

the Stipulation is clearly an appropriate use of this Court's powers under sections 105(a) of the Bankruptcy Code.

18. No previous request for relief sought herein has been made by the Debtors to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, (a) approving the Stipulation attached hereto as *Exhibit A* and (b) granting such other and further relief as the Court may deem just and proper.

Dated: Fort Worth, Texas
October 30, 2003

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By /s/ Meredyth A. Purdy
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ATTORNEYS FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing document upon all persons on the Limited Service List via email, facsimile and/or overnight courier, on the 30th day of October, 2003 in accordance with the Federal Rules of Bankruptcy Procedure:

/s/ Meredyth A. Purdy

EXHIBIT A

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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
MIRANT CORPORATION, <u>et al.</u>,	)	Case No. 03-46590-DML
Debtors.	)	Jointly Administered
	)	Hearing Date and Time: To Be Set

STIPULATION BY AND BETWEEN MIRANT CORPORATION, MIRANT SERVICES, LLC, AS DEBTOR AND PLAN ADMINISTRATOR, AND THE AMERICAS BENEFITS COMMITTEE, AS PLAN ADMINISTRATOR, AUTHORIZING PLAN ADMINISTRATORS TO FILE PROOFS OF CLAIM ON BEHALF OF EMPLOYEES RECEIVING BENEFITS UNDER CERTAIN EMPLOYEE BENEFIT PLANS

Mirant Corporation (“Mirant”), Mirant Services, LLC (“Mirant Services”), in its capacities as debtor and plan administrator, and the Americas Benefits Committee (the “Benefits Committee”), in its capacity as plan administrator, enter into this Stipulation (the “Stipulation”) authorizing the Benefits Committee and Mirant Services, as plan administrators of certain prepetition employee benefit plans of Mirant and/or Mirant Services, to file a proof of claim on behalf of employees participating in such plans in the chapter 11 cases of Mirant and Mirant Services.

RECITALS

1. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003 (the "Petition Date"), Mirant Corporation and certain of its affiliated debtors, including Mirant Services (collectively, the "Initial Debtors"), filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Texas (the "Court") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code").¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the "New Debtors" and, together with the Initial Debtors, the "Debtors") commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investments, Inc.; (iii) Wrightsville Power Facility, L.L.C.; and (iv) Wrightsville Development Funding, L.L.C. (collectively, the "Wrightsville Debtors").

2. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, the Court entered the order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. Also on September 8, 2003, the Court granted the motion for an order directing that orders entered in the cases of the Initial Debtors be made applicable to those of the New Debtors. On October 6, 2003, the Debtors filed a motion requesting the joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors, which is currently pending before the Court. Also on October 6, 2003, the Debtors filed a motion for the

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the "Canadian Debtors") to commence plenary insolvency proceedings in the Court of Queen's Bench of Alberta Judicial District of Calgary (the "Canadian Court") pursuant to the *Companies' Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

entry of an order directing that certain orders entered in the cases of the Initial Debtors be made applicable to the Wrightsville Debtors. The Debtors and the Wrightsville Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On July 18, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of two official unsecured creditors' committees; one for the Debtors (the "Mirant Committee") and the other for Mirant Americas Generation, LLC (the "MAGI Committee" and, together with the Mirant Committee, the "Creditors' Committees").

4. On September 18, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of the Official Committee of Equity Security Holders of Mirant Corporation (the "Equity Committee" and, collectively with the Creditors' Committees, the "Committees"). The appointment list of the members of the Equity Committee was filed in the chapter 11 case of Mirant Corporation on September 18, 2003.

5. The Debtors have adopted various employee benefit plans under which certain employees (the "Employees") participated prior to the Petition Date (each, a "Plan"). Each Plan is administered by a plan administrator. Many, if not all, of the Plans are administered by the Benefits Committee or Mirant Services. The Benefits Committee is comprised of individuals either appointed by the Board of Managers of Mirant Services, for Plans adopted by Mirant Services, or by the Board of Directors of Mirant, for Plans adopted by Mirant. The plan administrator interprets the Plan, prescribes, amends or rescinds the rules and regulations relating to the Plan and makes all other determinations necessary or advisable for the administration of the Plan.

6. As a result of the commencement of the Debtors' chapter 11 cases, the Employees may have claims against Mirant and/or Mirant Services under the Plans. While Employees having claims against Mirant and/or Mirant Services under the Plans are entitled to file proofs of claims on their own behalf, the Debtors believe that this approach will result in an unnecessary and untimely distraction from the Debtors' efforts to reorganize and ultimately emerge from chapter 11 as the Debtors' management will be inundated with inquiries by Employees regarding how to file a proof of claim and how to determine the amount of their claims against the Debtors under the various Plans.

7. Mirant, Mirant Services and the Benefits Committee are entering into this Stipulation in an effort to simplify the claims process for Employees participating in the Plans. The Debtors believe that allowing the various plan administrators to file claims on behalf of the Employees will enable the Debtors to focus on their reorganization efforts rather than addressing Employees' inquiries and concerns regarding the proof of claim process.

8. For the foregoing reasons, the Debtors believe that entry into this Stipulation is in the best interest of the Debtors, their creditors, and their estates, subject to the terms and conditions provided for herein, and is an exercise of their sound business judgment.

STIPULATION

The Parties stipulate and agree that:

1. Upon the execution of this Stipulation and approval of this Stipulation by the Court, the Benefits Committee and Mirant Services, as plan administrators, will be authorized, but not required, to file a proof of claim on behalf of the Employees for claims arising against Mirant and/or Mirant Services prior to the Petition Date under any of the Plans

administered by the Benefits Committee and/or Mirant Services including but not limited to, the following:

- a. Amended and Restated Mirant Corporation Deferred Compensation Plan for Directors and Select Employees, effective April 2, 2001;
- b. Amended and Restated Mirant Services Supplemental Executive Retirement Plan, originally adopted effective June 25, 1998;
- c. Mirant Services Supplemental Compensation Plan, adopted March 28, 2001; and
- d. Mirant Services Supplemental Benefit Plan, effective January 1, 2001.

2. To the extent that Employees have claims under a Plan that is administered by the Benefits Committee or Mirant Services and is not identified herein, the plan administrator of such Plan shall have the same authority granted by this Stipulation, upon its execution and approval by the Court, to file a proof of claim on behalf of the Employees that have claims under such Plan.

3. This Stipulation shall not constitute an assumption by the Debtors of any Plan under section 365 of the Bankruptcy Code, and the Debtors' rights with respect thereto are expressly reserved

4. The Court shall retain sole and exclusive jurisdiction with respect to any matters relating to this Stipulation.

5. This Stipulation shall be effective only upon approval by the Court.

MIRANT CORPORATION, Debtor

By: UMBook

MIRANT SERVICES, LLC, Debtor

By: UMBook

MIRANT SERVICES, LLC, Plan Administrator

By: Dennis Drayton

AMERICAS BENEFITS COMMITTEE, Plan Administrator

By: Dennis Drayton

**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
)	

ORDER APPROVING THE STIPULATION BY AND BETWEEN MIRANT CORPORATION, MIRANT SERVICES, LLC, AS DEBTOR AND PLAN ADMINISTRATOR, AND THE AMERICAS BENEFITS COMMITTEE, AS PLAN ADMINISTRATOR, AUTHORIZING PLAN ADMINISTRATORS TO FILE PROOFS OF CLAIM ON BEHALF OF EMPLOYEES RECEIVING BENEFITS UNDER CERTAIN EMPLOYEE BENEFIT PLANS

Upon the motion dated October 30, 2003 (the “Motion”) of Mirant Corporation (“Mirant”), Mirant Services LLC (“Mirant Services”) and its affiliated debtors (collectively, the “Debtors”), as debtors and debtors-in-possession, for the entry of an order approving the stipulation by and between Mirant, Mirant Services, as debtor and plan administrator, and the Americas Benefits Committee (the “Benefits Committee”), as plan administrator, authorizing plan administrators to file proofs of claim on behalf of employees receiving benefits under certain employee benefit plans (the “Stipulation”); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is

**ORDER APPROVING THE STIPULATION BY AND BETWEEN MIRANT CORPORATION, MIRANT SERVICES, LLC, AS DEBTOR AND PLAN ADMINISTRATOR, AND THE AMERICAS BENEFITS COMMITTEE, AS PLAN ADMINISTRATOR, AUTHORIZING PLAN ADMINISTRATORS TO FILE PROOFS OF CLAIM ON BEHALF OF EMPLOYEES RECEIVING BENEFITS UNDER CERTAIN EMPLOYEE BENEFIT PLANS
D-1182948.1**

ORDERED that the Motion is granted and the Stipulation is approved in full and in all respects; and it is further

ORDERED that the Benefits Committee and Mirant Services, as plan administrators, are authorized, but not required, to file a proof of claim on behalf of the employees covered by employee benefit plans administered by the Benefits Committee and Mirant Services (the "Plans") for claims arising against Mirant and/or Mirant Services prior to the Petition Date under any of the Plans; and it is further

ORDERED that nothing in this Order shall bar or prohibit any individual employee from filing proofs of claim on his or her own behalf; and it is further

ORDERED that the Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Order.

Dated: Fort Worth, Texas
October ____, 2003

HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

PREPARED BY:

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