

Thomas E Lauria
State Bar No. 11998025
Craig H. Averch
State Bar No. 01451020
White & Case LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Haynes and Boone, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
Telephone: (214) 651-5000
Facsimile: (214) 651-5940

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

_____)	Chapter 11 Case
In re)	
)	Case No. 03-46590(DML)11
MIRANT CORPORATION, <u>et al.</u> ,)	Jointly Administered
)	
Debtors.)	Hearing Date and Time: March 31,
)	2004 at 12:00 noon
_____)	

**DEBTORS' MOTION PURSUANT TO SECTIONS 105(a)
AND 546(c) OF THE BANKRUPTCY CODE FOR APPROVAL
OF PROCEDURES FOR THE TREATMENT OF RECLAMATION CLAIMS**

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

Mirant Corporation and its above-captioned affiliated debtors, Debtors and Debtors-in-Possession in the above-captioned cases, (collectively, the “Debtors”) file this Debtors' Motion Pursuant to Sections 105(a) and 546(c) of the Bankruptcy Code for Approval of Procedures for the Treatment of Reclamation Claims (the “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

II. PROCEDURAL BACKGROUND

2. On July 14, 2003 and various dates thereafter (collectively, the “Petition Date”), Mirant Corporation and 82 of its direct and indirect subsidiaries (collectively, the “Debtors”) filed voluntary chapter 11 petitions. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”).

3. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

4. The Committees. Three official committees (collectively, the “Committees”) have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases.

III. FACTUAL BACKGROUND

5. Consistent with the normal operations of their business, prior to the Petition Date the Debtors ordered goods from various vendors on varying credit terms. For example, the Debtors regularly purchase, among other things, parts and equipment that support their power generating businesses. These goods are typically delivered directly to the Debtors, to their storage facilities, or to facilities owned by third parties. Given the extension of credit by various vendors, the Debtors are perpetually in possession of goods for which payment has not been made at the time of delivery.

6. Under the laws of most states and the Bankruptcy Code, sellers who ship goods on credit may have the right under certain circumstances to reclaim the goods. Before the commencement of a case under the Bankruptcy Code, reclamation rights of sellers are governed by state law. Section 2-702 of the Uniform Commercial Code allows a seller of goods, upon discovering that the buyer has received goods on credit while insolvent, to reclaim the goods upon demand made within ten days after the buyer's receipt of the goods.

7. Upon commencement of a Chapter 11 bankruptcy case, reclamation rights are governed by section 546(c) of the Bankruptcy Code, which provides that sellers, who have sold goods to debtors in the ordinary course of the seller's business, may reclaim the goods if (i) the debtor has received the goods while insolvent and (ii) the seller makes a demand in writing (a) before ten days after receipt of the goods by the debtor or (b) if the ten day period expires after the commencement of the case, before twenty days after receipt of the goods by the debtor. Notwithstanding the foregoing, a court may deny reclamation if (i) a seller is granted an administrative priority claim pursuant to section 503(b) of the Bankruptcy Code or (ii) the payment of the seller's claim is secured by the granting of a lien or a security interest in the property of the debtor.

8. The Debtors have received correspondence from numerous vendors asserting some form of reclamation (the "Notices"). Through the Notices, the vendors have asserted approximately \$3,005,297 in reclamation claims (of which, \$2,031,127.31 has already been resolved through the Court's order granting the Debtors' Motion Pursuant to Federal Rule Bankruptcy Procedure 9019 for Approval of the Compromise of Controversy between Mirant Mid-Atlantic, LLC and Oak Mountain Products, LLC). Many of the Notices were received outside the prescribed time period for making a demand for reclamation pursuant to Section

546(c) of the Bankruptcy Code, and other Notices did not provide sufficient description to put the Debtors on notice of a reclamation claim. Nevertheless, the Debtors have undertaken an effort to examine each Notice and corresponding reclamation claim in an effort to amicably reconcile any dispute with individual vendors. To that end, AlixPartners LLC ("AlixPartners"), restructuring advisors for the Debtors, has undertaken a preliminary analysis of each individual Notice to determine if the elements of Section 546(c) of the Bankruptcy Code and 2-702 of the Uniform Commercial Code are met.

9. By this Motion, the Debtors seek authority, pursuant to sections 105(a) and 546(c) of the Bankruptcy Code, to establish certain procedures for the resolution of reclamation claims against the Debtors (the "Reclamation Procedures"). The Debtors submit that implementation of the Reclamation Procedures is in the best interests of the Debtors' estates and all parties in interest.

IV. RELIEF REQUESTED

10. Pursuant to Sections 105(a) and 546(c) of the Bankruptcy Code, the Debtors seek authority to reconcile and treat all asserted claims for reclamation of goods sold to the Debtors (as such claims are reconciled or approved by the Court) (the "Reclamation Claims") according to the Reclamation Procedures as set forth below:

(a) On or before April 10, 2004, the Debtors will begin to implement the Reclamation Procedures in accordance with an Order from the Bankruptcy Court (the "Reclamation Claims Procedure Order") by filing with this Court and serving, along with a copy of the Reclamation Claims Procedure Order, a statement identifying the Reclamation Claims of which the Debtors have received notice and the Debtors' proposed treatment of the Reclamation Claims (the "Notice Statement"). The Notice Statement will contain the following:

- (i) the name of the party asserting the Reclamation Claim (the "Claimant");
- (ii) the amount of the asserted Reclamation Claim;
- (iii) the address, telephone, and facsimile number to which all communications regarding the asserted Reclamation Claim will be sent by the Debtors;
- (iv) the date upon which the Debtors received notice of the Reclamation Claim; and
- (v) the Debtors' proposed treatment of the Reclamation Claim.

Additionally, the Debtors will provide a letter to the Claimants listed on the Notice Statement, substantially in the form attached hereto as *Exhibit A*, detailing the preliminary reclamation analysis, and the Debtors' proposed treatment of the Reclamation Claim. The Debtors will serve the Notice Statement upon all parties listed on the Notice Statement and upon the Limited Service List.

(b) On or before May 10, 2004, all persons or entities asserting a Reclamation Claim that dispute the proposed treatment of their Reclamation Claim contained in the Notice Statement must notify Debtors' counsel in writing of their dispute of the proposed treatment (the "Notice of Dispute"). Additionally, any party or entity that believes it has a Reclamation Claim that has been omitted from the Notice Statement must send a Notice of Dispute to Debtors' counsel. Accompanying the Notice of Dispute, the parties must provide Debtors' counsel with all documentation (i) in support of the asserted Reclamation Claim (including documents and invoices showing the items that were delivered to the Debtors during the reclamation period as well as appropriate shipping records and bills of lading that prove that the items were in fact delivered during the reclamation period) and (ii) demonstrating that timely notice of the asserted

Reclamation Claim was provided to the Debtors. Parties must serve the Notice of Dispute and supporting documentation on Debtors' counsel at the following address:

Mark J. Elmore, Esq.
Haynes and Boone, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202
Telephone: 214.651.5265
Facsimile: 214.200.0905

(c) The Debtors will then have until June 10, 2004 (the "Reconciliation Period") to:

(i) review its business records to determine the validity of the facts and circumstances alleged in the Notice of Dispute; (ii) inform the holder of its findings; and (iii) use its discretion to determine whether the proposed allowed amount of each Reclamation Claim should be revised, either upward or downward. After reviewing the Reclamation Claims in light of the additional information provided with the Notice of Dispute, the Debtors will file a revised statement listing those Reclamation Claims which the Debtors believe to have been correctly asserted and allowable according to applicable law (the "Statement of Reclamation Claims"). The Statement of Reclamation Claims will identify (i) the Claimant asserting the Reclamation Claim and (ii) the proposed treatment of the Claimant's Reclamation Claim. The Debtors will file the Statement of Reclamation Claims with the Court on or before June 10, 2004 and will serve the Statement of Reclamation Claims upon all persons or entities identified on the Statement of Reclamation Claims, the Notice Statement, all persons who provided Debtors' counsel with a Notice of Dispute, and the Limited Service List.

(d) The Debtors shall treat the Reclamation Claims, determined as set forth above, in accordance with applicable law, including Section 546(c)(2) of the Bankruptcy Code, in the amount as indicated in the Statement of Reclamation Claims. Accordingly, to the extent proceeds exist in the reclamation goods after satisfaction of any prior secured claims against such

goods, the Debtors propose to treat the allowed Reclamation Claims as administrative expense claims payable according to the terms of a confirmed plan of reorganization after considering possible claims and defenses to avoidance actions and applying the provisions of 11 U.S.C. § 502(d).

(e) If a party asserting a Reclamation Claim disagrees with any part of the Statement of Reclamation Claims, such party shall file and serve a written request for judicial adjudication of the Reclamation Claim (the "Request for Judicial Resolution") on or before July 10, 2004. The Request for Judicial Resolution must allege, with specificity, that such Reclamation Claim meets all the requirements for treatment as a valid reclamation claim pursuant to applicable state law and Section 546(c) of the Bankruptcy Code. In proposing this reclamation process and proposed treatment, the Debtors do not admit or concede that they were insolvent (either collectively or separately).

(f) After filing the Request for Judicial Resolution, the Court will establish a hearing date, which will be used to establish discovery procedures and fix trial dates to adjudicate the treatment of the Reclamation Claim.

(g) In the event that a party asserting a Reclamation Claim does not file and serve a Request for Judicial Resolution prior to July 10, 2004, then the holder of a Reclamation Claim shall be deemed to have waived any objection to the Debtors' proposed treatment of the Reclamation Claim described in the Statement of Reclamation Claim. If a Reclamation Claim is not included in the Statement of Reclamation Claims or is included as a claim of zero, a Claimant failing to file and serve a Request for Judicial Resolution would concede that no Reclamation Claim is allowable.

(h) The failure of a party asserting a Reclamation Claim materially to comply with these procedures shall constitute a waiver of such party's right to object to the proposed determination of such Reclamation Claim as set forth in the Debtors' Statement of Reclamation Claim (including the right to object to the Debtors' omission of a Reclamation Claim from such Statement of Reclamation Claim), unless the Court orders otherwise. A summary of the relevant deadlines as contemplated by this Motion is as follows:

SUMMARY OF RECLAMATION CLAIM PROCESS DEADLINES		
Deadline	Debtors' Deadlines	Claimants' Deadlines
April 10, 2004	Debtors' Notice Statement	
May 10, 2004		Notice of Dispute
June 10, 2004	Debtors' Statement of Reclamation Claim	
July 10, 2004		Requests for Judicial Resolution

(i) If a person or entity asserting a Reclamation Claim (i) fails to submit a timely Notice of Dispute, or (ii) submits a Notice of Dispute but thereafter (absent agreement respecting such Reclamation Claim with the Debtors) fails to file and serve a timely Request for Judicial Resolution, such party shall be bound by the Debtors' determination of such Claimant's Reclamation Claim as set forth in the Debtors' Statement of Reclamation Claims with respect thereto (including the omission of a Reclamation Claim from such statement).

(j) The Court shall retain jurisdiction over the Debtors and the holders of Reclamation Claims with respect to any matter, claims, rights, or disputes arising from or related to the Reclamation Claims or the Reclamation Procedures, including, without limitation, its implementation.

WHEREFORE PREMISES CONSIDERED, the Debtors respectfully request that the Court enter an order (i) granting this Motion; (ii) approving the Reclamation Procedures; and (iii) granting such other and further relief that is just and proper.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a true and correct copy of the forgoing to Bankruptcy Services, LLC on March 5, 2004 and directed them to effect service upon all persons on the Limited Service List via U.S. first class mail.

/s/ Mark Elmore

EXHIBIT “A”

April 1, 2004

VENDOR
C/O LEGAL REPRESENTATIVE
ADDRESS
CITY, ST ZIP

Re: Mirant Reclamation Claims

Dear VENDOR:

We represent Mirant Corporation and its related debtor entities ("Mirant") in connection with its bankruptcy proceedings and in particular its reclamation process. Enclosed you will find a detailed schedule of Mirant's calculation of your company's net reclamation claim. Mirant's summary of reclamation claims from all vendors is on file with the Bankruptcy Court (the "Notice Statement"). A copy of the Notice Statement has been served with this letter.

Below is a summary of your company's asserted reclamation claim and the results of our calculation:

Asserted Reclamation Claim	
Original Assertion	\$XX,XXX.XX
Letter Receipt Date	7/18/2003
Statutory Reclamation Period	7/4/2003 to and including 7/13/2003

Mirant Calculation:	
Goods Received during Statutory Reclamation Period	\$XX,XXX.XX
Less: Payments to Vendor	(X,XXX.XX)
Less: Goods Consumed prior to Letter Receipt Date	<u>(XXX.XX)</u>
Net Reclamation Claim	<u><u>\$X,XXX.XX</u></u>

Mirant's calculation of your company's Net Reclamation Claim is without prejudice to Mirant's right to adjust such claim as a result of, among other things, additional analyses by Mirant and/or based upon claims or rights, including without implied limitation rights of offset, held by Mirant against your company.

Finally, please note that the calculation of your company's Net Reclamation Claim provided with this letter is a calculation of amount only. This is not an arrangement to pay the amount reflected or an agreement to treat your company's Net Reclamation Claim in a particular manner. Your company's Net Reclamation Claim is subject to applicable law with respect to the allowance, priority and payment of such claim, including without limitation potential preference claims that Mirant may have against

VENDOR
April 1, 2004
Page 2

your company and those matters raised in the Order Granting Debtors' Motion Pursuant to Sections 105(a) and 546(c) of the Bankruptcy Code for Approval of Procedures for the Treatment of Reclamation Claims being served contemporaneously herewith and Mirant hereby reserves all rights in respect of your Company's Net Reclamation Claim available to Mirant at law, equity, or otherwise.

If you are not in agreement with your company's Net Reclamation Claim, please contact the undersigned at 972-647-7676 so that we may attempt to resolve any and all issues prior to May 10, 2004, the deadline for issuing a Notice of Dispute.

Sincerely,

R. Kirk Brunson
ALIXPARTNERS, LLC

Enclosure: Mirant's Reclamation Claim Summary for VENDOR

Mirant Reclamation Claim Summary

Claimant: VENDOR

Asserted Reclamation Claim

Original Assertion \$XX,XXX.XX
 Letter Receipt Date 7/18/2003
 Statutory Reclamation Period 7/4/2003 through and including 7/13/2003

Mirant Calculation

Goods Received during Statutory Reclamation Period \$XX,XXX.XX
 Less: Payments to Vendor \$X,XXX.XX
 Less: Goods Consumed Prior to Letter Receipt Date XXX.XX
 Net Reclamation Claim \$X,XXX.XX

Invoice Number	Invoice Amount	Date Goods were Received	Goods Received During Reclamation Period	Goods Already Paid Post Petition	Goods Consumed Prior to Receiving Reclamation Notice Letter	Net Reclamation Claim	Comments
AAAA	\$X,XXX.XX	7/8/03	\$X,XXX.XX	\$X,XXX.XX	\$ -	\$X,XXX.XX	Invoice was paid post-petition via check no. XXXX.
BBBB	\$X,XXX.XX	7/8/03	\$X,XXX.XX	\$X,XXX.XX	\$ -	\$X,XXX.XX	Invoice was paid post-petition via check no. XXXX.
CCCC	\$X,XXX.XX	7/6/03	\$X,XXX.XX	\$ -	\$XXX.XX	\$XXX.XX	1,000 of 3,000 parts were used prior to receiving the reclamation notice.
DDDD	\$X,XXX.XX	7/5/03	\$X,XXX.XX	\$ -	\$ -	\$X,XXX.XX	
EEEE	\$X,XXX.XX	7/4/03	\$X,XXX.XX	\$ -	\$ -	\$X,XXX.XX	
FFFF	\$X,XXX.XX	6/30/03	\$ -	\$ -	\$ -	\$ -	Goods were not received during the statutory reclamation period.
GGGG	\$X,XXX.XX	6/30/03	\$ -	\$ -	\$ -	\$ -	Goods were not received during the statutory reclamation period.

\$XX,XXX.XX

\$XX,XXX.XX \$X,XXX.XX \$XXX.XX \$X,XXX.XX

**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)11
)	Jointly Administered
Debtors.)	
)	

**ORDER GRANTING DEBTORS' MOTION PURSUANT TO
SECTIONS 105(a) AND 546(c) OF THE BANKRUPTCY CODE FOR APPROVAL
OF PROCEDURES FOR THE TREATMENT OF RECLAMATION CLAIMS**

On _____, the Court considered the Debtors' Motion Pursuant to Sections 105(a) and 546(c) of the Bankruptcy Code for Approval of Procedures for the Treatment of Reclamation Claims (the "Motion") filed by Mirant Corporation and its above-captioned affiliated debtors, Debtors and Debtors-in-Possession in the above-captioned cases, (collectively, the "Debtors"). After reviewing the pleadings on file and the evidence presented at hearing and considering the arguments of counsel, it appears to the Court that the Motion has merit and should be granted. Therefore, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Debtors may implement the following procedures to reconcile all asserted claims to reclaim goods sold to the Debtors (the "Reclamation Claims") on the terms set forth below:

(a) On or before April 10, 2004, the Debtors will begin to implement the Reclamation Procedures in accordance with this Order (the "Reclamation Claims Procedure Order") by filing with this Court and serving, along with a copy of the Reclamation Claims Procedure Order, a statement identifying the Reclamation Claims of which the Debtors have received notice and the Debtors' proposed treatment of the Reclamation Claims (the "Notice Statement"). The Notice Statement will

contain the following:

- (i) the name of the party asserting the Reclamation Claim (the "Claimant");
- (ii) the amount of the asserted Reclamation Claim;
- (iii) the address, telephone, and facsimile number to which all communications regarding the asserted Reclamation Claim will be sent by the Debtors;
- (iv) the date upon which the Debtors received notice of the Reclamation Claim;
- and
- (v) the Debtors' proposed treatment of the Reclamation Claim.

The Debtors will provide a letter to the Claimants listed on the Notice Statement detailing the preliminary reclamation analysis, and the Debtors' proposed treatment of the Reclamation Claim. The Debtors will serve the Notice Statement upon all parties listed on the Notice Statement and upon the Limited Service List.

(b) On or before May 10, 2004, all persons or entities asserting a Reclamation Claim that dispute the proposed treatment of their Reclamation Claim contained in the Notice Statement must notify Debtors' counsel in writing of their dispute of the proposed treatment (the "Notice of Dispute"). Additionally, any party or entity that believes it has a Reclamation Claim that has been omitted from the Notice Statement must send a Notice of Dispute to Debtors' counsel. Accompanying the Notice of Dispute, parties must provide Debtors' counsel with all documentation (i) in support of the asserted Reclamation Claim (including documents and invoices showing the items that were delivered to the Debtors during the reclamation period as well as appropriate shipping records and bills of lading that prove that the items were in fact delivered during the reclamation period) and (ii) demonstrating that timely notice of the asserted Reclamation Claim was provided to

the Debtors. Parties must serve the Notice of Dispute and supporting documentation on Debtors' counsel at the following address:

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Telephone: 214.651.5265
Facsimile: 214.200.0905**

(c) The Debtors shall have until June 10, 2004 (the "Reconciliation Period") to: (i) review its business records to determine the validity of the facts and circumstances alleged in the Notice of Dispute; (ii) inform the holder of its findings; and (iii) use its discretion to determine whether the proposed allowed amount of each Reclamation Claim should be revised, either upward or downward.

After reviewing the Reclamation Claims in light of the additional information provided with the Notice of Dispute, the Debtors will file a revised statement listing those Reclamation Claims which the Debtors believe to have been correctly asserted and allowable according to applicable law (the "Statement of Reclamation Claims"). The Statement of Reclamation Claims will identify (i) the Claimant asserting the Reclamation Claim and (ii) the proposed treatment of the Claimant's Reclamation Claim. The Debtors shall file the Statement of Reclamation Claims with the Court on or before June 10, 2004 and shall serve the Statement of Reclamation Claims upon all persons or entities identified on the Statement of Reclamation Claims, the Notice Statement, all persons who provided Debtors' counsel with a Notice of Dispute, and the Limited Service List.

(d) The Debtors shall treat the Reclamation Claims, determined as set forth in this Order, in accordance with applicable law, including Section 546(c)(2) of the Bankruptcy Code, in the amount as indicated in the Statement of Reclamation Claims. Accordingly, to the extent proceeds exist in the reclamation goods after satisfaction of any prior secured claims against such goods, the

Debtors shall treat such allowed Reclamation Claims as administrative expense claims payable according to the terms of the Debtors' confirmed plan of reorganization after considering possible claims and defenses to avoidance actions and applying the provisions of 11 U.S.C. §502(d). In proposing this reclamation process and proposed treatment, the Debtors do not admit or concede that they were insolvent (either collectively or separately).

(e) If a party asserting a Reclamation Claim disagrees with any part of the Statement of Reclamation Claims, such party shall file and serve a written request for judicial adjudication of the Reclamation Claim (the "Request for Judicial Resolution") on or before July 10, 2004. The Request for Judicial Resolution must allege, with specificity, that such Reclamation Claim meets all the requirements for treatment as a valid reclamation claim pursuant to applicable state law and Section 546(c) of the Bankruptcy Code.

(f) After filing the Request for Judicial Resolution, the Court will establish a hearing date, which will be used to establish discovery procedures and fix trial dates to adjudicate the treatment of the Reclamation Claim.

(g) In the event that a party asserting a Reclamation Claim does not file and serve a Request for Judicial Resolution prior to July 10, 2004, then the holder of a Reclamation Claim shall be deemed to have waived any objection to the Debtors' proposed treatment of the Reclamation Claim described in the Statement of Reclamation Claim. If a Reclamation Claim is not included in the Statement of Reclamation Claims or is included as a claim of zero, a Claimant failing to file and serve a Request for Judicial Resolution would concede that no Reclamation Claim is allowable.

(h) The failure of a party asserting a Reclamation Claim materially to comply with these procedures shall constitute a waiver of such party's right to object to the proposed determination of such Reclamation Claim as set forth in the Debtors' Statement of Reclamation Claim (including the

right to object to the Debtors' omission of a Reclamation Claim from such Statement of Reclamation Claim), unless the Court orders otherwise. The relevant deadlines as contemplated by this Motion is as follows:

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July 10, 2004		Requests for Judicial Resolution

(i) If a person or entity asserting a Reclamation Claim (i) fails to submit a timely Notice of Dispute, or (ii) submits a Notice a Statement of Dispute but thereafter (absent agreement respecting such Reclamation Claim with the Debtors) fails to file and serve a timely Request for Judicial Resolution, such party shall be bound by the Debtors' determination of such Claimant's Reclamation Claim as set forth in the Debtors' Statement of Reclamation Claims with respect thereto (including the Debtors' failure to list a Reclamation Claim on such statement).

(j) The Court shall retain jurisdiction over the Debtors and the holders of Reclamation Claims with respect to any matter, claims, rights or disputes arising from or related to the Reclamation Claims or the Reclamation Procedures, including, without limitation, its implementation.

SIGNED this ____ day of March, 2004.

HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE