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**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)
	§	Jointly Administered
Debtor.	§	
	§	Hearing Date: October 29, 2003
	§	Time: 10:30 a.m.

**MOTION OF DRESDNER BANK AG, NEW YORK AND GRAND CAYMAN
BRANCHES, TO AUTHORIZE TRADING OF BANK DEBT AND FOR RELIEF FROM
ORDER APPROVING SPECIFIED INFORMATION BLOCKING PROCEDURES AND
PERMITTING TRADING IN THE DEBTORS' SECURITIES, BANK DEBT,
PURCHASE OR SALE OF TRADE DEBT AND ISSUING OF ANALYST REPORTS
UPON ESTABLISHMENT OF A SCREENING WALL EFFECTIVE JULY 25, 2003**

**ANY WRITTEN RESPONSE OR OBJECTION TO THIS MOTION MUST
BE FILED WITH THE CLERK OF THE UNITED STATES
BANKRUPTCY COURT AT 501 WEST 10TH STREET, FORT WORTH,
TEXAS 76102, AND SERVED UPON THE UNDERSIGNED
PROFESSIONAL BEFORE CLOSE OF BUSINESS ON OCTOBER 27,
2003, WHICH IS MORE THAN TWENTY (20) DAYS FROM THE DATE
OF SERVICE HEREOF. IF A RESPONSE OR OBJECTION IS FILED, A
HEARING WILL BE HELD ON OCTOBER 29, 2003 AT 10:30 A.M.,
BEFORE THE HONORABLE D. MICHAEL LYNN, IN HIS
COURTROOM LOCATED AT 501 WEST 10TH STREET, FORT
WORTH, TEXAS 76102, AT WHICH YOU MUST APPEAR.**

IF NO RESPONSES OR OBJECTIONS ARE FILED ON OR BEFORE OCTOBER 27, 2003, THE RELIEF REQUESTED IN THIS MOTION SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT WITHOUT FURTHER NOTICE.

Dresdner Bank AG, New York and Grand Cayman Branches (“Dresdner”) files this Motion to Authorize Trading of Bank Debt and For Relief From Order Approving Specified Information Blocking Procedures and Permitting Trading in the Debtors’ Securities, Bank Debt, Purchase or Sale of Trade Debt and Issuing of Analyst Reports Upon Establishment of a Screening Wall Effective July 25, 2003 (the “Motion”). In support of this Motion, Dresdner respectfully states as follows:

I. Jurisdiction and Venue

1. This Court has jurisdiction over this proceeding and this Motion pursuant to 28 U.S.C. § 1334 and resolution of this Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). This Motion is being brought pursuant to Federal Rule of Civil Procedure 60(b), as made applicable hereto by Federal Rule of Bankruptcy Procedure 9024.

2. Venue of these cases in this district is proper pursuant to 28 U.S.C. § 1408.

II. Relevant Background

3. On July 14, 2003, Mirant Corporation and certain of its subsidiaries (the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

4. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are authorized to operate their business and manage their properties as debtors in possession. By

order of the Court, the Debtors' Chapter 11 cases are being jointly administered for procedural purposes only.

5. On or about July 25, 2003, Dresdner was appointed by the Office of the United States Trustee to serve on the Official Committee of Unsecured Creditors for Mirant Corporation (the "Mirant Committee").

6. The Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC (the "MAGI Committee") filed its Emergency Motion for the Entry of an Order Approving Specified Information Blocking Procedures and Permitting Trading of the Debtors' Securities, Trading Bank Debt, Purchase or Sale of Trade Debt and Issuing of Analyst Reports Upon Establishment of a Screening Wall Effective July 25, 2003 (the "Screening Wall Motion"). Thereafter, the Mirant Committee joined in the Screening Wall Motion. (The MAGI Committee and the Mirant Committee may be referred to herein collectively as the "Committees.")

7. By and through the Screening Wall Motion, the Committees sought the "entry of an order determining that those Committee members, who are engaged in the trading of Securities or Bank Debt for others . . . will not violate their fiduciary duties as Committee members" (*See* Screening Wall Motion, ¶ 5).

8. On or about August 18, 2003, this Court entered the Order Approving Specified Information Blocking Procedures and Permitting Trading in the Debtors' Securities, Bank Debt, Purchase or Sale of Trade Debt and Issuing of Analyst Reports Upon Establishment of a Screening Wall Effective July 25, 2003 (along with the attachments and exhibits thereto, the "Screening Wall Order"). Among other things, the Screening Wall Order implemented a

procedure whereby Committee members were allowed to trade securities or bank debt of the Debtors, purchase or sell bank debt of the Debtors, and/or issue analyst reports concerning the Debtors, provided that such Committee members “establish, implement, and strictly adhere to the information policies and procedures detailed in the Screening Wall Declaration.”¹ (See Screening Wall Order, ¶ 3).

9. Although the Screening Wall Order did establish certain limitations on members of the Committees, a “safe harbor” was established in the Screening Wall Order so that members of the Committees may trade the debt or securities of the Debtors if they act on information that is neither confidential nor proprietary. Specifically, the Screening Wall Order defines this type of information as that which

becomes generally available to, or known by, the public other than as a result of the unauthorized disclosure by either Committee or their respective Permitted Persons; or becomes available to either Committee on a non-confidential basis from a source other than the Debtors or any of their advisors, agents or affiliates

(See Screening Wall Order, App. A., ¶ 1).

10. A component of Dresdner’s business involves the buying, selling, and trading of bank debt of large companies. In this capacity, Dresdner is the holder of over \$127 million of Mirant Corp. debt, all of which is unsecured (the “Mirant Debt”). The Mirant Debt is divided into three tranches. The first tranche of Mirant Debt has a face value of \$22,308,800 and will mature on April 1, 2004. The second tranche of Mirant Debt has a face value of \$49,485,000

¹ The Screening Wall Declaration was attached to the Screening Wall Order as Exhibit “B”. The Screening Wall Declaration was to be signed by each representative of each Committee member that was in a position to receive confidential or proprietary information from the Debtor. By execution of the Screening Wall Declaration, each signatory represented that certain internal procedures were implemented to restrict the flow of confidential and proprietary information to unauthorized persons.

and will mature on July 16, 2005. The third tranche of Mirant Debt has a face value of \$54,985,000 and has already matured.

11. In addition to the Mirant Debt, Dresdner is also the holder of approximately \$49 million of debt of Mirant Corp.'s affiliated debtors (the "Affiliated Debt," together with the Mirant Debt, the "Debt").²

12. On September 19, 2003, less than two (2) months after its appointment, Dresdner withdrew as a member of the Mirant Committee. On or about October 2, 2003, the Office of the United States Trustee reconstituted the Mirant Committee, deleting Dresdner. A copy of the First Amended Appointment of Official Unsecured Creditors' Committee is attached hereto as Exhibit "A."

13. Although Dresdner did not execute a Screening Wall Declaration, it never took any actions in contravention of the Screening Wall Order while it was a member of the Mirant Committee. In addition, during such time, Dresdner did not buy, sell, or trade any of the Debt.

III. Request for Relief

14. Now that Dresdner has resigned from the Committee, the Screening Wall Order should no longer be applicable to Dresdner's future trading activities; however, Dresdner is filing this Motion out of an abundance of caution in order to apprise this Court, the Committees and the Debtors' creditors and parties-in-interest of its intended actions with respect to some or all of the Debt. Accordingly, by and through this Motion, Dresdner requests an order from this Court

² These affiliated debtors include: (a) Mirant Americas Generation, \$16,758,620; (b) MC Equipment Revolver Statutory Trust, \$21,592,143; (c) Mirant Suall Corporation, Inc., \$4,800,000; and (d) Southern Energy Quezon, Inc., \$5,836,000.

granting Dresdner relief from the Screening Wall Order so that Dresdner may proceed to sell or trade within its discretion, some or all of the Debt, without concern that it could arguably be in violation of the Screening Wall Order.

IV. Basis for Relief Requested

15. Federal Rule of Civil Procedure 60, as adopted by Federal Rule of Bankruptcy Procedure 9024 (“Rule 60”), allows this Court to grant Dresdner relief from the Screening Wall Order. Rule 60(b) establishes six grounds upon which a party may receive relief from an order. Two of these grounds are relevant to this Motion.

16. First, Rule 60(b)(5) allows a party to obtain relief from an order if it is “no longer equitable that the judgment should have prospective application.” Fed. R. Civ. P. 60(b)(5). The specified purpose of the Screening Wall Order was to prohibit members of the Committees from trading or selling the debt or equity of the Debtors based on confidential or proprietary information obtained in their capacity as a member of one of the Committees. (*See* Screening Wall Order, ¶ 2) (stating that the purpose of the Screening Wall Declaration is to “prevent the misuse of Subject Material³. . .”). As noted above, Dresdner is no longer a member of the Mirant Committee. Its withdrawal from the Mirant Committee was effective as of September 19, 2003. By virtue of its withdrawal, Dresdner has experienced a change of circumstances which makes application of the Screening Wall Order to it “no longer equitable.” Further, to the best of Dresdner’s knowledge and belief, during its tenure on the Mirant Committee, it has not received

³ “Subject Material” is defined in Appendix A to the Screening Wall Order as “certain information which is confidential and/or proprietary” and which is disclosed by the Debtors to the Committees. (*See* Screening Wall Order, App. A., ¶ 1).

any “Subject Material” as defined in the Screening Wall Order that could prospectively affect its decision to undertake any trade of the Debt.

17. Second, Rule 60(b)(6) allows a party to obtain relief from an order if there is any reason which justifies such relief. *See* Fed. R. Civ. P. 60(b)(6). The Fifth Circuit Court of Appeals has stated that three factors govern a court’s analysis under Rule 60(b)(6): (a) whether the motion was made within a reasonable time, (b) whether the movant had a fair opportunity to present his claim or defense, and (c) whether granting relief would be equitable. *See In re Copeland Enterprises, Inc.*, 153 F.3d 268, 272 (5th Cir. 1998).

18. An application of these factors to Dresdner warrants relief from the Screening Wall Order. First, there is no dispute that Dresdner is timely filing this Motion. As previously indicated, Dresdner withdrew from the Mirant Committee on September 19, 2003. This Motion follows that withdrawal by a little over two (2) weeks. Dresdner has undertaken no trade of the Debt during that time. Second, the second factor from *Copeland* appears to be inapplicable to Dresdner’s situation in that Dresdner, as a member of the Mirant Committee, was not in a position to oppose entry of the Screening Wall Order at the time it was entered. Now, only after a change of circumstances, is Dresdner faced with the need to request relief from the terms of the Screening Wall Order, as it is silent as to the effect on former members of one of the Committees. Finally, granting the relief sought by Dresdner in this Motion is equitable. The primary purpose of the Screening Wall Order is to prohibit members of a Committee from acting on the confidential and proprietary information received in their capacity as members of one of the Committees. That purpose (with respect to Dresdner) can no longer be furthered now that

Dresdner is no longer a member of the Mirant Committee. As a result, it is equitable to grant the relief that Dresdner seeks herein.

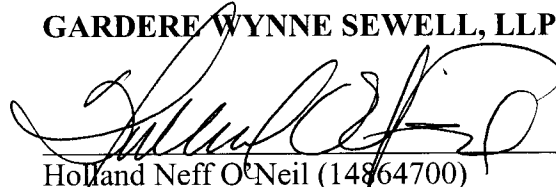
19. Dresdner is confident that it is no longer bound by the Screening Wall Order. However, in light of Dresdner's prior tenure as a member of the Mirant Committee, it believes that the relief it seeks herein should be granted in an abundance of caution.

WHEREFORE, Dresdner hereby respectfully requests that this Court enter an order which provides Dresdner with relief from the prospective effect of the Screening Wall Order, which acknowledges Dresdner's right to trade the Debt, in its sole discretion, and which grants to Dresdner any other relief which may be just and equitable.

Dated: October 6, 2003

Respectfully submitted by,

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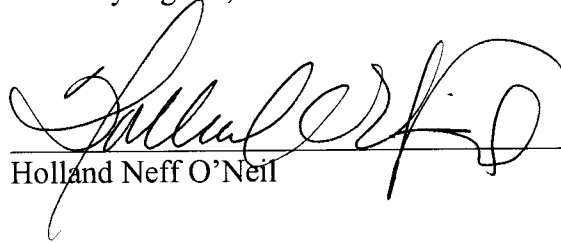
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded to all parties on the attached service list by regular, first-class mail on this the 6th day of October, 2003.



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TEXAS STATE BAR NO. 13581600

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

IN RE

MIRANT CORPORATION

DEBTORS

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§
§
§
§
§

CASE NO. 03-46590-DML-11

CHAPTER 11

**FIRST AMENDED APPOINTMENT OF
OFFICIAL UNSECURED CREDITORS' COMMITTEE**

Pursuant to 11 U.S.C. §1102(a)(1), the following persons are appointed to the Official Unsecured Creditors' Committee in the above styled and numbered case:

- | | |
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DATED: October 2, 2003

Respectfully submitted,
WILLIAM T. NEARY
UNITED STATES TRUSTEE

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document was mailed by first class, postage-prepaid, U.S. mail to the addresses listed on the attached matrix and the committee members listed herein.

/s/George F. McElreath
George F. McElreath