

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**

_____	)	
In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590 (DML)
	)	Jointly Administered
Debtors.	)	
_____	)	

**MOTION OF DEBTORS TO REJECT EXECUTORY CONTRACTS WITH  
(1) SCARLETT RESOURCE MERCHANTS LLC AND (2) HVB RISK  
MANAGEMENT PRODUCTS, INC.**

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the "Bankruptcy Code") for authority to reject certain executory contracts described below (the "Contracts"), and in support thereof 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 filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended.<sup>1</sup> On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. commenced chapter 11 cases under the Bankruptcy Code (collectively, the "New Debtors"). The 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 Debtors' motion for an order requesting that the Debtors' bankruptcy estates be jointly administered. A motion for joint administration of the cases of the New Debtors with the Debtors' cases was filed with this Court on August 20, 2003 and an order approving same was entered on September 8, 2003. This Court also entered an order on September 8, 2003 which provides that certain orders entered in the chapter 11 cases of Mirant Corporation, *et al.* are applicable to the New Debtors' cases and the New Debtors.

4. Unsecured 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

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<sup>1</sup> 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 (the "Canadian 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 "CCAA"). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

unsecured creditors' committees; one for Mirant Corporation and the other for Mirant Americas Generation, LLC. The appointment lists of members of both official unsecured creditors' committees were filed in their respective chapter 11 cases on July 25, 2003.

5. Mirant Corporation 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 Debtor Mirant (the "Equity Committee"). The appointment list of the members of the Equity Committee was filed in Debtor Mirant's Chapter 11 case on September 18, 2003.

### **RELIEF REQUESTED**

6. By this Motion, and with out prejudice to the reservation of rights set forth in paragraph 19 hereof, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject the Contracts listed below in paragraph 9 hereof, effective 10 (ten) business days from the date of service of this Motion.

### **BASIS FOR RELIEF**

7. On August 14, 2003, the Court entered an amended order (the "Order") approving procedures (the "Rejection Procedures") for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

8. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit A.

9. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Contracts will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

(a) **Scarlett Resource Merchants LLC Contracts (collectively, the "Scarlett Contract"):**

Title of the Contract:

- (i) ISDA Master Agreement between Mirant Americas Energy Marketing, LP ("MAEM") and HVB Risk Management Products, Inc. ("HVB"), as assignee of Scarlett Resource Merchants LLC ("Scarlett"), dated as of October 11, 2001.
- (ii) Schedule to the Master Agreement dated as of October 11, 2001 between MAEM and HVB as assignee of Scarlett.
- (iii) Amended and Restated Confirmation dated as of October 11, 2001 between MAEM and HVB as assignee of Scarlett (which superceded and replaced the "Confirmation" between MAEM and Scarlett, also dated October 11, 2001).

Effective Date of Rejection:

October 17, 2003, subject to paragraph 10 hereof

Parties to the Contract:

Mirant Americas Energy Marketing, LP

HVB Risk Management Products, Inc., as assignee of Scarlett Resource Merchants LLC

Contact Information for HVB, as assignee of Scarlett:

HVB Risk Management Products, Inc.  
150 East 42<sup>nd</sup> Street  
New York, New York 10005  
Attn: Thomas Drelles/William Hunter  
Phone No.: (212)-672-6206/672-5340  
Fax No.: (212)-672-5522/672-5530

(b) **HVB Risk Management Products, Inc. Contracts (collectively, the "HVB Contract"):**

Title of the Contract:

- (i) ISDA Master Agreement between MAEM and HVB Risk Management Products, Inc. ("HVB") dated as of October 11, 2001.
- (ii) Schedule to the Master Agreement dated as of October 11, 2001 between MAEM and HVB.
- (iii) Amended and Restated Confirmation dated as of October 11, 2001 between MAEM and HVB (which superceded and replaced the "Confirmation" between MAEM and HVB, also dated October 11, 2001).

Effective Date of Rejection:

October 17, 2003, subject to paragraph 10 hereof

Parties to the Contract:

Mirant Americas Energy Marketing, LP

HVB Risk Management Products, Inc.

Contact Information for HVB:

HVB Risk Management Products, Inc.  
150 East 42<sup>nd</sup> Street  
New York, New York 10005  
Attn: Thomas Drelles/William Hunter  
Phone No.: (212)-672-6206/672-5340  
Fax No.: (212)-672-5522/672-5530

10. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to the Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the Contracts,

then the Contracts shall be deemed rejected as of the date of the determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the respective Contracts.

11. Pursuant to the Order, claims arising out of the rejection of the Contracts must be filed with the Court, or any Court approved claims processing agent, by the later of (i) the deadline for filing proofs of claims established by the Court or (ii) thirty (30) days after the Effective Date of Rejection, or the date of the Order of the Court upholding the Debtors' determination to reject the Contracts, unless otherwise agreed, in writing, by the Debtors and the counterparty to the Contract (the "Rejection Claims Deadline").

12. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of the Contracts who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

## **ANALYSIS**

### **A. General Description Relating to the Contracts.**

13. The Contracts. Under the Scarlett Contract, MAEM agreed to make three future payments to HVB as assignee of Scarlett in the amount of the price of a notional amount of natural gas based on NYMEX gas prices (subject to certain floor and ceiling prices) in October 2002 (10% of the notional amount), October 2003 (10% of the notional amount) and October 2004 (80% of the notional amount) in consideration of Scarlett's payment of \$218,903,836 to MAEM. Concurrently with the Scarlett Contract, MAEM entered into the HVB

Contract whereby MAEM fixed the price of natural gas to be settled under the Scarlett Contract. MAEM understands that Scarlett funded its payment to MAEM by a loan from an HVB affiliate. Because the HVB Contract fixed the price of natural gas to be settled under the Scarlett Contract, the net economic effect of the Contracts as to MAEM was that MAEM received \$218,903,836 in consideration of its obligation to pay approximately \$250,000,000 in fixed payments over four years. As discussed in paragraph 19, the Debtors are reviewing the Scarlett Contract and the HVB Contract to determine whether or not such arrangements are more appropriately characterized as a financing transaction and, therefore, not executory contracts. Reserving fully their rights as discussed in paragraph 19, the Debtors are requesting this relief as a protective measure in light of the purported termination of the HVB Contract discussed in paragraph 14 below.

14. HVB's Purported Termination of the HVB Contract. On August 26, 2003, HVB purported to terminate the HVB Contract by sending a notice of termination to MAEM. In the termination letter, HVB asserts that the HVB Contract is a "safe harbor" contract under Bankruptcy Code section 560. Although HVB has purported to terminate the HVB Contract, to the extent such termination is ineffective, the Debtors seek authority to reject the HVB Contract. To the extent effective, the termination of the HVB Contract leaves MAEM unhedged to natural gas commodity price risk under the Scarlett Contract.

**B. The Contracts May Be Rejected.**

15. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may assume or reject an executory contract of the debtor." 11 U.S.C. § 365(a). An executory contract has been defined as one where material performance is due on both sides such that the failure of either party to complete performance would constitute a material breach of the contract excusing performance of the non-breaching party. *In re Liljeberg Enterprises, Inc.*, 304 F.3d 410, 436 (5th Cir. 2002); *In re Murexco*

*Petroleum, Inc.*, 15 F.3d 60, 62-63 (5th Cir. 1994). The Scarlett Contract and the HVB Contract may be considered executory contracts and, to the extent they constitute executory contracts, they are subject to rejection under Section 365(a).

**C. Rejection Of The Contracts is Within the Debtors' Business Judgment.**

16. A debtor's decision to assume or reject will be approved provided that it meets the "business judgment" test, pursuant to which rejection of an executory contract is appropriate if such rejection would benefit the estate. *Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("[A] bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision . . ."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor's request to assume or reject contract should be approved where not manifestly unreasonable or made in bad faith). The "business judgment" test is satisfied where the assumption or rejection of an executory contract enhances the value of the estate. *Richmond Leasing*, at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an executory contract, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

17. "The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *Bildisco*, 465 U.S. at 528 (citing H.R.Rep. No. 95-595, p. 220 (1977)).

18. In this case, the rejection of the Contracts is well within the sound business judgment of the Debtors. The Debtors owe substantial amounts under the Contracts as a whole and there is no benefit to the Debtors from continued performance under the Contracts as a whole. Termination of one Contract without concurrent termination of the other could expose the Debtors to unhedged natural gas commodity price risk. Accordingly, without prejudice to the reservation of rights under paragraph 19, the Debtors seek authority to reject

both the Scarlett Contract and the HVB Contract to the extent the Contracts constitute executory contracts.

19. Reservation of Rights. In regard to the Contracts, the Debtors are reviewing whether or not such arrangements should be characterized as a financing transaction and, thus, reserve the right to: (a) characterize the Contracts (either individually or collapsed into one transaction) as a financing and not executory contracts, (b) seek a determination from this Court that the Contracts are not swap contracts under Bankruptcy Code section 560, (c) argue that claims arising under the Contracts may or may not be netted or offset against one another, (d) determine any claims or damages arising out of the termination or rejection of the Contracts and the dates as of which such claims or damages are determined, and (e) seek a determination from this Court that the Contracts are not "safe harbor" contracts under Bankruptcy Code section 560 and that HVB's purported termination of the HVB Contract violated of the automatic stay of section 362(a). In addition, the Debtors reserve all defenses, counterclaims and rights of setoff or recoupment that Debtors may have with respect to any claims that Scarlett or HVB may assert arising out of the rejection of the Contracts.



CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided true and correct copies of the forgoing to Bankruptcy Services, LLC as service agent and directed them to effect service upon the addressees set forth below via overnight delivery, and upon all persons on the Limited Service List via first class United States mail, on the 2<sup>nd</sup> day of October, 2003.

Eric J. Taube  
Mark C. Taylor  
Hohmann, Taube & Summers, L.L.P.  
100 Congress Avenue  
Suite 1600  
Austin, TX 78701

Howard L. Siegel  
Brown Rudnick Berlack Israels LLP  
City Place I, 185 Asylum Street  
Hartford, CT 06103-3401

William R. Baldiga  
Brown Rudnick Berlack Israels LLP  
One Financial Center  
Boston, MA 02111

Edward S. Weisfelner  
Leslie H. Scharf  
Brown Rudnick Berlack Israels LLP  
120 West 45th Street  
New York, NY 10036

Paul N. Silverstein  
Andrews & Kurth, L.L.P.  
805 Third Avenue  
New York, NY 10022

Jason S. Brookner  
Andrews & Kurth, L.L.P.  
1717 Main Street  
Suite 3700  
Dallas, TX 75201

Mark Thompson  
Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, NY 10017-3954

HVB Risk Management Products, Inc.  
150 East 42nd Street  
New York, New York 10005  
Attn: Thomas Drelles/William Hunter

Bruce R. Zirinsky  
Gregory Petrick  
Cadwalader, Wickersham & Taft  
100 Maiden Lane  
New York, NY 10038

Deborah D. Williamson  
Thomas Rice  
Cox & Smith Incorporated  
112 East Pecan Street  
Suite 1800  
San Antonio, TX 78205-1505

/s/ Robin E. Phelan

# EXHIBIT “A”

U.S. BANKRUPTCY COURT,  
 NORTHERN DISTRICT OF TEXAS  
**ENTERED**  
 TAWANA J. MARSHALL, CLERK  
 THE DATE OF ENTRY IS  
 ON THE COURT'S DOCKET

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
Debtors.	)	Jointly Administered

**AMENDED ORDER REGARDING MOTION OF DEBTORS FOR AN ORDER  
 PURSUANT TO SECTIONS 365 AND 554 OF THE BANKRUPTCY CODE  
 AUTHORIZING AND APPROVING A PROCEDURE FOR THE REJECTION OF  
CERTAIN EXECUTORY CONTRACTS**

Upon the Motion of Debtors for an Order Pursuant to Sections 365 and 554 of the Bankruptcy Code Authorizing and Approving a Procedure for the Rejection of Certain Executory Contacts (the "Motion") filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") in these Chapter 11 cases; and it appearing that this Court has jurisdiction over this matter; and it appearing that due and proper notice has been given; and upon due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED** that the Motion is granted; and it is further

**ORDERED** that the Rejection Procedures referenced on Exhibit "A" attached hereto are hereby approved; and it is further

**ORDERED** that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising or related to the implementation of this Order; and it is further

**ORDERED** that the last date to file timely proofs of claim against the Debtors arising from the rejection of any Contracts and Leases (the "Rejection Claims Deadline") will be and hereby is the later of: (i) the deadline for filing proofs of claims established by this Court; and (ii) thirty (30) days after the Rejection Effective Date, as such term is defined in the

Rejection Procedures, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease; and it is further

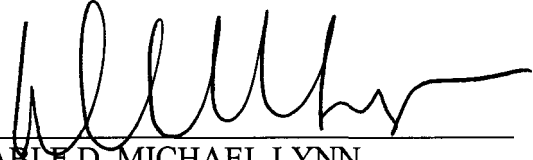
**ORDERED** that any holder of a claim allegedly arising from the rejections authorized in accordance with the Rejection Procedures who fails to timely file a proof of such claim on or prior to the expiration of the Rejection Claims Deadline be: (i) forever barred from asserting such claim against any of the Debtors or their estates; (ii) forever barred from sharing in any distribution of the Debtors' estates or assets under any plan of reorganization confirmed in these chapter 11 cases or order of the Court authorizing distributions from the Debtors' estates; and (iii) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and/or any order of the Court authorizing distributions from the Debtors' estates; and it is further

**ORDERED** that the procedures established by this Order, including the Rejection Claims Deadline, shall not apply to (a) any executory contract or unexpired lease between any of the Debtors and (i) PEPCO and any of its affiliates; (ii) WGES; (iii) Kern; (iv) 285 Venture; (v) Unutil; (vi) the NSTAR Companies (as each entity is defined in its respective objection or joinder to objections to the Motion) (vii) the Cape Light Compact Agreements, including the Pilot Electric Supply Agreement by and between the Cape Light Compact and Mirant Americas Retail Energy Marketing, LP; or (b) leases and lease-related contracts pertaining to the Dickerson and Morgantown power plants operated by Mirant Mid-Atlantic, LLC and its subsidiaries (in which the lease counterparties are certain limited liability companies affiliated with Bank One, N.A., Union Bank of California, N.A. and Verizon Capital Corp.); and it is further

**ORDERED** that, to the extent that any provision contained in this Order is inconsistent with this Court's Interim Order Authorizing the Debtors to (i) Comply With Terms of Prepetition Trading Contracts, (ii) Enter Into Postpetition Trading Contracts in the Ordinary Course of Business, (iii) Provide Credit Support Relating to Both Pre- and Post-Petition Trading

Contracts, and (iv) Setting a Final Hearing to Consider the Entry of a Final Order Affirming the Interim Order and Authorizing Assumption of Prepetition Trading Contracts entered on July 17, 2003 (the "Trading Order"), the Trading Order shall control.

Dated August 14, 2003



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HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

Exhibit "A"

**Rejection Procedures**

- a. Unless a timely objection is filed, any Contract or Lease determined by the Debtors, in the exercise of their business judgment, to be unnecessary and/or burdensome to the Debtors' ongoing business operations shall, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease, be deemed rejected ten (10) business days from service of a motion to reject such Contract or Lease (the "Rejection Motion"), via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases (each, a "Committee").
- b. The Rejection Motion shall be substantially in the form of the Rejection Motion attached hereto as Exhibit A-1 and shall include a copy of the Order approving this Motion.
- c. If an objection to a Rejection Motion is filed by a counterparty to a Contract or Lease, or by any Committee, and timely served upon, and actually received by, counsel to the Debtors prior to the expiration of the ten (10) business day notice period, the Debtors will seek a hearing to consider the objection at the Court's earliest convenience.
- d. If no objections by either a counterparty to a Contract or Lease or by any Committee, are timely received, then the applicable Contract or Lease shall be deemed rejected as of the expiration of the ten (10) business day notice period described above unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease. The Rejection Effective Date for any rejection shall be the later of (a) the expiry of the ten (10) business day notice period if no objection is filed; (b) the entry of an order ultimately approving rejection if an objection to rejection is filed; and (c) such other date upon which the debtor and the objection party may agree.
- e. If an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of the Order unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.
- f. Claims arising out of the rejection of Contracts and Leases must be filed with the Bankruptcy Court or any Court approved claims processing agent by the later of (i) the deadline for filing proofs of claim established by this Court or (ii) thirty (30) days after the Rejection Effective Date, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease.

**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
Debtors.	)	Jointly Administered

**MOTION OF DEBTORS TO REJECT EXECUTORY CONTRACTS OR  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
OF [NAME OF COUNTERPARTY]**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the "Bankruptcy Code") for authority to reject certain executory contracts (each, a "Contract") or unexpired leases of real property (each, a "Lease"), and in support thereof 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"), each of the 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”).<sup>1</sup> The 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 Debtors’ motion for an order requesting that the Debtors’ bankruptcy estates be jointly administered.

4. Unsecured Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas formed two official committees of unsecured creditors. The first Committee is comprised of certain bondholders of Mirant Americas Generation, LLC. The Second Committee is comprised of certain creditors of Mirant Corporation and the remaining Debtors.

### **RELIEF REQUESTED**

4. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject certain Contracts and/or Leases listed below, effective 10 (ten) business days from the date upon service of this Motion.

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<sup>1</sup> 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 (the “Canadian 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 “CCAA”). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

**BASIS FOR RELIEF**

5. On \_\_\_\_\_, 2003, the Court entered an order (the “Order”) approving procedures (the “Rejection Procedures”) for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

6. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors’ ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit “A”.

7. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Leases and/or Contracts will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the “Effective Date”):

**Title of Lease/Contract:  
Effective Date of Rejection:  
Parties to the Lease/Contract  
and Contact Information:**

8. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100,

Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of such determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.

9. Pursuant to the Order, claims arising out of the rejection of Contracts and Leases must be filed with the Court, or any Court approved claims processing agent, by the later of: (i) the deadline for filing proofs of claims established by this Court or (ii) thirty (30) days after the Effective Date, or the date of the Order of the Court upholding the Debtors' determination to reject the applicable Contract or Lease, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease (the "Rejection Claims Deadline").

10. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of a Contract or Lease who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas  
\_\_\_\_\_, 2003

HAYNES AND BOONE, LLP  
901 Main Street  
Suite 3100  
Dallas, TX 75202  
(214) 651-5000

By \_\_\_\_\_

Robin Phelan  
State Bar No. 15903000  
Judith Elkin  
State Bar No. 06522200  
Ian Peck  
State Bar No. 24013306

-and-

Thomas E Lauria  
State Bar No. 11998025  
Michelle C. Campbell  
State Bar No. 24001828  
WHITE & CASE LLP  
Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131  
(305) 371-2700

PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS-IN-POSSESSION