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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.)	

**EX PARTE MOTION OF THE DEBTORS FOR AUTHORITY TO FILE SCHEDULE TO
MOTION OF THE DEBTORS FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a)
AND 363(b) AUTHORIZING (A) THE REMAINING PAYMENTS UNDER PHASE I OF
THE KEY EMPLOYEE RETENTION PROGRAM, (B) THE IMPLEMENTATION OF
PHASE II OF THE KEY EMPLOYEE RETENTION PROGRAM, (C) THE
IMPLEMENTATION OF THE KERP SEVERANCE PLAN, (D) THE CONTINUATION
OF THE GENERAL SEVERANCE PLAN, (E) THE MODIFICATION OF THE
CHANGE IN CONTROL DOCUMENTS, (F) THE MODIFICATION OF THE
SEVERANCE WAIVER TO EXCLUDE CLAIMS ARISING UNDER RETENTION
AGREEMENTS, (G) THE WAIVER OF CERTAIN CLAIMS OF THE DEBTORS'
ESTATES AGAINST ACTIVE EMPLOYEES WHO WERE THE BENEFICIARIES OF
CERTAIN PURCHASED ANNUITIES, (H) THE PAYMENT OF SEVERANCE TO
JOHN W. RAGAN AND (I) CONTINUATION OF CERTAIN NON-QUALIFIED
BENEFIT PLANS FOR ACTIVE EMPLOYEES**

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors and debtors-in-possession, file this *Ex Parte* Motion (the “Motion”) for Authority to File a Schedule to the Motion of the Debtors for an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) authorizing (a) the Remaining Payments under Phase I of the Key Employee Retention Program,

(b) the Implementation of Phase II of the Key Employee Retention Program, (c) the Implementation of the KERP Severance Plan, (d) the Continuation of the General Severance Plan, (e) the Modification of the Change in Control Documents, (f) the Modification of the Severance Waiver to Exclude Claims arising under Retention Agreements, (g) the Waiver of Certain Claims of the Debtors' Estates against Active Employees who were the Beneficiaries of Certain Purchased Annuities, (h) the Payment of Severance to John W. Ragan and (i) Continuation of Certain Non-Qualified Benefit Plans for Active Employees Under Seal, and respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Application 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. On July 14, 2003 and various dates thereafter (collectively, the "Petition Date"), 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 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.

5. The Examiner. On April 7, 2004, this Court authorized the United States Trustee to appoint an examiner in these cases to analyze certain potential causes of action and act

as a referee with respect to certain disputes that arise among the Debtors, the Committees, or other parties in interest. The United States Trustee appointed William K. Snyder (the “Examiner”) as the examiner in these cases.

RELIEF REQUESTED AND BASIS THEREFOR

6. Prior to the filing of this Motion, the Debtors filed the Motion of the Debtors for an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) authorizing (a) the Remaining Payments under Phase I of the Key Employee Retention Program, (b) the Implementation of Phase II of the Key Employee Retention Program, (c) the Implementation of the KERP Severance Plan, (d) the Continuation of the General Severance Plan, (e) the Modification of the Change in Control Documents, (f) the Modification of the Severance Waiver to Exclude Claims arising under Retention Agreements, (g) the Waiver of Certain Claims of the Debtors’ Estates against Active Employees who were the Beneficiaries of Certain Purchased Annuities, (h) the Payment of Severance to John W. Ragan and (i) Continuation of Certain Non-Qualified Benefit Plans for Active Employees (the “KERP Motion”) in this Court on July 9, 2004. By the KERP Motion, as more fully set forth therein, the Debtors seek entry of an Order pursuant to 11 U.S.C. §§ 105(a) and 363(b) authorizing the Debtors’ to implement the remainder of the KERP and granting additional relief in connection with the global resolution of certain employee related concerns and disputes proposed by the Examiner.¹

7. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities² from potential harm that may result from the disclosures of certain confidential information. This section provides, in relevant part:

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the KERP Motion.

² Section 101(15) of the Bankruptcy Code defines “entity” to include any “person, estate, trust, governmental unit, and United States trustee.” 11 U.S.C. § 101(15).

On request of a party in interest, the bankruptcy court shall . . .

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b) (emphasis added).

8. Federal Rule of Bankruptcy Procedure 9018 sets forth the procedures for application of section 107. Pursuant to Rule 9018, the Court on a motion or upon its own initiative “may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation.” See Fed. R. Bankr. P. 9018.

9. In connection with the KERP Motion, the Debtors seek to file a schedule delineating the amount of accrued prepetition benefits owing to current employees under each of the Non-Qualified Benefit Plans (the “Schedule”). While the Debtors seek to file the Schedule to provide full disclosure to the Court and to the Committees and Examiner, the Debtors also wish to protect the privacy interests of the employees regarding whom certain information is set forth in the Schedule. In contrast, creditors and parties in interest in these chapter 11 cases would not be prejudiced by allowing the Debtors to file the Schedule under seal as their interests are protected by the Committees.

10. The Debtors, therefore, request that the Court require that the Schedule be filed with the Court and sealed by the United States Bankruptcy Clerk for the Northern District of

Texas. The Court shall receive a copy of the Schedule,³ and upon entry of an order granting this Motion. Copies of the Schedule will also be provided sent to counsel for the Committees and the Examiner.⁴

11. Under the circumstances, the Debtors believe that a general description of the Schedule and its purpose, as set forth in the KERP Motion, together with the filing of the Schedule under seal and the sharing of the Schedule with counsel for the Committees and the Examiner, provides all parties in interest with sufficient information to determine whether the honoring of prepetition claims arising under the Non-Qualified Benefit Plans for active employees would be in the best interest of the Debtors, their estates, and their creditors.

12. Finally, the Debtors also request that the Schedule be kept confidential indefinitely. Northern District of Texas Local Rule 79.4 states that “all sealed documents will be deemed unsealed 60 days after final disposition of a case.” Pursuant to Local District Court Rule 79.4, the Debtors hereby request that the Schedule be kept confidential indefinitely and that it not be deemed unsealed 60 days after the final disposition of these bankruptcy proceedings.

³ Pursuant to LDR 79.3, made applicable in these proceedings by LBR 9029.3, the Debtors have, concurrently with this filing, delivered a copy of the Schedule to this Court’s chambers by hand delivery for the Court’s consideration and review.

⁴ The information contained in the Schedule is subject to the confidentiality obligations of the Committees and the Examiner.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he 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 or overnight mail, on the 12th day of July, 2004 in accordance with the Federal Rules of Bankruptcy Procedure:

/s/ Ian T. Peck _____
Ian T. Peck

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for the Debtors conferred with counsel for each of the Committees on July 12, 2004 regarding the relief requested in this motion. Counsel for the Committees indicated that they do not oppose the relief requested herein.

/s/ Ian T. Peck

Ian T. Peck

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

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

***EX PARTE* ORDER AUTHORIZING DEBTORS TO FILE SCHEDULE TO
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JOHN W. RAGAN AND (I) CONTINUATION OF CERTAIN NON-QUALIFIED
BENEFIT PLANS FOR ACTIVE EMPLOYEES**

Upon the *Ex Parte* Motion, dated July 12, 2004 (the “Motion”), of Mirant Corporation and its affiliated debtors, as debtors-in-possession in the above captioned cases (collectively, the “Debtors”), for Authority to File a Schedule to the Motion of the Debtors for an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) authorizing (a) the Remaining Payments under Phase I of the Key Employee Retention Program, (b) the Implementation of Phase II of the Key Employee Retention Program, (c) the Implementation of the KERP Severance Plan, (d) the Continuation of the General Severance Plan, (e) the Modification of the Change in Control Documents, (f) the Modification of the Severance Waiver to Exclude Claims arising under Retention Agreements, (g) the Waiver of Certain Claims of the Debtors’ Estates against Active Employees who were the

Beneficiaries of Certain Purchased Annuities, (h) the Payment of Severance to John W. Ragan and (i) Continuation of Certain Non-Qualified Benefit Plans for Active Employees Under Seal; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Debtors are authorized to file the Schedule under seal; and it is further

ORDERED that the United States Bankruptcy Clerk for the Northern District of Texas shall accept the Schedule for filing and shall file the Schedule under seal; and it is further

ORDERED that the Schedule be sealed indefinitely such that it shall not be deemed unsealed 60 days after the disposition of these bankruptcy proceedings pursuant to Northern District of Texas Local Rule 79.4.

Signed this ____ day of July, 2004.

HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE