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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-11
)	Jointly Administered
Debtors.)	HEARING DATE AND TIME:
_____)	November 12, 2003 at 10:30 a.m.

***EX PARTE* MOTION FOR AN EXTENSION
OF TIME PURSUANT TO FED. R. BANKR. P. 9006 AND LOCAL RULE 9003.1 TO
RESPOND TO MODESTO IRRIGATION DISTRICT'S MOTION FOR
DETERMINATION OF RECOUPMENT RIGHTS OR IN THE ALTERNATIVE,
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors-in-possession, file this Ex Parte Motion For An Extension Of Time Pursuant To Federal Rule of Bankruptcy Procedure 9006 And Local Rule 9003.1 To Respond Modesto Irrigation District's Motion for Determination of Recoupment Rights or in the Alternative, Motion for Relief from the Automatic Stay (the "Motion to Extend Time"). In support of the Motion to Extend Time, the Debtors respectfully represent as follows:

***EX PARTE* MOTION FOR AN EXTENSION OF TIME
PURSUANT TO FED. R. BANKR. P. 9006 AND LOCAL RULE 9003.1
TO RESPOND TO MODESTO IRRIGATION DISTRICT'S
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OR IN THE ALTERNATIVE, MOTION FOR RELIEF FROM THE AUTOMATIC STAY
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I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334(b) and the standing order of reference of the district court. This matter is a core proceeding. 28 U.S.C. § 157(b)(1), (b)(2)(A).

2. Venue in this Court is proper under 28 U.S.C. § 1409(a).

II. BACKGROUND

3. On October 17, 2003, Modesto Irrigation District (“MID”) filed its Motion For Determination Of Recoupment Rights Or In The Alternative, Motion for Relief From The Automatic Stay (the “Motion For Relief From Stay”) requesting that this Court determine that MID’s exercise of its alleged recoupment or setoff rights does not violate the automatic stay provisions of 11 U.S.C. § 362(a) or, in the alternative, granting relief from the automatic stay provisions of 11 U.S.C. § 362(s) to allow MID to setoff certain amounts.

4. MID served the Motion For Relief From Stay via first class United States Mail. The Debtors’ had twelve (12) plus three (3) days (for service by mail) to respond to the Motion for Relief From Stay. Therefore, the Debtors’ response deadline would be November 3, 2003.

5. The Debtors have been working to resolve the issues set forth in the Motion For Relief From Stay and to verify the proposed setoff amounts. The Debtors are hopeful that the Debtors and MID will come to an agreement and enter an agreed order.

III. RELIEF REQUESTED

6. The Debtors request that this Court extend the time for the Debtors to Respond to the Motion For Relief From The Automatic Stay for two (2) days until November 5, 2003 to

provide Debtors' sufficient time to verify the numbers provided in the Motion for Relief From the Automatic Stay and to negotiate the terms of an agreed order.

7. Rule 9006(b) of the Federal Rules of Bankruptcy Procedure provides in relevant part that: "when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order...." Fed. R. Bankr. P. 9006(b). The Local Rules provide that a motion to enlarge time may be brought *ex parte*. See Local Bankruptcy Rule 9003.1.

8. On November 1, 2003, the Debtors left a message with MID's local counsel that the Debtors' were prepared to enter into an agreed order resolving MID's Motion For Relief From Stay and that the Debtors agreed that MID had some right to setoff. The Debtors, through their local counsel, then spoke personally to local counsel for MID. The Debtors requested a **2 day** extension of time to respond to the Motion For Relief From Stay to allow the Debtors' accounting department to verify the setoff amounts provided in the Motion For Relief From Stay and to negotiate the terms of an agreed order. Attorneys for MID refused to grant the extension, which has forced the Debtors to bring this matter before the Court.

9. Pursuant to Rule 9006, good cause exists to grant the Debtors' request for a two (2) day extension. The Debtors' are less than four months into a very complicated bankruptcy case and have expended a great deal of time dealing with regulatory issues and executory contracts. The Debtors and their professionals have been busy dealing with a myriad of

emergency issues in these cases. The Debtors were confident that they would reach an agreement with MID and sought to preserve estate resources that would be spent filing a formal response to the MID Motion For Relief From Stay. The Debtors made a reasonable request for an extension of time to respond. An extension would not delay the disposition of the Motion For Relief From Stay or prejudice the rights of either party. The MID's failure to grant a two-day extension to allow Debtors to verify the amounts subject to setoff and to negotiate the language of an agreed order is unreasonable. *See Dondi Props. Corp. v. Commerce Sav. & Loan Assoc.*, 121 F.R.D. 284 (N.D. Tex. 1988).

WHEREFORE PREMISES CONSIDERED, the Debtors respectfully request that this Court enter an order i) granting this motion, ii) extending the time for the Debtors to file a response for an additional two (2) days; and iii) granting the Debtors such other relief that is fair and just.

RESPECTFULLY SUBMITTED THIS 3RD DAY OF NOVEMBER, 2003.

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By /s/ Judith Elkin
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State Bar No. 06522200
Ian Peck
State Bar No. 24013306

-and-

**EX PARTE MOTION FOR AN EXTENSION OF TIME
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she provided true and correct copies of the foregoing to Bankruptcy Services, LLC and directed them to effect service upon the parties listed below via email and United States first class mail, postage prepaid on the 3rd day of November 2003:

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/s/ Judith Elkin

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

In re:

MIRANT CORPORATION, et al.,

Debtors.

Chapter 11

Case No. 03-46590 (DML)

(Jointly Administered)

**ORDER GRANTING *EX PARTE* MOTION FOR AN EXTENSION OF TIME
PURSUANT TO FED. R. BANKR. P. 9006 AND LOCAL RULE 9003.1 TO
RESPOND TO MODESTO IRRIGATION DISTRICT'S MOTION FOR
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MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

Came for consideration of the *Ex Parte* Motion of Mirant Corporation for an Extension of Time Pursuant to Fed. R. Bankr. P. 9006 and Local Rule 9003.1 to Respond to Modesto Irrigation District's Motion for Determination of Recoupment Rights Or In the Alternative, Motion For Relief From The Automatic Stay (the "Motion to Extend Time").¹ After considering the Motion and the representations made therein, the Court finds that the Motion has merit and should be granted. It is therefore, hereby

ORDERED that the relief requested in the Motion is granted.

SO ORDERED this ____ day of November, 2003.

D. Michael Lynn
United States Bankruptcy Judge

¹ All undefined capitalized terms herein shall have the same meaning as set forth in the Motion.