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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.)	HEARING DATE AND TIME:
_____)	January 7, 2004 @ 10:30 a.m.

MOTION OF THE DEBTORS FOR THE ENTRY OF AN ORDER PURSUANT TO
11 U.S.C. § 105(a) DIRECTING THAT ORDERS PREVIOUSLY
ENTERED BE MADE APPLICABLE TO THE MAEC DEBTORS

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors and debtors-in-possession, file this motion (the “Motion”) for the entry of an order pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”), directing that orders previously entered in the Debtors’ chapter 11 cases be made applicable to Mirant Americas Energy Capital, LP and Mirant Americas Energy Capital Assets, LLC, and respectfully represent as follows:

MOTION OF THE DEBTORS FOR THE ENTRY OF AN ORDER PURSUANT TO
11 U.S.C. § 105(A) DIRECTING THAT ORDERS PREVIOUSLY
ENTERED BE MADE APPLICABLE TO THE MAEC DEBTORS

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 (collectively, the “Initial 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 (the “Bankruptcy Code”).¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the “EcoElectrica Debtors”) commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investments, Inc.; (iii) Wrightsville Power Facility, L.L.C.; and (iv) Wrightsville Development Funding, L.L.C. (collectively, the “Wrightsville Debtors”). On November 18, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Americas Energy Capital, LP (“MAEC”) and (ii) Mirant Americas Energy Capital Assets, LLC (“MAECA” and, together with MAEC, the “MAEC Debtors”). The Debtors continue to manage and operate their businesses as debtors-in-

¹ 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 in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

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 motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, the Court entered an order approving joint administration of the cases of the EcoElectrica Debtors with those of the Initial Debtors. Also, on September 8, 2003, the Court granted the motion for an order directing that orders entered in the cases of the Initial Debtors be made applicable to those of the EcoElectrica Debtors. On October 21, 2003, the Court entered an order approving the joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. On November 5, 2003, the Court entered an order directing that certain orders entered in the cases of the Initial Debtors be made applicable to the Wrightsville Debtors. On November 20, 2003, the Court entered an order approving the joint administration of the cases of the MAEC Debtors with those of the Initial Debtors.

4. The Committees. Three official committees have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases. Specifically, an official unsecured creditors' committee and an official committee of equity security holders have been appointed for Mirant Corporation and an official unsecured creditors' committee has been appointed for Mirant Americas Generation, LLC (collectively, the "Committees").

FACTUAL BACKGROUND

A. The Debtors' Business Operations

5. Mirant and its direct and indirect subsidiaries, including the MAEC Debtors, comprise one of the world's largest generators and marketers of electricity. Through its direct and indirect subsidiaries, Mirant produces, sells and delivers reliable energy products and

services to utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers and large industrial customers in North America, the Philippines and the Caribbean. Mirant's core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls more than 21,800 megawatts of electric generating capacity around the world, of which more than 18,000 megawatts is located in the United States. In 2002, Mirant produced 73 million megawatt-hours of electricity, sold 312 million megawatt-hours of electricity and sold or marketed an aggregate average of 21 billion cubic feet per day of natural gas.

6. As of July 31, 2003, Mirant employs about 6,700 employees worldwide. Approximately 1,000 employees are based at Mirant's corporate headquarters in Atlanta, and approximately 5,700 employees are based at operating facilities. Approximately 1,000 employees are subject to collective bargaining agreements. In 2002, Mirant recorded a \$542 million loss in earnings before interest, taxes and depreciation on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

B. Facts Relevant to the Motion

7. MAEC (f/k/a Southern Producer Services, L.P.) is a limited partnership organized under the laws of Delaware.² After its formation in March of 1999, MAEC engaged in the business of lending money to smaller oil and gas production companies located primarily in Texas and Louisiana that drilled in Texas and Louisiana or offshore on the continental shelf in the Gulf of Mexico. MAEC's relationship to these companies was that of a traditional lender,

² The general partner of MAEC is Mirant Americas Development, Inc., which owns a 1% interest in MAEC. The remaining 99% interest is held by Mirant Americas Energy Marketing Investments, Inc., MAEC's limited partner. Both Mirant Americas Development, Inc. and Mirant Americas Energy Marketing Investments, Inc. are Debtors in these chapter 11 cases.

i.e., MAEC granted loans to the companies and, as collateral, took a security interest in the revenue stream generated pursuant to the companies' production efforts.

8. The assets of the MAEC Debtors consist of approximately \$2.4 million of cash in bank accounts held by MAEC. No funding to the MAEC Debtors has been provided by the Debtors since the Initial Debtors' Petition Date.

9. On or about December 7, 2001, Stroud Investments 2001, Ltd. and Stroud Oil Properties, Inc. (together, "Stroud") filed a lawsuit (the "Brazos Lawsuit") in the 272nd Judicial District Court of Brazos County, Texas (the "Texas State Court") against Predator Development Company, LLC ("Predator"). Stroud had been a borrower under one of the loans made by MAEC and which had been sold to Lehman Commercial Paper, Inc. and H/Z Acquisition Partners LLC. On or about June 16, 2003, Predator filed an Original Third-Party Petition against Mirant, MAEC and MAECA. Mirant subsequently filed for bankruptcy on the Initial Debtors' Petition Date.

10. On or about July 25, 2003, Predator filed a Motion for Severance in the Brazos Lawsuit, requesting that the Texas State Court sever out any and all claims, counterclaims, and/or third-party claims by, between and/or among Stroud, Predator, and MAEC and MAECA and make them the subject of a separate suit thereby leaving the claims involving Mirant stayed and isolated in its own cause. By letter dated August 29, 2003, the Texas State Court denied Predator's Motion for Severance and stated that all claims against Mirant, MAEC and MAECA were stayed pending further order of this Court.

11. On or about September 9, 2003, Predator filed a Motion for Severance of Claims in the Brazos Lawsuit, requesting that the Texas State Court sever out any and all claims and/or counterclaims among Stroud and Predator and make them the subject of a separate suit

thereby leaving the claims involving Mirant, MAEC and MAECA stayed and isolated in its own cause. By letter dated October 10, 2003, the Texas State Court denied Predator's Motion for Severance and stated that all claims against Mirant, MAEC and MAECA remained stayed pending further order of this Court. On November 3, 2003, Predator filed a Motion for Relief from Automatic Stay to Complete Pending State Court Litigation Involving Non-Debtor Entities (the "Lift Stay Motion").³ The MAEC Debtors determined that their assets (\$2.4 million) should be protected and administered in the orderly fashion provided by the Bankruptcy Code.

12. Accordingly, in order to allow for the orderly administration of all of the Debtors' operations, chapter 11 petitions were prepared and filed for the MAEC Debtors. The Debtors have determined that it is in the best interest of their estates and creditors to make orders previously entered in the Debtors' chapter 11 cases applicable to the MAEC Debtors.

RELIEF REQUESTED

13. By this Motion, the Debtors request that the Court enter an order pursuant to section 105(a) of the Bankruptcy Code directing that all orders entered in the Debtors' chapter 11 cases prior to November 20, 2003, the date the Court entered an order approving the joint administration of the cases of the MAEC Debtors with those of the Initial Debtors, be made applicable to the MAEC Debtors, except for certain orders listed below. The Debtors request that certain orders, as described below, entered in the Debtors' chapter 11 cases be made applicable to the MAEC Debtors on the terms set forth below.

³ On November 18, 2003, Mirant filed an Opposition to the Lift Stay Motion on the ground that the commencement of the MAEC Debtors' cases stays the entire Brazos Lawsuit. Predator subsequently withdrew its motion to lift the automatic stay.

**APPLICATION TO THE MAEC DEBTORS OF CERTAIN
ORDERS ENTERED IN THE DEBTORS' CASES**

14. This Motion seeks to have all orders previously entered in the Debtors' cases (the "Mirant Debtors' Orders") apply to the MAEC Debtors, except for certain orders listed below. To the extent that additional information is required to make the applicable order's effect on the MAEC Debtors meaningful, such request for additional relief is noted herein. The MAEC Debtors seek to have each of such orders apply to them effective as of the date of entry of the order requested by this Motion.

15. The MAEC Debtors seek to have the Order (I) Authorizing Continued Use of Existing (A) Cash Management System, (B) Bank Accounts, and (C) Business Forms; (II) Granting Interim Waiver of Investment and Deposit Requirements; and (III) Granting Related Relief, entered July 17, 2003 (Docket No. 47), be made applicable to the MAEC Debtors as supplemented by the additional non-payroll bank accounts listed on Exhibit "A" attached hereto.

16. The MAEC Debtors do not seek to have the following Mirant Debtors' Orders apply in their cases:

- (a) The Joint Administration Order. Order Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and N.D. TX L.B.R. 1015.1 Directing Joint Administration of Cases, entered July 16, 2003.
- (b) The Order Extending Time to File Schedules and Statements. Order Pursuant to Bankruptcy Rule 1007(c) Granting Extension of Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases and Statements of Financial Affairs, entered July 16, 2003.
- (c) The Bar Date Order. Order Pursuant to Bankruptcy Rule 3003(c) (I) Establishing a Bar Date for Filing Certain Proofs of Claim; (II) Establishing Ramifications for Failure to Comply Therewith; (III) Approving Proof of Claim Form and Consolidated Notice of (A) Case Commencement, (B) Bar Date, and (C) Meeting of Creditors Under Section 341(a) of the Bankruptcy Code; and (IV) Approving Notice and Publication Procedures, entered on August 21, 2003.

BASIS FOR RELIEF

17. Section 105(a) of the Bankruptcy Code provides, in relevant part: “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of a debtor’s assets. See, e.g., In re Kestell, 99 F.3d 146, 149 (4th Cir. 1996) (bankruptcy court has authority to issue any order necessary or appropriate to carry out the provisions of the bankruptcy code); In re Chinichian, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); Bird v. Crown Convenience (In re NWFx, Inc.), 864 F.2d 588, 590 (8th Cir. 1988) (“The overriding consideration in bankruptcy ... is that equitable principles govern”); In re Cooper Properties Liquidating Trust, Inc., 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (“the Bankruptcy Court is one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws.”).

18. The approval of this motion will obviate the need for duplicative notices, motions, applications, and orders to be filed in this case. The MAEC Debtors simply seek to save considerable time and expense for them and their estates, and to reduce the burden on the Court and parties in interest by proceeding in this manner. The MAEC Debtors require the protections and authorizations that are set forth in the Mirant Debtors’ Orders to enter chapter 11 in an orderly manner and to maintain their ability to reorganize successfully. It is appropriate for the MAEC Debtors to seek the substantive relief granted in the Mirant Debtors’ Orders since

those orders deal with many of the first-day matters that most debtors like the MAEC Debtors must deal with. For example, the orders deal with, among other things, employee wages and benefits, retention and compensation of professionals, bank accounts, cash management, and noticing procedures.

19. Had MAEC Debtors filed at the same time as the Initial Debtors, they would have been movants with respect to all of the Mirant Debtors' Orders. By proceeding in the manner of this Motion, the MAEC Debtors seek to streamline the motion practice for requesting the relief granted in the Mirant Debtors' Orders, while at the same time providing the same requisite facts and justification for such relief as if the MAEC Debtors were filing such motions and related affidavits.

20. The Debtors believe that the relief requested herein is appropriate to carry out the provisions and purposes of the Bankruptcy Code. Similar procedures have been authorized in other complex chapter 11 cases. In re Enron, Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. 2001); In re Genesis Health Ventures, Inc., et al., Case No. 00-2692 (JHW) (Bankr. D. Del. 2000).

21. No previous motion for the requested relief has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request the entry of an order directing that orders in the Mirant Debtors' chapter 11 cases be made applicable to the MAEC Debtors, as supplemented herein, and granting such other and further relief as is just and proper.

Dated: Fort Worth, Texas
December 12, 2003

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By : /s/ Ian T. Peck
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-and-

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ATTORNEYS FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION

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 and upon all persons on the attached Service List via United States first class mail, postage prepaid, on the 12th day of December, 2003 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Ian T. Peck

EXHIBIT “A” –BANK ACCOUNTS

Name of Company	Bank	Type of Account
Mirant Americas Energy Capital, LP	Federated Investors Pittsburgh, PA Acct No. 4375680	Investment Account
Mirant Americas Energy Capital, LP	Bank of America, N.A. Dallas, TX 75283-2406 Acct No. 3751298032	Operating Account

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
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)	
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In re)	Chapter 11 Case
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MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML
)	Jointly Administered
Debtors.)	
)	

**ORDER PURSUANT TO 11 U.S.C. § 105(A) DIRECTING THAT ORDERS
PREVIOUSLY ENTERED BE MADE APPLICABLE TO THE MAEC DEBTORS**

Upon the motion dated December 12, 2003 (the “Motion”) of Mirant Corporation and its affiliated debtors (collectively, the “Debtors”), as debtors and debtors-in-possession, for an order pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”), directing that orders previously entered in the Debtors’ chapter 11 cases be made applicable to Mirant Americas Energy Capital, LP and Mirant Americas Energy Capital Assets, LLC (collectively, the “MAEC Debtors”); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that all orders entered in the Debtors’ chapter 11 cases prior to November 20, 2003, the date the Court entered an order approving the joint administration of the cases of the MAEC Debtors with those of the Initial Debtors, except the orders listed below, be

and hereby are applicable to the MAEC Debtors; and it is further
**ORDER PURSUANT TO 11 U.S.C. § 105(A) DIRECTING THAT ORDERS PREVIOUSLY
ENTERED BE MADE APPLICABLE TO THE MAEC DEBTORS**

ORDERED that the Order (I) Authorizing Continued Use of Existing (A) Cash Management System, (B) Bank Accounts, and (C) Business Forms; (II) Granting Interim Waiver of Investment and Deposit Requirements; and (III) Granting Related Relief, entered July 17, 2003 (Docket No. 47), is applicable to the MAEC Debtors as supplemented by the additional non-payroll bank account listed on Exhibit "A" to the Motion; and it is further

ORDERED that that the following orders in the Debtors' chapter 11 cases are not made applicable to the MAEC Debtors:

- (a) The Joint Administration Order. Order Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and N.D. TX L.B.R. 1015.1 Directing Joint Administration of Cases, entered July 16, 2003.
- (b) The Order Extending Time to File Schedules and Statements. Order Pursuant to Bankruptcy Rule 1007(c) Granting Extension of Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases and Statements of Financial Affairs, entered July 16, 2003.
- (c) The Bar Date Order. Order Pursuant to Bankruptcy Rule 3003(c) (I) Establishing a Bar Date for Filing Certain Proofs of Claim; (II) Establishing Ramifications for Failure to Comply Therewith; (III) Approving Proof of Claim Form and Consolidated Notice of (A) Case Commencement, (B) Bar Date, and (C) Meeting of Creditors Under Section 341(a) of the Bankruptcy Code; and (IV) Approving Notice and Publication Procedures, entered on August 21, 2003.

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: January __, 2003

HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

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