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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FT. WORTH DIVISION

In re: :
: Chapter 11
: Case No. 03-46590 (DML)
MIRANT CORPORATION, et al., :
: (Jointly Administered)
Debtors. :
-----X

THE TRUSTEE OR THE DEBTOR SHALL FILE A RESPONSE TO THIS MOTION WITHIN TWELVE (12) DAYS FROM THE DATE OF SERVICE OF THIS MOTION. THE TRUSTEE OR THE DEBTOR'S RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED. IF THE TRUSTEE OR THE DEBTOR DOES NOT FILE A RESPONSE AS REQUIRED, THE ALLEGATIONS IN THIS MOTION SHALL BE DEEMED ADMITTED, UNLESS GOOD CAUSE IS SHOWN WHY THESE ALLEGATIONS SHOULD NOT BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

**MOTION OF SEABOARD SURETY COMPANY
FOR RELIEF FROM THE AUTOMATIC STAY TO CANCEL
CERTAIN SURETY BONDS OR, IN THE ALTERNATIVE, FOR
ADEQUATE PROTECTION ON ACCOUNT OF SUCH BONDS**

TO: THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE:

Seaboard Surety Company ("Seaboard") respectfully submits this motion (the "Motion") for an order, pursuant to section 362(d) of title 11 of the United States Code (the "Bankruptcy Code"), granting Seaboard relief from the automatic stay to permit Seaboard to take those actions necessary to cancel a certain surety bond issued on behalf of a debtor affiliate of Mirant Corporation (collectively, the "Debtors") or, in the alternative, for adequate protection on account of such bonds and, in support thereof, respectfully represents as follows:

PRELIMINARY STATEMENT

By this Motion, Seaboard seeks relief from the automatic stay in order to take those steps necessary to cancel a surety bond (the "Bond") it issued on behalf of the Debtors. Pursuant to the express terms of the Bond and the U.S. Customs Service Regulations, Seaboard is permitted to cancel the Bond by providing notice to the principal and obligee (*i.e.*, the beneficiary of the bond). Seaboard is requesting that the Court modify the automatic stay to permit it to exercise this right.

If the Bond is not terminated, Seaboard will continue to be exposed to new claims that arise against the Debtors. Under the Bond, Seaboard is, in effect, extending postpetition credit to the Debtors. Accordingly, the Bond is a contract for "financial accommodation," as that term is used in section 365 of the Bankruptcy Code. The Bankruptcy Code prohibits a debtor from assuming such contracts and allows modification of the automatic stay to permit their cancellation.

The Debtors, on the other hand, will not be prejudiced by cancellation of the Bond because they can simply procure replacement bonds or provide other forms of security to the

obligees. The Debtors have the financial wherewithal to obtain a replacement bond, if necessary. Moreover, there is no prejudice to the Debtors because Seaboard only seeks to enforce its rights of cancellation in accordance with the terms of the Bond -- terms that were agreed to by the Debtors. Bankruptcy does not bestow upon the Debtors greater contractual rights under the Bond than they would otherwise have outside of bankruptcy.

JURISDICTION AND VENUE

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. § 1409(a). The statutory basis for the relief requested herein is section 362(d) of the Bankruptcy Code.

FACTUAL BACKGROUND

2. Prior to the commencement of the Debtors' bankruptcy cases, Seaboard, as surety, issued a bond under which Mirant Americas Energy Marketing, LP is the principal.

3. The Bond is a "continuous bond," meaning that it will remain in effect until it is cancelled in accordance with the terms of the Bond and pertinent statutes and regulations. (Cranston Affidavit at ¶ 3) Seaboard may cancel or terminate a Bond pursuant to the U.S. Customs Service Regulations. (*Id.* at ¶ 4)

4. Mirant Americas Energy Marketing, LP. is obligated to indemnify and reimburse Seaboard for all payments made under the Bond pursuant to a General Indemnity Agreement dated September 12, 2000 (the "GIA"). (Cranston Affidavit at ¶ 8-9)

RELIEF REQUESTED

5. By its Motion, Seaboard seeks relief from the automatic stay in order to take all action necessary, pursuant to the terms of the Bond and the relevant statutes and regulations, to cancel the Bond. In the alternative, Seaboard seeks adequate protection, in a form acceptable to Seaboard, for the full amount of its potential exposure under the Bond. Cause exists for this Court to grant relief from the stay in that: (i) the Bond is a contract for "financial accommodation" which cannot be assumed by the Debtors and the cancellation of which is implicitly authorized by the Bankruptcy Code; and (ii) there will be prejudice to Seaboard if it is not permitted to cancel the Bond as it will be involuntarily exposed to the Debtors' credit risk during the postpetition period, and this prejudice outweighs any potential harm to the Debtors.

BASIS FOR REQUESTED RELIEF

6. The express terms of the Bond permit Seaboard to cancel and terminate the Bond in accordance with the U.S. Customs Service Regulations. Seaboard is requesting that this Court permit Seaboard to enforce its rights under the express terms of the Bond -- terms that were agreed to by the Debtors.

A. Seaboard has a Valid Basis to Cancel the Bond Based on Its Terms and Because It Is a "Financial Accommodation" Contract

(i) *Seaboard Should be Permitted to Enforce its Contractual Rights*

7. Seaboard only seeks to enforce its rights of cancellation under the express terms of the Bond and the relevant statutes and regulations. The Bond contains language which permits Seaboard to cancel the Bond pursuant to the U.S. Customs Service Regulations.

8. The U.S. Customs Service Regulations allow a surety to terminate a bond as follows:

A surety may, with or without the consent of the principal, terminate a Customs bond on which it is obligated. The surety shall provide reasonable written notice to both the director of the port . . . and the principal of the intent to terminate. The written notice shall state the date on which the termination shall be effective and shall be sent to both Customs and the principal by certified mail, with a return receipt requested. Thirty days shall constitute reasonable notice unless the surety can show . . . that a lesser time is reasonable under the facts and circumstances.

9. Courts generally permit postpetition termination of a prepetition contract by a non-debtor party in accordance with the terms of the contract. In addition, Courts will generally enforce terminable-at-will provisions, such as those contained in the Bond, as long as the non-debtor party is acting in "good faith." Here, Seaboard has a legitimate, good faith reason to cancel the Bond. Unless Seaboard is authorized to exercise its rights to cancel the Bond, the Bond will remain in force indefinitely and Seaboard will be subject to the increased risk that further claims will be made on the Bond. Seaboard's good faith is also demonstrated by the fact that Seaboard is willing to accept adequate protection in lieu of canceling a Bond, upon a showing that the Bond is critical to the Debtors' operations and cannot be replaced. Thus, Seaboard should be able to enforce its rights of termination under the express terms of the Bond.

(ii) *The Bond Is A Contract for Financial Accommodation Which May Not Be Assumed or Assigned by the Debtors and May be Cancelled by Seaboard*

10. The Bond is a contract for "financial accommodation." The Bankruptcy Code limits a debtor's rights with respect to contracts for "financial accommodation" in order to ensure that a party cannot be compelled to provide unsecured credit to a debtor during the postpetition period. See 11 U.S.C. §§ 365(c)(2) and (e)(2).

11. Although the Bankruptcy Code prohibits *ipso facto* provisions, this prohibition does not apply if the executory contract is a “contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor” 11 U.S.C. § 365(e)(2)(B). Section 365(e)(2) permits a non-debtor party to rely on an *ipso facto* provision to cancel a contract if it is for “financial accommodation.” Here, Seaboard’s contractual right to cancel and terminate the Bond should be recognized much in the same way *ipso facto* termination rights are recognized when dealing with contracts for “financial accommodation” under section 365(e)(2)(B).

B. Cause Exists to Permit Seaboard Relief From the Stay to Cancel the Bond

12. Relief from the automatic stay is permitted under section 362(d) of the Bankruptcy Code, which provides, in pertinent part, that:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay --

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest

11 U.S.C. § 362(d).

13. In this instance, cause exists to modify the stay because: (i) the Bond is a contract for “financial accommodation,” the cancellation of which is authorized by the Bankruptcy Code; and (ii) the prejudice to Seaboard if it is not permitted to cancel the Bond by being forced to extend credit to the Debtors during the postpetition period. This risk outweighs any prejudice to the Debtors.

(i) *Modification of the Stay is Appropriate Because the Bond are "Financial Accommodation" Contracts*

14. The fact that the Bond is a contract for "financial accommodation," alone, provides sufficient cause under section 362(d)(1) to grant Seaboard relief from the automatic stay. If Seaboard is not permitted to exercise its right to cancel the Bond, the Bond will continue to remain in force indefinitely and Seaboard will be forced to extend new credit as new claims against the Bond arise, a result that section 365 is intended to prevent. Moreover, if the Court were to deny the relief requested by Seaboard under section 362(d)(1), it would have the effect of permitting the Debtors to assume the benefits of the Bond when the Bond is not assumable.

15. Confirming that this requirement is simply a formality intended to allow the court to confirm that the contract is for "financial accommodation" and to allow the debtor to provide adequate protection in lieu of canceling the contract, Collier on Bankruptcy advises as follows:

[w]hile the automatic stay has been held to apply generally to attempts to terminate executory contracts and unexpired leases, including the special kinds of contracts or leases described in section 365(e)(2), the effect of the stay should be simply to preserve the status quo rather than to compel performance by the nondebtor party until the court determines whether section 365(e)(2) is applicable. If it is applicable, the stay should be vacated." 3 Collier on Bankruptcy, ¶ 365.07[1] (Lawrence P. King, *et al.* eds., 15th ed. rev. 2002) (emphasis added).

16. Here, either Seaboard should be permitted to cancel the Bond or, if the Debtors are able to show that certain of the Bond are critical to their efforts to reorganize, the Debtors should be required to provide Seaboard with adequate protection, in a form that is acceptable to Seaboard, to cover any additional exposure under the Bond.

(ii) *The Prejudice to Seaboard Warrants Modification of the Stay*

17. Seaboard faces additional exposure under the Bond until it is cancelled and terminated.¹ On the other hand, cancellation of the Bond will not result in any increased claims exposure or prejudice to the Debtors for the following reasons:

1. To the extent certain Bond is critical to the Debtors' ability to reorganize, the Debtors can seek a replacement bond or other forms of security. The Debtors have the financial wherewithal to obtain replacement security.
2. Cancellation of the Bond has no impact on the amount of claims made against the estate because of the indemnity obligations of Mirant Americas Energy Marketing, LP. Cancellation determines the entity that holds the claim against the Debtors -- the amount or priority of the claim does not change.
3. Seaboard only seeks to cancel the Bond in accordance with the express terms of the Bond, which were agreed to by the Debtor. Therefore, the Debtors cannot claim unfair surprise or prejudice.

For the foregoing reasons, Seaboard respectfully requests that this Court enter an order: (i) modifying the automatic stay to permit Seaboard to take all actions necessary pursuant to the terms of the Bond and the relevant statutes and regulations to cancel the Bond; (ii) alternatively, providing Seaboard with adequate protection acceptable to Seaboard to cover its exposure under the Bond; and (iii) granting such other and further relief as is just and equitable.

¹ It should be noted that even after a Bond is cancelled, Seaboard remains liable for all the past periods that the Bond was in effect. Thus, cancellation eliminates future risk to Seaboard, but does not protect it from liability on claims that existed prior to termination.

Dated: May 5, 2004

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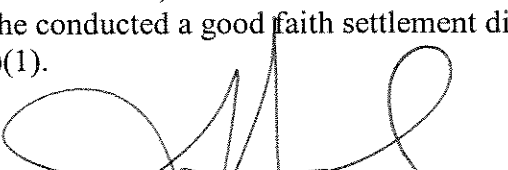
Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing document was served via U.S. mail on the 5 day of May 2004, to counsel of record identified on the attached Limited Service List filed April 14, 2004.


James W. Hamel

Certificate of Conference

The undersigned certifies that he conferred with Frances Smith on April 30, 2004, informed her as to the contents and basis of this motion, and was informed that the debtor opposed the motion. The undersigned certifies that he conducted a good faith settlement discussion pursuant to Local Bankruptcy Rule 9014(c)(1).


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IMPAIRED LOAN MANAGEMENT
STAMFORD BRANCH
677 WASHINGTON BOULEVARD
STAMFORD, CT 06901

UBS WARBURG
WALTER HULSE
299 PARK AVENUE
NEW YORK, NY 10171

UNION BANK OF CALIFORNIA
JOEL STEINER
VICE PRESIDENT SPECIAL ASSETS DEPT.
C/O BANKERS COMMERCIAL CORP.
445 SOUTH FIGUEROA, SUITE 403
LOS ANGELES, CA 90071

UNITED STATES ATTORNEY
OFFICE OF THE UNITED STATES ATTORNEY
3RD FLOOR, 1100 COMMERCE STREET
DALLAS, TEXAS 75242

UNITED STATES TRUSTEE'S OFFICE
GEORGE F. MCELREATH
EARLE CABELL FEDERAL BUILDING
1100 COMMERCE STREET
ROOM 976
DALLAS, TX 75242

UNITIL SERVICE CORPORATION
MARK H. COLLIN, CFO
6 LIBERTY LANE
HAMPTON, NH 03842

US BANK NATIONAL ASSOCIATION
KEITH FROHILCHER
1555 RIVERCENTER DRIVE
SUITE 0300
MILWAUKEE, WI 53212

US EPA
RTP – FINANCE CENTER
MD D143-02
ATTN: MARY ANN KEITH
4930 PAGE RD.
DURHAM, NC 27703

VERIZON CAPITAL GROUP
AUDREY E. PRASHKER
JAMES J. JORDAN
PETER D. RUTHERFORD
245 PARK AVENUE, 40TH FLOOR
NEW YORK, NY 10167-4098

VINSON & ELKINS, L.L.P.
JOHN E. WEST
2300 FIRST CITY TOWER
1001 FANNIN STREET
HOUSTON, TX 77002

VINSON & ELKINS, L.L.P.
WILLIAM L. WALLANDER
3700 TRAMMELL CROW CENTER
2001 ROSS AVENUE
DALLAS, TX 75201

WACHOVIA SECURITIES
JILL AKRE
1339 CHESTNUT STREET
MAIL CODE PA4810
PHILADELPHIA, PA 19107

WACHOVIA SECURITIES
GEN SIMMS
CLASS ACTION AND BANKRUPTCY
111 8TH AVENUE
NEW YORK, NY 10011

WARNER, STEVENS & DOBY, L.L.P.
DAVID T. COHEN
1700 CITY CENTER TOWER II
301 COMMERCE STREET
FORT WORTH, TX 76102

WASHINGTON GAS ENERGY SERVICES, INC.
TELEMAC N. CHRYSOSIKOS
1100 H STREET, N.W., 12TH FLOOR
WASHINGTON, DC 20080

WEIL, GOTSHAL & MANGES, LLP
MARTIN A. SOSLAND
MICHELLE V. LARSON
STEVE A. YOUNGMAN
100 CRESCENT COURT
SUITE 1300
DALLAS, TEXAS 75201-6950

WEIL GOTSHAL & MANGES LLP
PAUL M. BASTA
767 FIFTH AVENUE
NEW YORK, NY 10153

WELLS FARGO BANK MINNESOTA NA
TRUST OPERATIONS CENTER - PROXY DEPT.
733 MARQUETTE AVE. SO., MAC N9306-057
MINNEAPOLIS, MN 55479

WELLS FARGO BANK MINNESOTA, NA
THOMAS M. KORSMAN
MAC N9303-120
SIXTH AND MARQUETTE
MINNEAPOLIS, MN 55479

WELLS FARGO BANK MINNESOTA NA
1600 EAST MADISON AVENUE
MANKATO, MN 56001

WESTDEUTSCHE LANDESBANK GIROZENTRALE
FELICIA LAFORGIA
1211 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

WESTPORT PETROLEUM, INC.
DENNIS BJORKLAND
300 NORTH LAKE AVENUE
SUITE 1020
PASADENA, CA 91101
WHITE & CASE LLP
ATTN: TOM LAURIA
WACHOVIA FINANCIAL CENTER
200 SOUTH BISCAYNE BLVD.
MIAMI, FL 33131

WHITE & CASE LLP
ATTN: CRAIG AVERCH
633 WEST FIFTH ST., SUITE 1900
LOS ANGELES, CA 90071-2007

WILSON, ELSER, MOSKOWITZ, EDELMAN &
DICKER LLP
R. DOUGLAS NOAH, JR.
5000 RENAISSANCE TOWER
1201 ELM STREET
DALLAS, TX 75270

WILSON, ELSER, MOSKOWITZ, EDELMAN &
DICKER LLP
MARK G. LEDWIN
3 GANNETT DRIVE
WHITE PLAINS, NY 10604

WINSTEAD SECHREST & MINICK, P.C.
R. MICHAEL FARQUHAR
PHILLIP L. LAMBERSON
J. FRASHER MURPHY
5400 RENAISSANCE TOWER
DALLAS, TX 75270

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

In re: :
: **Chapter 11**
: **Case No. 03-46590 (DML)**
MIRANT CORPORATION, et al., :
: **(Jointly Administered)**
Debtors. :
-----X

**AFFIDAVIT OF MICHAEL CRANSTON IN SUPPORT OF MOTION
OF SEABOARD SURETY COMPANY FOR RELIEF FROM THE AUTOMATIC
STAY TO CANCEL CERTAIN SURETY BONDS OR, IN THE ALTERNATIVE,
FOR ADEQUATE PROTECTION ON ACCOUNT OF SUCH BONDS**

STATE OF MARYLAND)
) ss.:
COUNTY OF BALTIMORE)

MICHAEL CRANSTON, being duly sworn, deposes and says:

1. I am a Senior Corporate Counsel for St. Paul Fire and Marine Insurance Company ("St. Paul"). St. Paul is the parent company of Seaboard Surety Company ("Seaboard"), which issued the Customs Bond (the "Bond") at issue in this matter. I am authorized to submit this affidavit on behalf of St. Paul and Seaboard. I submit this affidavit in support of Seaboard Surety Company's Motion For Relief From the Automatic Stay to Cancel Certain Surety Bonds or, in the Alternative, for Adequate Protection on Account of Such Bonds (the "Motion"). I have personal knowledge of all facts set forth herein and they are all true and correct. All capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

2. Seaboard Surety Company is a New York insurance surety company. Prior to the commencement of the Debtors' bankruptcy cases, Seaboard, as surety, issued a bond under which Mirant Americas Energy Marketing, LP is the principal.

3. The Bond is a "continuous bond," meaning that the Bond will remain in effect until it is cancelled in accordance with the terms of the Bond or pertinent statute. The "continuous bond" is subject to automatic renewal upon the anniversary of the bond's "effective date" in the event that the bond has not been cancelled or terminated in accordance with its terms.

4. Seaboard may cancel or terminate a Bond in accordance with the U.S. Customs Service Regulations.

5. The Bond which Seaboard seeks permission to cancel is a U.S. Customs Bond, which is generally required of importers of goods and merchandise and secures the payment of duties, taxes, and other charges that become due on account of such imports. Attached hereto as Exhibit "A" and incorporated herein by reference is a true and correct copy of the Bond that Seaboard seeks to cancel.

6. The U.S. Customs bond's anniversary date was August 22, 2003.

7. Unlike the renewal of most continuous bonds which merely increases the coverage period of the bonds, when a customs bond reaches its anniversary/effective date it increases Seaboard's penal sum exposure. Seaboard becomes potentially liable up to the penal sum amount of the bond (the maximum amount of liability under the bond) for the new coverage period, as well as remaining potentially liable up to the penal sum amount for any prior coverage period. Seaboard's exposure is cumulative.

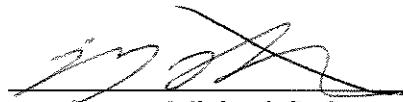
8. Mirant Americas Energy Marketing, LP is obligated to indemnify and reimburse Seaboard under the Bond pursuant to a General Indemnity Agreement (the "GIA") dated September 12, 2000, a true and correct copy of which is attached hereto as Exhibit "B" and

incorporated herein by reference. The GIA was originally executed by Southern Company Energy Marketing, L.P., but the company changed its name to "Mirant Americas Energy Marketing, LP," as is set forth in the Certificate of Amendment, a true and correct copy of which is attached hereto as Exhibit "C" in incorporated herein by reference.

9. The GIA provides, in relevant part, that:

The Indemnitors shall at all times indemnify and keep indemnified the Surety and hold and save it harmless from and against any and all liability, losses, costs, damages, attorneys' and counsel fees, and disbursements, and expenses of whatever kind or nature which the Surety may sustain or incur by reason or in consequence of having executed or procured the execution of such bond or bonds, and any renewal, continuation, extension or successor thereof, and all other bonds heretofore or hereafter executed or procured for or at the request of the Principal . . .

If for any reason the Surety shall be required or shall deem it necessary to set up a reserve in any amount to cover any contingent claim or claims . . . the undersigned jointly and severally hereby covenant and agree immediately upon demand to deposit with the Surety, in current funds, an amount sufficient to cover such reserve and any increase thereof, such funds to be held by the Surety as collateral, in addition to the Indemnity afforded by this instrument, with the right to use such funds or any part thereof, at any time, in payment or compromise of any judgment, claims, liability, loss, damage, attorneys' fees and disbursements or other expenses . . .



Michael C. Cranston

Sworn to before me this 12th day of April ~~March~~, 2004.



Notary Public

[S E A L]

REBECCA EASLEY-ONOKALA
NOTARY PUBLIC OF BALTIMORE, MD
MY COMMISSION EXPIRES 7-1-06



DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

CUSTOMS BOND

BOND NUMBER 404588

19 CFR Part 113

CUSTOMS USE ONLY	BOND NUMBER ¹ (Assigned by Customs)
	FILE REFERENCE

In order to secure payment of any duty, tax or charge and compliance with law or regulation as a result of activity covered by any condition referenced below, we, the below named principal(s) and surety(ies), bind ourselves to the United States in the amount or amounts, as set forth below.

SECTION I - Select Single Transaction OR Continuous Bond (not both) and fill in the applicable blank spaces.

<input type="checkbox"/> SINGLE TRANSACTION BOND <input checked="" type="checkbox"/> CONTINUOUS BOND	Identification of transaction secured by this bond (e.g., entry no., seizure no., etc.) Effective date 22 August 2000	Date of transaction Transaction district & port code	Execution Date
---	--	---	----------------

SECTION II - This bond includes the following agreements.^a (Check one box only, except that, 1a may be checked independently or with 1, and 3a may be checked independently or with 3. Line out all other parts of this section that are not used.)

Activity Code	Activity Name and Customs Regulations in which conditions codified	Limit of Liability	Activity Code	Activity Name and Customs Regulations in which conditions codified	Limit of Liability
<input checked="" type="checkbox"/> 1	Importer or broker.....113.62	\$50,000.00	<input type="checkbox"/> 5	Public Goods.....113.62	
<input type="checkbox"/> 2	Drawback Payment.....113.62		<input type="checkbox"/> 6	Wool & Fur Products Labeling Act Importation (Single Entry Only).....113.66	
<input type="checkbox"/> 3	Guarantee of bonded branch and office.....113.62		<input type="checkbox"/> 7	Ent of Lacey (Single Entry Only).....113.69	
<input type="checkbox"/> 3a	Restraints of International Traffic.....113.66		<input type="checkbox"/> 8	Detention of Copyrighted Material (Single Entry Only).....113.70	
<input type="checkbox"/> 4	Foreign Trade Zone Operator.....113.72		<input type="checkbox"/> 9	Neutrality (Single Entry Only).....113.71	
			<input type="checkbox"/> 10	Count-Down for Condemned Goods (Single Entry Only).....113.72	

SECTION III - List below all tradenames or unincorporated divisions that will be permitted to obligate this bond in the principal's name including their Customs Identification Number(s).^b (If more space is needed, use Section III(Continuation) on back of form.)

Importer Number	Importer Name	Importer Number	Importer Name

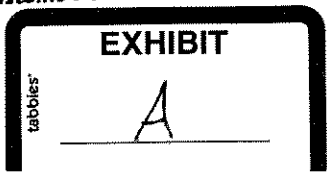
Principal and surety agree that any charge against the bond under any of the listed names is as though it was made by the principal(s).

Principal and surety agree that they are bound to the same extent as if they executed a separate bond covering each set of conditions incorporated by reference to the Customs Regulations into this bond.

If the surety fails to appoint an agent under Title 8, United States Code, Section 7, surety consents to service on the Clerk of any United States District Court or the U.S. Court of International Trade, where suit is brought on this bond. That clerk is to send notice of the service to the surety at:

PRINCIPAL ¹	Name and Address	Importer No. ²	Signature ³	Seal
PRINCIPAL ¹	SOUTHERN COMPANY ENERGY MARKETING L.P. (INCORPORATED IN THE STATE OF DELAWARE) 1155 PERIMETER CENTER WEST, SUITE 130 ATLANTA, GEORGIA 30338-5416	58-2338667		SEAL
PRINCIPAL ¹				SEAL
SURETY ⁴	SEABOARD SURETY COMPANY, A CORPORATION OF THE STATE OF NEW YORK BURNT MILLS ROAD AND ROUTE 206 BEDMINISTER, N.J. 07921-0751	753	J. GREG STEWART, Attorney-In-Fact	SEAL
SURETY ⁴				SEAL
SURETY AGENTS	Name ⁵	Identification No. ⁶	Name ⁷	Identification No. ⁸
		609 592 472		

Customs Form 301 (111883)



Certified Copy
No. 15275

SEABOARD SURETY COMPANY

ADMINISTRATIVE OFFICES, BEDMINSTER, NEW JERSEY
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SEABOARD SURETY COMPANY, a corporation of the State of New York, has made, constituted and appointed and by these presents does make, constitute and appoint **J. Greg Stewart** or **Sherry M. Falconer** or **Gregg C. Jensen** or **Lois E. Innes** or **Waldy H. Hugel**


of **Calgary, Alberta, Canada** its true and lawful Attorney-in-Fact, to make, execute and deliver on its behalf insurance policies, surety bonds, undertakings and other instruments of similar nature as follows:
Without Limitations

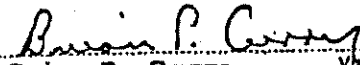
Such insurance policies, surety bonds, undertakings and instruments for said purposes, when duly executed by the aforesaid Attorney-in-Fact, shall be binding upon the said Company as fully and to the same extent as if signed by the duly authorized officers of the Company and sealed with its corporate seal; and all the acts of said Attorney-in-Fact, pursuant to the authority hereby given, are hereby ratified and confirmed.

This appointment is made pursuant to the following By-Laws which were duly adopted by the Board of Directors of the said Company on December 8th, 1927, with Amendments to and including January 15, 1982 and are still in full force and effect:

ARTICLE VII, SECTION 1:
"Policies, bonds, recognizances, stipulations, consents of surety, underwriting undertakings and instruments relating thereto. Insurance policies, bonds, recognizances, stipulations, consents of surety and underwriting undertakings of the Company, and releases, agreements and other writings relating in any way thereto or to any claim or loss thereunder, shall be signed in the name and on behalf of the Company (a) by the Chairman of the Board, the President, a Vice-President or a Resident Vice-President and by the Secretary, an Assistant Secretary, a Resident Secretary or a Resident Assistant Secretary; or (b) by an Attorney-in-Fact for the Company appointed and authorized by the Chairman of the Board, the President or a Vice-President to make such signature; or (c) by such other officers or representatives as the Board may from time to time determine. The seal of the Company shall if appropriate be affixed thereto by any such officer, Attorney-in-Fact or representative."


IN WITNESS WHEREOF, SEABOARD SURETY COMPANY has caused these presents to be signed by one of its Vice-Presidents, and its corporate seal to be hereunto affixed and duly attested by one of its Assistant Secretaries, this **21st** day of **October**, 19**97**

Attest:
(Seal) 
Assistant Secretary

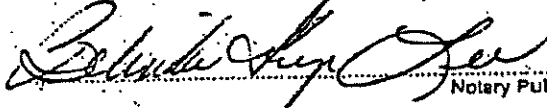
SEABOARD SURETY COMPANY,
By 
Brian P. Curry Vice-President

STATE OF NEW JERSEY ss:
COUNTY OF SOMERSET
On this **21st** day of **October**, 19**97**

Brian P. Curry a Vice-President of SEABOARD SURETY COMPANY, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the State of **New Jersey**; that he is a Vice-President of SEABOARD SURETY COMPANY, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of the said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto as Vice-President of said Company by like authority.

(Seal) 

BELINDA FAYE LEE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Sept. 9, 1998


Notary Public

C E R T I F I C A T E

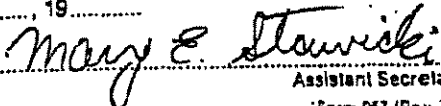
I, the undersigned Assistant Secretary of SEABOARD SURETY COMPANY do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this Certificate and I do further certify that the Vice-President who executed the said Power of Attorney was one of the Officers authorized by the Board of Directors to appoint an attorney-in-fact as provided in Article VII, Section 1, of the By-Laws of SEABOARD SURETY COMPANY.

This Certificate may be signed and sealed by facsimile under and by authority of the following resolution of the Executive Committee of the Board of Directors of SEABOARD SURETY COMPANY at a meeting duly called and held on the 25th day of March 1970.

"RESOLVED: (2) That the use of a printed facsimile of the corporate seal of the Company and of the signature of an Assistant Secretary on any certification of the correctness of a copy of an instrument executed by the President or a Vice-President pursuant to Article VII, Section 1, of the By-Laws appointing and authorizing an attorney-in-fact to sign in the name and on behalf of the Company surety bonds, underwriting undertakings or other instruments described in said Article VII, Section 1, with like effect as if such seal and such signature had been manually affixed and made, hereby is authorized and approved."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Company to these presents this **22nd** day of **August**, 19**2000**

(Seal) 


Assistant Secretary
Form 957 (Rev. 7/84)



SEABOARD SURETY COMPANY®

ADMINISTRATIVE OFFICES: BEDMINSTER, N.J.

General Agreement of Indemnity

KNOW ALL MEN BY THESE PRESENTS, that whereas, at the request of the undersigned hereinafter referred to as Indemnitors, and upon condition that this instrument be executed, SEABOARD SURETY COMPANY, hereinafter referred to as the Surety, a corporation of the State of New York, has executed, or may hereafter execute, a bond or bonds on behalf of _____
Southern Company Energy Marketing L.P.

hereinafter referred to as Principal, copy or copies of which may be hereto attached.

AND WHEREAS, the Indemnitors have a substantial, material and beneficial interest in the obtaining of the said bond or bonds.

NOW, THEREFORE, in consideration of the premises the Indemnitors, for themselves, their heirs, executors, administrators, successors and assigns jointly and severally hereby covenant and agree with the Surety, its successors and assigns, as follows:

1. That the Indemnitors will promptly pay or cause to be paid in cash to the Surety at its designated place of business for the execution of the said bond or bonds, the premium or premiums to be paid annually, in advance, in each and every year during the time which the Surety shall be and continue to be liable upon the said bond or bonds, and until the Surety shall have been fully discharged and released from any and all liability upon said bond or bonds and all matters and things arising therefrom, and until there shall have been furnished to the Surety due and satisfactory proof by evidence legally competent of such discharge and release.
2. The Indemnitors shall at all times indemnify and keep indemnified the Surety and hold and save it harmless from and against any and all liability, losses, costs, damages, attorneys' and counsel fees, and disbursements, and expenses of whatever kind or nature which the Surety may sustain or incur by reason or in consequence of having executed or procured the execution of such bond or bonds, and any renewal, continuation, extension or successor thereof, and all other bonds heretofore or hereafter executed or procured for or at the request of the Principal, and which the Surety may sustain or incur in taking any steps it may deem necessary in making any investigation, in defending or prosecuting any actions, suits or other proceedings which may be brought under or in connection therewith, or in recovering or attempting to recover salvage or any unpaid bond premium, in obtaining or attempting to obtain release from liability, or in enforcing any of the covenants of this agreement: to pay over, reimburse and make good to the Surety, its successors or assigns, all money which the Surety or its representatives shall pay, or cause to be paid or become liable to pay, by reason of the execution of such bond or bonds, and any renewal, continuance, extension or successor thereof, and all other bonds heretofore or hereafter executed or procured for or at the request of the Principal; and such payment to be made to the Surety as soon as it shall become liable therefor, whether the Surety shall have paid out such sum or any part thereof, or not.
3. If for any reason the Surety shall be required or shall deem it necessary to set up a reserve in any amount to cover any contingent claim or claims, loss, costs, attorney's fees and disbursements and expenses in connection with any bond by reason of default of the Principal, abandonment of contract, liens filed, unpaid and past due bills, dispute with the owner or obligee, or for any reason whatsoever, and regardless of any proceedings contemplated or taken by the Principal or the pendency of any appeal, the undersigned jointly and severally hereby covenant and agree immediately upon demand to deposit with the Surety, in current funds, an amount sufficient to cover such reserve and any increase thereof, such funds to be held by the Surety as collateral, in addition to the indemnity afforded by this instrument, with the right to use such funds or any part thereof, at any time, in payment or compromise of any judgment, claims, liability, loss, damage, attorney's fees and disbursements or other expenses; and if the Surety is required to enforce performance of this covenant by action at law or in equity, the costs, charges, and expenses, including counsel or attorney's fees, which it may thereby incur, shall be included in such action and paid by the undersigned. Demand shall be sufficient if sent by registered mail to the undersigned at the address given herein or last known to the Surety, whether or not actually received.
4. That the Surety may, at any time hereafter, without releasing or discharging the Indemnitors from any claim, demand, action, costs, liability or any other expense theretofore incurred or accrued, take such action as it might deem necessary or proper to obtain its release from any and all liability under the said bond or bonds, and the Indemnitors further agree that they shall further secure and indemnify the Surety against any and all charges, liabilities and expenses of whatever nature which the Surety may sustain or incur or be put to in obtaining such release.
5. The Surety may also alter, change, modify, amend, limit or extend the said bond or bonds and any renewal or other obligation in place or in lieu thereof; and in any such case the Indemnitors shall be liable to the Surety as fully and to the same extent on account of any such altered, changed, modified, amended, limited or extended bond or bonds or renewal or substitution thereof, whenever and as often as made, as though such bond or bonds, is or are described at length herein.
6. That it shall not be necessary for the Surety to give to the Indemnitors or any of them notice, which is hereby expressly waived, of any act, fact or information coming to the notice or knowledge of the Surety concerning or affecting its rights or liabilities under any such bond or bonds by it so executed, or the rights and liabilities of the Indemnitors herein.
7. Any property of any kind which may have been, or may hereafter be, pledged as collateral security on any one or more of such bonds may, at the option of the Surety, be retained as collateral security on any and all bonds coming within the scope of this agreement, whether theretofore or thereafter executed, and for the full and complete performance in all respects of the covenants of the Indemnitors. In case the Surety should deem it advisable for the purpose of meeting any actual or prospective claim or demand under any such bond or bonds or to pay any expenses incurred or to be incurred in connection therewith, or in case the Surety should be of the opinion that said property is likely to so decline in market value that the security to the Surety will be inadequate, the Surety shall have full power and authority, without notice to the Indemnitors or any of them, to sell, assign, and deliver said collateral, or any part thereof, at public or private sale at the option of the Surety, its successors and assigns, with the right to be the purchaser itself at any such sale, and to use the proceeds, or any part thereof as may be necessary, in order to protect itself or any other Surety or Sureties executing such bond or bonds against loss, costs, damages, attorney's fees and expenses as aforesaid; and after deducting all legal and other costs and expenses of such sale, and all such loss, costs, damages, attorney's fees and expenses as aforesaid, and all premiums due the Surety or any such Surety or Sureties for any such bond or bonds, shall return the remainder of such collateral or the proceeds of sale, if any, to the person or persons legally authorized to receive the same; provided the Surety shall not be responsible for any loss resulting to said property from any cause other than the wrongful act or neglect of its officers and employees.

EXHIBIT

tabbies

B

8. That this instrument shall protect in the name of the Surety, any and all surety or reinsuring companies that may assume reinsurance or co-suretyship on any such bond or bonds, and, in like manner, shall indemnify such other reinsurer or co-surety as the Surety has procured or may procure to execute or to join with it in executing any such bond or bonds, it being agreed that this instrument shall inure to the benefit of any such reinsurer or co-surety, so as to give it or them the right of action hereunder.

9. If any provision or provisions of this instrument shall be void or unenforceable under the laws of any place governing its construction or enforcement, this instrument shall not be void or vitiated thereby but shall be construed and enforced with the same effect as though such provision or provisions were omitted. It is expressly understood and agreed that all rights and remedies of the Surety under this instrument shall be deemed to be cumulative, and the exercise of any particular right or remedy at any time shall not be considered to be an election of remedy or a waiver of any other right or remedy, and the acceptance of security or consideration shall not be taken as a waiver of any right or remedy, which the Surety might have by statute or otherwise.

10. It is understood and agreed that, as the execution of this agreement is an essential part of the consideration for the execution by the Surety of such bond or bonds, the failure to execute this instrument, or, in case the execution may be defective or invalid for any reason, such failure, defect or invalidity, shall not in any manner affect the validity of this instrument or the liability hereunder, and this instrument shall be in full force and effect to the same extent as if such failure, defect or invalidity had not existed. This agreement, although executed subsequent to the issuance of any instrument referred to herein, is of the same force and effect as though executed prior to the issuance of such instrument.

11. Each of the undersigned, for himself, his heirs, executors, administrators, successors and assigns, hereby covenants and agrees that until the Surety shall have been discharged or relieved of and from any and all liability under such bond or bonds and proper evidence of such discharge from liability shall have been furnished to the Surety, this instrument shall be deemed to impose a claim against his assets and estate, actual and contingent, in the amount of such bond or bonds, with the same force and effect as any other debt.

12. In the event that it becomes necessary or advisable in the judgment of the Surety to control, administer, operate or manage any matters connected with the performance of any contract covered by such bond or bonds for the purpose of minimizing any possible loss or ultimate loss to the Surety, the undersigned hereby expressly covenant and agree that such action on the part of the Surety shall be entirely within its rights and remedies and as Surety.

13.

IN TESTIMONY WHEREOF, the Indemnitors have hereunto set their hands and affixed their seals this 12th day of September 2000

PRINCIPAL(S):

Southern Company Energy Marketing L.P.

By [Signature]
Vice President

By _____

By _____

INDEMNITOR(S):

Southern Company Energy Marketing L.P.

By [Signature]
Vice President

By _____

Street _____ City _____ State _____

By _____

Street _____ City _____ State _____

By _____

Street _____ City _____ State _____

By _____

Street _____ City _____ State _____

By _____

Street _____ City _____ State _____

INSTRUCTIONS

If Principal or any Indemnitor be a CORPORATION, corporate name should be set forth in full and corporate seal impressed. The signature and title of the officer executing for the Corporation should be set out immediately below. If a PARTNERSHIP, firm name should be set forth in full, with the signature(s) of the partner(s) executing in its behalf set out immediately below. EACH PARTNER should sign as an INDEMNITOR. Attach additional acknowledgment forms if necessary.

CORPORATE ACKNOWLEDGMENT

STATE OF _____ ss.:
 COUNTY OF _____
 On the _____ day of _____, 19____, before me personally came _____ to me known who, being by me duly sworn, did dispose and say, that he resides in _____ that he is the _____ of _____ the corporation described in, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

 Notary Public
 _____ County,

STATE OF _____ ss.:
 COUNTY OF _____
 On the _____ day of _____, 19____, before me personally came _____ to me known who, being by me duly sworn, did dispose and say, that he resides in _____ that he is the _____ of _____ the corporation described in, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

 Notary Public
 _____ County,

STATE OF _____ ss.:
 COUNTY OF _____
 On the _____ day of _____, 19____, before me personally came _____ to me known who, being by me duly sworn, did dispose and say, that he resides in _____ that he is the _____ of _____ the corporation described in, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

 Notary Public
 _____ County,

STATE OF _____ ss.:
 COUNTY OF _____
 On the _____ day of _____, 19____, before me personally came _____ to me known who, being by me duly sworn, did dispose and say, that he resides in _____ that he is the _____ of _____ the corporation described in, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

 Notary Public
 _____ County,

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____ ss.:
 COUNTY OF _____
 On the _____ day of _____, 19____, before me
 personally came _____
 to me known, and known to me to be the individual described in and who ex-
 ecuted the foregoing instrument and ... he duly acknowledged to me that ... he
 executed the same.

 Notary Public
 _____ County,

STATE OF _____ ss.:
 COUNTY OF _____
 On the _____ day of _____, 19____, before me
 personally came _____
 to me known, and known to me to be the individual described in and who ex-
 ecuted the foregoing instrument and ... he duly acknowledged to me that ... he
 executed the same.

 Notary Public
 _____ County,

STATE OF _____ ss.:
 COUNTY OF _____
 On the _____ day of _____, 19____, before me
 personally came _____
 to me known, and known to me to be the individual described in and who ex-
 ecuted the foregoing instrument and ... he duly acknowledged to me that ... he
 executed the same.

 Notary Public
 _____ County,

STATE OF _____ ss.:
 COUNTY OF _____
 On the _____ day of _____, 19____, before me
 personally came _____
 to me known, and known to me to be the individual described in and who ex-
 ecuted the foregoing instrument and ... he duly acknowledged to me that ... he
 executed the same.

 Notary Public
 _____ County,

PARTNERSHIP ACKNOWLEDGMENT

STATE OF _____ ss.:
 COUNTY OF _____
 On the _____ day of _____, 19____, before me
 personally came _____
 to me known and known to me to be a member of the firm of _____
 described
 in and who executed the foregoing instrument, and he thereupon acknowledged
 to me that he executed the same as and for the act and deed of the said firm.

 Notary Public
 _____ County,

STATE OF _____ ss.:
 COUNTY OF _____
 On the _____ day of _____, 19____, before me
 personally came _____
 to me known and known to me to be a member of the firm of _____
 described
 in and who executed the foregoing instrument, and he thereupon acknowledged
 to me that he executed the same as and for the act and deed of the said firm.

 Notary Public
 _____ County,

28 MAR 2001

SURETY RIDER NO. 1

To be attached to and form a part of Customs Assigned Bond No. 330004135, being Seaboard Surety Company Bond No. 404588 dated August 22, 2000 executed by SOUTHERN COMPANY ENERGY MARKETING LP. as Principal, under Importer No. 58-2338667 and Seaboard Surety Company as Surety.

It is understood and agreed that effective this date, January 19, 2001 the Principal's name on the bond is amended to:

MIRANT AMERICAS ENERGY MARKETING, LP
(incorporated in the State of Delaware)

Provided, however, that the liability of the Surety under the attached bond and under the attached bond as changed by this rider shall not be cumulative.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or warranties of the above mentioned bond, other than as stated above.

Signed, sealed and dated this 23rd day of March, 2001.

MIRANT AMERICAS ENERGY MARKETING, LP

(Principal) (Signature & Seal)

SEABOARD SURETY COMPANY

J. GREG STEWART (SURETY NO. 753)

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF LIMITED PARTNERSHIP

OF
SOUTHERN COMPANY ENERGY MARKETING L.P.

It is hereby certified that:

FIRST: The name of the limited partnership (hereinafter called the "partnership")
is: Southern Company Energy Marketing L.P.

SECOND: Pursuant to provisions of Section 17-202, Title 6, Delaware Code, the
Certificate of Limited Partnership of the partnership is amended as follows:

"The name of the limited partnership (the "partnership") is:
Mirant Americas Energy Marketing, LP."

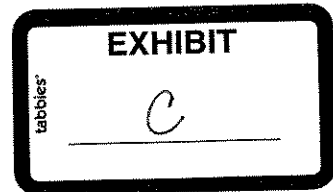
The effective time of the amendment herein certified shall be 5:00 p.m. on
January 19, 2001.

The undersigned, a general partner of the partnership, executed this Certificate of
Amendment on January 17, 2001.

Michael L. Smith
Michael L. Smith, Sr. Vice President and Chief Financial Officer,
Mirant Americas Development,
The General Partner Inc.

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 05:00 PM 01/19/2001
D10091561 - 2783676

DE LP D-CERTIF OF AMENDMENT TO CERTIF OF LP 605



State of Delaware
Office of the Secretary of State

PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "SOUTHERN COMPANY ENERGY MARKETING L.P.", CHANGING ITS NAME FROM "SOUTHERN COMPANY ENERGY MARKETING L.P." TO "MIRANT AMERICAS ENERGY MARKETING, LP", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF JANUARY, A.D. 2001, AT 5 O'CLOCK P.M.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

2783676 8100

010044656

AUTHENTICATION: 0940393

DATE: 01-29-01