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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**

_____ )	Chapter 11 Case
In re )	
MIRANT CORPORATION, <u>et al.</u> , )	Case No. 03-46590(DML)11
)	Jointly Administered
)	
Debtors. )	Requested Hearing Date and Time:
)	April 21, 2004 at 12:00 p.m.
_____ )	

**DEBTORS' MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 9019 APPROVING (I) SETTLEMENT AGREEMENT AMONG (A)  
MIRANT CORPORATION, MIRANT AMERICAS ENERGY MARKETING  
INVESTMENTS, INC., MIRANT AMERICAS ENERGY MARKETING, LP AND  
MIRANT SERVICES, LLC (B) MIRANT CANADA ENERGY MARKETING  
INVESTMENTS, INC. AND MIRANT CANADA ENERGY MARKETING, LTD. AND  
(C) VARIOUS THIRD PARTIES; AND (II) GLOBAL SETTLEMENT OF MIRANT  
CANADA CLAIMS AND ISSUES**

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

Mirant Corporation and its above-captioned affiliated debtors (collectively, the “Debtors”), as debtors and debtors-in-possession, file this motion (the “Motion”) pursuant to rule 9019 of the Federal Rules of Bankruptcy Procedure requesting an order allowing Debtors Mirant Corporation (“Mirant Corp.”), Mirant Americas Energy Marketing Investments, Inc.

(“MAEMII”), Mirant Americas Energy Marketing, LP (“MAEM”), and Mirant Services, LLC (“Mirant Services”) (collectively, the “Mirant Debtors”) to consummate a “Settlement Agreement” (the “Agreement”) with Mirant Canada Energy Marketing Investments, Inc. and Mirant Canada Energy Marketing Ltd. (collectively, “Mirant Canada”), Enron Canada Corp. (“Enron Canada”), Paramount Resources Ltd. (“Paramount”) and TransCanada PipeLines Limited, TransCanada Gas Services, Inc. and TransCanada Energy Ltd. (collectively, “TransCanada”). A copy of the Agreement is attached hereto as Exhibit A.<sup>1</sup> The Debtors also seek approval to consummate their obligations under the Agreement, and approval and authorization to resolve various claims and debts arising out of Mirant Canada’s proceeding currently pending in Canada (Action No. 0301-11094) (the “Canadian Proceeding”) under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended (the “CCAA”).

## **I. PRELIMINARY STATEMENT**

1. Since the beginning of this case, the Debtors have strived to resolve the issues, claims, and debts governed by the Canadian Proceeding. The Canadian Proceeding is complicated by the fact that (a) total claims (including those of the Debtors herein) in excess of \$800 million have been asserted against Mirant Canada in the Canadian Proceeding,<sup>2</sup> and (b) there is approximately \$86 million<sup>3</sup> of cash in the Mirant Canada estate. Many of the claims

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<sup>1</sup> Not all parties were served with a copy of the exhibits attached hereto. Any party interested in obtaining a copy of such exhibits may make a written request therefor of Debtors’ counsel.

<sup>2</sup> As discussed more fully below, the majority of such claims are asserted by the Mirant Debtors against Mirant Canada.

<sup>3</sup> Unless otherwise specified, all dollar amounts indicated herein are stated in United States currency, in some cases following conversion from Canadian dollar amounts. Applicable currency conversion rates between the U.S. and Canadian dollar will vary depending on prevailing exchange rates at the time of conversion.

filed by the Mirant Debtors were disputed by Mirant Canada or other creditors, and the material claims have been resolved through the settlement described herein.

2. The Agreement memorializes a heavily negotiated compromise of significant claims and debts in the Canadian Proceeding. Specifically, the Agreement, the Mirant Canada settlement, and the Plan of Arrangement in the Canadian Proceeding giving effect thereto, approval of which is sought herein (and assuming all necessary creditor and Court approvals under the CCAA are obtained), will result in the elimination of all the claims of third party creditors of Mirant Canada, leaving approximately \$49 million in Mirant Canada for the ultimate benefit of Mirant Corp. (and potentially more depending on how the anticipated unliquidated claim of TransCanada is resolved).<sup>4</sup> Moreover, Mirant Corp. (as the ultimate owner of Mirant Canada) will retain the benefits on account of the sale, disposition, or transfer of Mirant Canada Energy Marketing, Ltd., which holds certain losses with a nominal value of \$85 million. Finally, the Agreement avoids complex and contentious litigation regarding the Mirant Debtors' claims against Mirant Canada and allows the Canadian Proceeding to be resolved quickly, for the benefit of the Debtors and other creditors of Mirant Canada. The Motion should be granted.

## **II. PROCEDURAL BACKGROUND**

### **A. The U.S. Bankruptcy Proceedings.**

3. The Cases. On July 14, 2003 and various dates thereafter (collectively, the "Petition Date"), Mirant Corp. and 82 of its direct and indirect subsidiaries, including, the

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<sup>4</sup> Mirant Canada Energy Marketing Ltd. is 100% owned by Mirant Canada Energy Marketing Investments, Inc., which is 100% owned by MAEMII which is 100% owned by Mirant Americas, Inc., which is 100% owned by Mirant Corporation. Attached hereto as Exhibit B is a chart that demonstrates the foregoing ownership interests.

Mirant Debtors (collectively, 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 United States Code (the “Bankruptcy Code”).

4. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

5. 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.

**B. The Canadian Proceedings.**

6. Concurrently with the filing of these bankruptcy cases, Mirant Corp. caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd. and Mirant Canada Energy Marketing Investments, Inc. to commence plenary insolvency proceedings in the Court of Queen’s Bench of Alberta Judicial District of Calgary pursuant to the CCAA.<sup>5</sup> Mirant Canada is subject to the sole and exclusive jurisdiction of the Canadian Court. PricewaterhouseCoopers Inc. (“PwC”) is the Monitor in the CCAA proceedings.

**III. FACTUAL BACKGROUND.**

**A. Mirant Canada’s Business Operations and Sale of Assets.**

7. Mirant Canada was in the energy trading business. For the most part, Mirant Canada traded natural gas and natural gas-related products. Mirant Canada did not own

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<sup>5</sup> Mirant Canada Energy Trading Partnership is an Alberta partnership whose sole partners are Mirant Canada. Although the partnership was not a petitioner under the initial application, it is subject to the CCAA proceedings.

The CCAA originated in the Depression of the 1930’s as a means of providing for the reorganization of insolvent public corporations with complicated debt structures. Rather than providing detailed substantive and procedural provisions that govern reorganization, the CCAA provides a general framework within which a restructuring plan can be developed. CCAA filings operate under a high degree of judicial discretion and guidance. Existing management continues in place and a monitor is appointed to oversee the operation of the business.

or operate power plants or power generating facilities or assets. In connection with its trading operations, Mirant Canada established trading and marketing contracts, and developed trading systems and infrastructure. In early January, 2004, Mirant Canada had approximately twenty employees that ran Mirant Canada's trading operations (including commercial, operations, accounting, risk management, human resources, and information systems). Mirant Canada currently has less than ten employees.<sup>6</sup>

8. In October, 2001, Mirant Canada purchased certain business assets, including various transportation contracts from TransCanada under two agreements (collectively, the "TransCanada Purchase Agreement"). MAEM and MAEMII agreed to be jointly and severally liable for Mirant Canada's obligations under the TransCanada Purchase Agreement. Mirant Corp. guaranteed the obligations of the Mirant Canada entities under the TransCanada Purchase Agreement.

**B. Mirant Canada Liquidated Assets and Commenced the Canadian Proceeding.**

9. As a result of the general downturn in the energy trading industry, Mirant Canada sold approximately 80% of its assets to Cargill Limited ("Cargill") pursuant to an asset purchase agreement (the "Cargill Purchase Agreement"), which sale closed July 1, 2003. Under the Cargill Purchase Agreement, Mirant Canada and MAEM are jointly and severally liable for

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<sup>6</sup> As a result of Mirant Canada's cessation of operations, all Mirant Canada employees are expected to have their employment positions terminated by the end of June, 2004.

certain obligations set forth in the Cargill Purchase Agreement.<sup>7</sup> As noted, Mirant Canada commenced the Canadian Proceeding on July 14, 2003.

10. On October 2, 2003, pursuant to Court order, Mirant Canada engaged in a sales process designed to sell its Canadian trading business as a going concern. At the close of bidding there were no offers for Mirant Canada as an ongoing business. Rather, the offers consisted of various combinations of offers to purchase certain specific assets. To that end, in March 2004, Mirant Canada assigned most of the TransCanada transportation contracts to Tenaska Marketing Canada, a division of TMV Corp. (“Tenaska”).<sup>8</sup> Because such TransCanada transportation contracts were significantly “out of the money” for Mirant Canada, Mirant Canada paid Tenaska approximately \$10.8 million to accept the assignment of such unprofitable contracts. The transaction resulted in a net benefit to Mirant Canada because it allowed Mirant Canada to avoid further liability under those unprofitable contracts and determine and liquidate its losses thereunder. Additionally, as part of the Canadian Court order approving the Tenaska transaction, Mirant Canada and the Mirant Debtors contend that TransCanada agreed to marshal any claim it may have (currently valued at \$0) first against the Mirant Debtors before pursuing claims against Mirant Canada.

11. Sempra Energy Trading (Canada) Ltd. (“Sempra”) has assumed Mirant Canada’s office lease for its premises located at 650, 440 – 2<sup>nd</sup> Avenue, S.W., Calgary, Alberta, effective March 1, 2004. Mirant Canada is no longer obligated under the lease and has been

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<sup>7</sup> As of the date of this Motion, Mirant Canada and the Mirant Debtors are not aware of any contingent liabilities that could be claimed by Cargill, and any such claims would be barred by the contemplated Plan of Arrangement in the Canadian Proceeding.

<sup>8</sup> The two TransCanada transportation contracts that have not been assigned to Tenaska are long-term contracts commonly referred to as the “Portland Contracts.”

allowed by Sempra to utilize a limited space for no charge through June 2004. Mirant Canada is not a party to any other lease arrangements. Mirant Canada does continue to have and manage a few trading contracts, which were not conveyed. All other such contracts have either been assigned or rejected in the Canadian Proceeding.

**C. Mirant Canada's Assets and Liabilities.**

12. Substantially all of Mirant Canada's assets have been liquidated in the Canadian Proceeding. Consequently, as of the date hereof, Mirant Canada has approximately **\$86 million** in cash to be distributed to creditors with "provable" claims in the Canadian Proceeding. Moreover, Mirant Canada has approximately \$85 million in tax losses which will be preserved for the benefit of Mirant Corp. and its creditors if this Motion is granted.

13. Approximately \$48.3 million in significant third party claims have been filed against Mirant Canada (excluding the claims of the Mirant Debtors), summarized as follows:

Enron Canada:	\$38,500,000
Paramount:	6,500,000
Others:	<u>3,300,000</u> (approximate) <sup>9</sup>
Total:	\$48,300,000 (collectively, the "Third Party Claims").

14. In addition to the Third Party Claims, the Mirant Debtors have asserted claims against Mirant Canada in the following amounts:

Mirant Corp.	\$433,500,000
MAEM	161,000,000
MAEMII	171,000,000
Mirant Services	780,000

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<sup>9</sup> Included in this amount is a severance claim of approximately \$353,629 (CDN) in favor of one Mr. Chrumka. Mr. Chrumka has recently (and belatedly) filed an unliquidated claim for \$3 million (USD) for unpaid bonus amounts and additional severance amounts. Mirant Canada disputes Mr. Chrumka's belated claim as it is completely devoid of merit. The Debtors expect Mr. Chrumka's belated claim will be disallowed in its entirety.

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Total: \$766,280,000 (the “Mirant U.S. Claims”).

15. In addition to its cash assets, Mirant Canada has alleged claims against the following Debtors in this case:

MAEMII	\$16,265,000
Mirant Services	28,000
MAEM	<u>163,431,000</u>
Total:	\$179,724,000 (the “Mirant Canada Claims”).

Mirant Canada has asserted no claims against Mirant Corp.

**D. Analysis of the Mirant U.S. Claims in the Canadian Proceeding.**

16. Certain major creditors of Mirant Canada have taken the position that all of the Mirant U.S. Claims should be either (a) characterized as equity, as opposed to debt; or (b) equitably subordinated. The Mirant Debtors strongly disagree with the foregoing position, and contend that the Mirant U.S. Claims should be afforded the same treatment and priority as all other unsecured claims against Mirant Canada.

17. PwC, as the Monitor for Mirant Canada in the Canadian Proceeding, has submitted numerous and substantial document requests to the Mirant Debtors regarding the Mirant U.S. Claims against Mirant Canada. The Mirant Debtors have responded to such requests.

**E. The Proposed Settlement.**

18. The parties in interest in the Canadian Proceeding, and especially the Mirant Debtors, have worked diligently since the commencement of these cases to build a consensus as to how to deal with the claims, debts, and issues related to the Canadian Proceeding. To that end, a global settlement has been reached among Mirant Canada, the Mirant Debtors and certain holders of Third Party Claims (to wit, Enron Canada, Paramount, and

TransCanada) and which is memorialized by the Agreement attached hereto as Exhibit A. The Agreement, approval of which is requested herein, contemplates a Plan of Arrangement<sup>10</sup> in the Canadian Proceeding which contains the following important terms and implications:

- (a) Affected Creditors will receive cash distributions of 80% of their proven claims, representing approximately \$25.52 million;<sup>11</sup>
- (b) It is expected Mirant Canada will retain approximately \$49 million<sup>12</sup> for ultimate distribution to Mirant Corp.;
- (c) The tax losses aggregating approximately \$85 million will be preserved for the benefit of Mirant Corp.;<sup>13</sup>
- (d) The rights of any holder of a guaranty obligation owed by any of the Mirant Debtors to any of the Third Party Creditors will not be impacted;<sup>14</sup> and
- (e) The parties to the Agreement will support a Plan of Arrangement embodying the foregoing concepts to be voted upon by creditors in the Canadian Proceeding by April 16, 2004, with a creditor distribution to take place on or about May 3, 2004.

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<sup>10</sup> For purposes of voting on a Plan of Arrangement, creditors are divided into classes (in this case, a single class of "Affected Creditors") and vote on a class-by-class basis. The majority required to approve a plan is one-half in number and two-thirds in value of the creditors in each class represented at the meeting called to consider the plan. If the required majority is not achieved in a class, the plan is not binding on the creditors in that class; however, most plans require all classes accept the plan to become effective. Once approved by the creditors, the Plan of Arrangement must be approved by the Canadian court.

<sup>11</sup> The foregoing amount does not include approximately \$10.8 million of funds escrowed for TransCanada's benefit, pending resolution of their executory contracts. The \$10.8 million amount represents 80% of TransCanada's maximum claim in the event of rejection of its contracts. Mirant Canada is working on a settlement with TransCanada.

<sup>12</sup> This number may increase depending on the resolution of TransCanada's claims arising out of its executory contracts.

<sup>13</sup> Although the Agreement does not explicitly set forth (i) the foregoing amounts to which Mirant Corp. anticipates receiving from Mirant Canada, or (ii) the right to retain the \$85 million of Mirant Canada tax losses, the foregoing consideration will inure to the benefit of Mirant Corp. by default. For example, Mirant Canada has approximately \$86 million in cash and \$85 million in tax losses. The Third Party Creditors will receive approximately \$25.52 million, leaving (after deduction of other amounts) approximately \$49 million in cash in the Mirant Canada estate. The tax losses will remain with Mirant Canada for the benefit of Mirant Corp. who will retain its indirect equity interests in Mirant Canada.

<sup>14</sup> For example, Mirant Corp. executed a guaranty in favor of Enron Canada, the residual value of which (after giving effect to the transactions described herein and payments to Enron Canada in the Canadian Proceeding) will be reduced to approximately \$4.42 million.

Additional important concepts related to the settlement are discussed below.

*(i) The Enron Settlement.*

19. The most significant non-Mirant creditor in the Canadian Proceeding is Enron Canada. Enron Canada submitted a claim (consisting of several components) against Mirant Canada in the amount of approximately \$38.5 million. After substantial negotiations, Enron Canada agreed to reduce its claim to \$22.1 million. Upon consummation of the Canadian settlement (including the distribution to Enron Canada of approximately \$17.68 million on account of its compromised claim), Enron Canada will have a residual claim against Mirant Corp. for \$4.42 million as a result of a guaranty executed by Mirant Corp. in favor of Enron Canada.

*(ii) The Make-whole Payment from Mirant Canada to MAEM.*

20. Part of the settlement with Enron Canada involves “cross-entity” netting of certain sums owing to Mirant Canada and MAEM by Enron N.A., against Enron Canada’s claim against Mirant Canada, and a concomitant reduction of those claim amounts. In order to understand the purpose and benefits of the foregoing, a brief discussion regarding the business relationship between Mirant Canada, Enron Canada, and the Mirant Debtors is necessary.

21. Mirant Canada and Enron Canada had a gas trading relationship, which was memorialized by six different versions of long-form confirmations. The parties never executed a Master Trading Agreement. While there is no dispute that the transactions between the parties were terminated, there were significant disputes between the parties as to (i) when the transactions were terminated and (ii) the date to use for calculating the damages.

22. As a result of the terminations, the parties calculated the amounts owing by them and to them. The parties disagreed on the amounts owed and the net amounts owed.

Enron Canada argued that cross-entity netting was not applicable because of the lack of a formal netting agreement. Mirant Canada disagreed and contended that cross-entity netting eliminated its debt to Enron Canada. The issue was further complicated by the fact that the long-form confirmations contained six different cross-entity netting provisions.

23. In negotiations, Mirant Canada and Enron Canada agreed that partial cross-entity netting would occur; however, Enron Canada insisted that an appropriate reduction take place with respect to the claims of the Mirant Debtors' (i.e., the U.S. Debtors) against the relevant Enron U.S. entities.

24. The claims to be reduced and cross-netted pursuant to the settlement are described as follows:

- Enron Canada agreed to reduce its claim against Mirant Canada by \$7.2 million.<sup>15</sup>
- In consideration of the foregoing claim reduction, (i) Mirant Canada reduces its claim against Enron N.A. by \$1.2 million and (ii) MAEM reduces its claim against Enron N.A. by \$6.0 million (i.e., \$6 million + \$1.2 million = \$7.2 million).
- The Debtors have determined that the market value of the \$6.0 million reduction of MAEM's claim against Enron N.A. is \$2.1 million.<sup>16</sup>
- In consideration of MAEM's reduction of its claim against the Enron debtors, Mirant Canada has agreed to pay MAEM \$2.1 million as a "Make-whole Payment," thus fully compensating MAEM for the reduction of MAEM's claim against Enron N.A.

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<sup>15</sup> The partial cross-netting relates to one Confirmation of \$14.4 million. The parties agreed to a \$7.2 million settlement, and that amount is subject to cross-netting.

<sup>16</sup> This amount is calculated by multiplying the \$6.0 million reduction by the estimated percentage of recovery to be recovered by MAEM against the Enron debtors, which is 0.346%. The foregoing recovery percentage is comprised of the estimated recovery on account of MAEM's guaranty claims against Enron Corp. (0.145%) plus estimated recovery pursuant to Enron's disclosure statement and plan of reorganization (0.201%).

Attached hereto as Exhibit C is a chart that graphically depicts the foregoing description of the Make-whole Payment.

25. The Make-whole Payment and related cross-netting is an important component of the global settlement because it results in a reduction of Enron Canada's claim against Mirant Canada by \$7.2 million (thereby increasing the net benefit to Mirant Corp.). MAEM is fully compensated, at market prices, for its reduction of its claim against Enron N.A. by the \$2.1 million Make-whole Payment. In essence, MAEM is simply selling a \$6.0 million claim against Enron N.A. (valued at \$2.1 million based upon market prices) to Mirant Canada and receiving \$2.1 million in fair market value for that claim. Mirant Canada then takes the \$6.0 million plus its \$1.2 million claim (\$7.2 million total) and offsets it against Enron Canada's claim against Mirant Canada in the amount of \$7.2 million. MAEM is made whole and there is no harm or prejudice to MAEM's creditors.

*(iii) Negotiations with TransCanada.*

26. MAEM and TransCanada are parties to the Portland Contracts, which are roughly \$13.5 million "out of the money" to MAEM. Mirant Canada is jointly and severally liable for MAEM's performance with respect to the Portland Contracts. MAEM is performing under the contracts and the parties are currently in negotiations with regard to those contracts. Based upon the foregoing, TransCanada has no claim against Mirant Canada. However, if MAEM rejects the Portland Contracts, then TransCanada would likely assert a claim against Mirant Canada in the approximate amount of \$13.5 million. Given the joint and several liability associated with the TransCanada Purchase Agreement, Mirant Canada has agreed to escrow, as part of its Plan of Arrangement, eighty percent (80%) of \$13.5 million, or \$10.8 million, for the benefit of TransCanada in the event the relevant contracts are rejected.

(iv) “FX Payment” by MAEM to Mirant Canada.

27. Mirant Canada/MAEM Swaps. Prior to the Petition Date, MAEM and Mirant Canada entered into five (5) separate currency exchange swap agreements (the “Mirant Canada Swaps”). The purpose of the agreements was to hedge foreign exchange currency risk so as to provide a sufficient source of Canadian dollars to Mirant Canada to operate its trading business. In connection with the foregoing, and in order to hedge its risk under the Mirant Canada Swaps, MAEM entered into five (5) separate currency exchange swap agreements (the “Hedge Swaps”) with two different counterparties: three (3) swap agreements with Bank of Nova Scotia (“Scotia”) for 2003 and two (2) swap agreements with KBC Bank (“KBC”) for the years 2004-2005.

28. On or about the Petition Date, KBC and Scotia (collectively, the “Banks”) terminated their respective Hedge Swaps pursuant to Bankruptcy Code section 560. As part of the closing out of their respective positions, KBC paid to MAEM \$2,875,742.50<sup>17</sup> and Scotia paid MAEM a total of \$228,928.62.<sup>18</sup> Notwithstanding the termination of the Hedge Swaps by the Banks, the Mirant Canada Swaps are still operative.

29. Under the Canadian settlement, MAEM is authorized to pay \$2,540,653 to Mirant Canada under the Mirant Canada Swaps (the “FX Payment”).<sup>19</sup> The Debtors contend that

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<sup>17</sup> The foregoing amount represents \$1,973,143.35 for the April, 2004 KBC Hedge Swap and \$902,599.29 for the April 2005 KBC Hedge Swap.

<sup>18</sup> The foregoing amount represents \$77,556.82 for the August, 2003 Scotia Hedge Swap, \$76,237.91 for the September, 2003 Scotia Hedge Swap, and \$75,133.89 for the October, 2003 Scotia Hedge Swap.

<sup>19</sup> The \$2,540,653 amount is comprised of \$2,277,505 owing in connection with the 2004 KBC Hedge Swap and \$263,148 owing in connection with the Scotia Hedge Swap. The differences between the foregoing amounts and the amounts paid by the Banks to MAEM under the respective Hedge Swaps is attributable to timing and variations in the currency exchange rates. Furthermore, MAEM has calculated that a payment of \$1,136,389 may be owing to Mirant Canada in 2005 under the Mirant Canada Swaps, subject to changes in the applicable currency exchange rates.

this payment is authorized under the “*Final Order Authorizing The Debtors To (I) Comply With Terms Of Pre-Petition Trading Contracts, (II) Enter Into Post-Petition Trading Contracts In The Ordinary Course Of Business, (II) Provide Credit Support Relating To Both Pre- And Post-Petition Trading Contracts, And (IV) Authorizing Assumption Of Pre-Petition Trading Contracts*” entered on August 27, 2003 in this bankruptcy case (the “Final Trading Order”). It is important to note that MAEM’s payment under the Mirant Canada Swaps also provides favorable tax treatment.<sup>20</sup>

30. Notwithstanding the foregoing, the Debtors recognize that the payment by MAEM of the FX Payment to Mirant Canada may be the subject of scrutiny because MAEM is paying 100% of a prepetition obligation owed to Mirant Canada under the Mirant Canada Swaps. However, upon consummation of the global Canadian settlement, the FX Payment will ultimately end up benefiting Mirant Corp. as all funds remaining after payment of creditor claims

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<sup>20</sup> The favorable tax benefits are explained as follows: Mirant Canada and MAEM are subject to provisions of the Canadian Income Tax Act which imposes taxes on Mirant Canada and MAEM if Mirant Canada confers a benefit on MAEM, commonly known as the "Shareholder Benefit Rule." The Shareholder Benefit Rule would generally make MAEM primarily liable for paying Canadian withholding tax at a fifteen percent (15%) rate on amounts due, but not paid, under the Mirant Canada Swaps. The Shareholder Benefit Rule would also make Mirant Canada secondarily liable to withhold and remit taxes on account of MAEM. While MAEM is not a shareholder of Mirant Canada, the Shareholder Benefit Rule applies to either shareholders or affiliates of a Canadian entity. MAEM is an affiliate of Mirant Canada.

Among other things, the application of the Shareholder Benefit Rule would cause the Canada Customs and Revenue Agency (“Revenue Canada”) to become a creditor of Mirant Canada for the unremitted withholding tax. For two reasons, it is important that Revenue Canada not be a creditor of Mirant Canada. First, Mirant Canada’s Plan of Arrangement does not contemplate Revenue Canada as an Affected Creditor. Second, the ability of Mirant Corp. to benefit from the sale of Mirant Canada’s shares (for purposes of realizing value for the accumulated operating losses) is dependent on Revenue Canada not being a creditor of Mirant Canada.

The Mirant Debtors acknowledge that there is at least one exception (i.e., the ordinary course of business exception) to the Shareholder Benefit Rule that may be applicable to the Mirant Canada Swaps. However, any question or doubt about the application of the Shareholder Benefit Rule to the Mirant Canada Swaps may severely jeopardize Mirant Corp.’s ability to realize value from Mirant Canada’s operating losses. The Mirant Debtors, including MAEM, are of the view that any risk associated with the Shareholder Benefit Rule should be eliminated and resolved in the manner most favorable to facilitating the Canadian settlement. Thus, the Mirant Debtors believe that it is prudent for MAEM to perform under the Mirant Canada Swaps.

will reside in Mirant Canada, a debt-free indirect subsidiary of Mirant Corp., which is expected to have approximately \$49 million of cash and \$85 million of tax losses. In keeping with the foregoing, and to the extent necessary, Mirant Corp. has agreed to reimburse MAEM for the difference between what MAEM would have paid to Mirant Canada under the Mirant Canada Swaps as a percentage of payment under a confirmed plan of reorganization and the FX Payment.<sup>21</sup>

#### **IV. RELIEF REQUESTED.**

31. The Debtors request an order of this Court pursuant to rule 9019(a) of the Federal Rules of Bankruptcy Procedure authorizing: (a) the Mirant Debtors to consummate the transaction evidenced by the Agreement, including undertaking the obligation to assist with the formulation and approval of a Plan of Arrangement in the Canadian Proceeding as described herein, (b) the Mirant Debtors to compromise their claims against Mirant Canada in exchange for the retention by Mirant Canada of approximately \$49 million in cash and \$85 million of tax losses, (c) MAEM to reduce its claim against Enron N.A. by \$6 million in exchange for the Make-whole Payment, and (d) MAEM to make the FX Payment to Mirant Canada as set forth herein.

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<sup>21</sup> For example, if one assumes that MAEM ultimately pays 50% on the dollar to prepetition creditors, Mirant Corporation would be required to reimburse MAEM 50% of the FX Payment. As noted, however, the Debtors contend that the FX Payment is required under the Final Trading Order. If the Debtors are correct, no reimbursement payment by Mirant Corp. to MAEM is appropriate. The Debtors submit that all parties in interest (i.e., the Debtors, the Mirant Corp. Committee, the MAG Committee and the Equity Committee) reserve all rights in regard to the proper interpretation of the Final Trading Order and whether any reimbursement by Mirant Corp. is necessary with respect to the FX Payment.

## V. APPLICABLE AUTHORITY.

32. Bankruptcy Rule 9019(a) provides, in part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a).

33. Bankruptcy Rule 9019(a) empowers the Bankruptcy Court to approve compromises and settlements if they are “fair and equitable and in the best interest of the estate.” *In re Cajun Electric Power Cooperative, Inc.*, 119 F.3d 349, 355 (5th Cir. 1997); *see also, In re Zale Corp.*, 62 F.3d 746, 754 (5th Cir. 1995) (stating that “the ‘fair and equitable’ determination does not give the bankruptcy court jurisdiction over settlement conditions that do not bear on the court's duties to preserve the estate and protect creditors.”). A decision to accept or reject a compromise or settlement is within the sound discretion of the Court. *See 9 Collier on Bankruptcy* ¶ 9019.02 (15th ed. Rev. 2001). “Compromises are favored in bankruptcy” because they minimize the costs of litigation and further the parties’ interest in expediting administration of a bankruptcy estate. *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (citing *9 Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. Rev. 2001)). The settlement need not result in the best possible outcome for the debtor, but must not “fall beneath the lowest point in the range of reasonableness.” *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). Basic to the process of evaluating proposed settlements, then, is “the need to compare the terms of the compromise with the likely rewards of litigation.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 425 (1968).

34. In order to determine whether a settlement is fair and equitable, this Court should consider and evaluate the following factors:

- (a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law;
- (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and
- (c) all other factors bearing on the wisdom of the compromise.

*See, Cajun Electric* at 356 (citations omitted). Each of these factors will be discussed below:

**A. Probability of Success in the Litigation.**

35. The Mirant Debtors have asserted claims (including contingent amounts) against Mirant Canada in the amount of approximately \$766,280,000. Significant analysis has been undertaken by the Mirant Debtors, PwC, and some of the other major creditors in the Canadian Proceeding as to whether the Mirant Claims should be reclassified as equity or equitably subordinated. Although the Mirant Debtors believe strongly in their position that the Mirant Claims are valid, it is not clear as a matter of Canadian law how such claims would be characterized. This lack of clarity under Canadian law makes analysis of this factor difficult, and weighs in favor of a consensual compromise.

**B. Complexity, Likely Duration of the Litigation, and Expense.**

36. Because of the complexity of the legal and factual issues regarding whether the Mirant Claims are true debts, or merely represent equity interests, or if debt should be subordinated on equitable grounds, the issue would undoubtedly be litigated by all relevant constituencies. Such litigation would significantly delay resolution of the Canadian Proceeding, and any ultimate distribution to the Mirant Debtors on account of their claims against Mirant Canada. The Debtors have been informed by their Canadian counsel that the litigation of such

issues could likely take several years to finally resolve and would likely be subject to various appeals.

37. The Mirant Debtors would bear the burden of proving that the Mirant U.S. Claims represent true debts, rather than equity interests. Satisfying that burden would be complicated because they involve unmatured indemnification obligations, intercompany transactions and other non-liquidated, contingent amounts. Such debts would have to be proved by reference to the books and records, and practices and procedures, of the Mirant Debtors and Mirant Canada as they are not evidenced by formal contracts or agreements.

38. Moreover, given the dollars at stake, the expense of such litigation, which is factually and legally complex, would be significant. The Mirant Debtors expect such litigation to be prosecuted by a trustee, and/or other major creditor constituencies (including Enron Canada, Paramount, and TransCanada) against the Mirant Debtors. The determination of whether a claim represents debt or equity involves many factors and would require significant expert testimony, as well as testimony by percipient witnesses.

39. Finally, unlike the bankruptcy laws in the U.S., in the absence of the proposed settlement, it is likely that the Mirant Canada CCAA proceeding would be converted to a straight liquidation with the equivalent of a trustee appointed, thereby adding an additional and unnecessary layer of administrative expenses. In such circumstances, the value of the tax losses would be at risk.

**C. Other Factors Weigh in Favor of Approving the Settlement.**

40. The Debtors specifically highlight the Make-whole Payment (and accompanying cross-netting and reduction of MAEM's claim against Enron N.A.) and the FX Payment. As discussed above, the foregoing components of the global settlement inure to the

benefit of the Debtors' estates by increasing the cash to be ultimately distributed to Mirant Corp. MAEM's estate is not harmed by the reduction of its claim against Enron N.A. in the amount of \$6 million because the Make-whole Payment by Mirant Canada in the amount of \$2.1 million (which equals the fair market value attributable to such reduction) fully compensates MAEM for reducing its claim. Similarly, MAEM's estate is not harmed by making the FX Payment because the payment is authorized by the Final Trading Order. If the payment is not appropriate, Mirant Corp. is obligated to reimburse MAEM for the amount of the FX Payment that exceeds what Mirant Canada would have otherwise received as an ordinary prepetition creditor of MAEM under MAEM's plan of reorganization. In both instances, the Make-whole Payment and the FX Payment enhances the overall settlement, and fully compensates MAEM for any loss so the MAEM estate is not unfairly shouldering the economics of the settlement with Enron Canada.

41. As noted, the Mirant Debtors have worked since the beginning of these cases to resolve the issues presented in the Canadian Proceedings. The parties in interest in the Canadian Proceedings have aggressively prosecuted their arguments that the claims of the Mirant Debtors should be recharacterized or equitably subordinated. If the Agreement is not approved, then the Plan of Arrangement currently contemplated cannot go forward. The Mirant Debtors will then be embroiled in complex and significant litigation regarding their claims. The Mirant Debtors have determined that if the Mirant Claims are in fact subordinated, then the best they could hope to receive is approximately \$20 million, net of litigation costs. Litigation would likely take years to resolve. The risk is obvious: by approving the Agreement, the Mirant Debtors ensure Mirant Canada will have residual cash of at least approximately \$49 million by approximately May 3, 2004, with no significant third party creditor claims and the avoidance of significant litigation costs. The settlement of Canadian claims and issues will also allow

management to focus on core restructuring issues and preserve approximately \$49 million of value. The Mirant Debtors also ensure their ability to preserve \$85 million of tax losses for the benefit of their estates.

42. By avoiding the litigation costs that would attend litigating the Mirant U.S. Claims, the Debtors are able to focus on their core reorganization issues. Moreover, the intercompany issues between Mirant Canada and the Mirant Debtors will be resolved as a result of the Debtors' plan of reorganization in this case.

**VI. CONCLUSION**

WHEREFORE, based upon the foregoing, the Debtors request that the Court grant the relief requested herein, and any other relief that is necessary and proper.

Dated: Fort Worth, Texas  
April 12, 2004

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

By: /s/ Robin E. Phelan  
Robin E. Phelan  
State Bar No. 15903000  
Judith Elkin  
State Bar No. 06522200  
Ian T. Peck  
State Bar No. 24013306

-and-

Thomas E Lauria  
State Bar No. 11998025  
Craig H. Averch  
State Bar No. 01451020  
WHITE & CASE LLP  
Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131  
(305) 371-2700

ATTORNEYS FOR THE DEBTORS AND  
DEBTORS-IN-POSSESSION

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a true and correct copy of the forgoing to Bankruptcy Services, LLC on April 12, 2004 and directed them to effect service upon all persons on the Limited Service List via email, facsimile or overnight courier (without exhibits), and the addressees below via email, facsimile or overnight delivery (with exhibits).

A. Robert Anderson  
Blake, Cassels & Graydon LLP  
3500, 855 - 2nd Street, S.W.  
Calgary, AB T2P 4J8

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Andrews & Kurth L.L.P.  
1717 Main Street, Suite 3700  
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Brown Rudnick Berlack Israels LLP  
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City Place I, 185 Asylum Street  
Hartford, CT 06103-3402

David Bennett  
Thompson & Knight LLP  
1700 Pacific Avenue, Suite 3300  
Dallas, Texas 75201-4693

/s/ Robin E. Phelan

# **Exhibit A**

**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** dated effective the 15th day of March, 2004 is made  
**BETWEEN:**

**MIRANT CORPORATION,**  
a Delaware corporation with offices in Atlanta, GA ("Mirant Corp.");  
**MIRANT AMERICAS ENERGY MARKETING INVESTMENTS, INC.,**  
a Georgia corporation with offices in Atlanta, GA ("MAEMII");  
**MIRANT AMERICAS ENERGY MARKETING, LP,**  
a Delaware limited partnership with offices in Atlanta, GA ("MAEMLP"); and  
**MIRANT SERVICES, LLC,**  
a Delaware limited liability company with offices in Atlanta, GA ("Mirant Services")  
(individually and collectively, the "Mirant U.S. Affiliates")

**OF THE FIRST PART**

**AND:**

**MIRANT CANADA ENERGY MARKETING INVESTMENTS INC.,**  
a body corporate incorporated pursuant to the laws of Alberta, Canada; and  
**MIRANT CANADA ENERGY MARKETING LTD.,**  
a body corporate incorporated pursuant to the laws of Alberta, Canada  
(individually and collectively, "Mirant Canada")

**OF THE SECOND PART**

**AND:**

**ENRON CANADA CORP.,**  
a body corporate pursuant to the laws of Canada  
(**"Enron Canada"**)

**OF THE THIRD PART**

**AND:**

**PARAMOUNT RESOURCES LTD.,**  
a body corporate pursuant to the laws of Alberta, Canada  
(**"Paramount"**)

**OF THE FOURTH PART**

**AND:**

**TRANSCANADA PIPE LINES LIMITED.,**  
a body corporate incorporated pursuant to the laws of Canada;  
**TRANSCANADA GAS SERVICES INC.,**  
a body corporate incorporated pursuant to the laws of Canada; and  
**TRANSCANADA ENERGY LTD.**  
a body corporate incorporated pursuant to the laws of Canada  
(individually and collectively, "TransCanada")

**OF THE FIFTH PART**

(all of the foregoing hereinafter collectively referred to as the "Parties")

**WHEREAS:**

- A. Mirant Canada is subject to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, C. c-36 as amended ("CCAA"), in proceedings initiated by the Order of the Honourable Madame Justice Kent pronounced July 15, 2003 in Court of Queen's Bench of Alberta ("Alberta Court") Action No. 0301-11094, ("CCAA Proceedings");
- B. The Mirant U.S. Affiliates are subject to proceedings in the U.S. Bankruptcy Court in the Northern District of Texas under Chapter 11 of Title 11 of the United States Code, Case No. 03-46591-DML ("U.S. Chapter 11 Proceedings");
- C. The Mirant U.S. Affiliates each filed Proofs of Claim in the CCAA Proceedings dated September 30, 2003 claiming against Mirant Canada as unsecured creditors in respect of the following:
1. Mirant Corp. claims CDN \$387,742,242.64 in connection with letter of credit facilities issued on behalf Mirant Canada; CDN \$214,596,500 for contingent liabilities of Mirant Canada in connection with guarantees provided by Mirant Corp.; unquantified contingent claims arising pursuant to unlimited guarantees provided by Mirant Corp.; plus interest and/or charges in respect of the foregoing amounts;
  2. MAEMII claims CDN \$330,000,000 (plus interest and/or charges) in respect of contingent liabilities arising from a promissory note for inter-company debt and an indemnity under a purchase and sale agreement;
  3. MAEMLP claims CDN \$22,007,065.54 for accounts receivable; CDN \$283,823,700 for contingent liabilities arising from two indemnities under certain purchase and sale agreements; and a further CDN \$5,000,000 in contingent liabilities of Mirant Canada in connection with guarantees provided by MAEMLP; plus interest and/or charges in respect of the foregoing amounts; and
  4. Mirant Services claims CDN \$1,084,170.40 for purchase invoices paid on behalf of Mirant Canada and allocation of corporate overhead.
- D. Enron Canada filed a Notice of Claim in the CCAA Proceedings dated September 26, 2003, claiming, as an unsecured creditor of Mirant Canada, the amount of CDN \$53,157,811 in connection with contractual trading obligations of Mirant Canada (the "Enron Canada Claim");
- E. Paramount filed a Notice of Claim in the CCAA Proceedings, claiming, as an unsecured creditor of Mirant Canada, the amount of USD \$6,450,645 in connection with contractual

- 3 -

trading obligations of Mirant Canada (the "Paramount Claim"), which has been allowed by Mirant Canada.

- F. In this Settlement Agreement, "Non-related Creditors" means creditors of Mirant Canada other than the Mirant U.S. Affiliates.
- G. TransCanada has an expected claim against Mirant Canada in the CCAA Proceedings in the amount of approximately USD \$14 million (the "TransCanada Portland Contingent Claim") for contingent liabilities of Mirant Canada in connection with a Gas Transportation Contract for Firm Transportation Service commencing March 9, 1999 and ending October 31, 2018 between TransCanada Gas Services Inc. and Portland Gas Transmission for 4,000 MMBtu/day at primary delivery point near Draicut; and a Gas Transportation Contract For Firm Transportation Service starting November 1, 2018 and ending March 9, 2019 between TransCanada Gas Services Inc. and Portland Gas Transmission for 15,000 MMBtu/day at primary delivery point near Draicut; and
- H. Enron Canada, Paramount and TransCanada have agreed to settle their respective claims against Mirant Canada in accordance with the terms of this Settlement Agreement ("Agreement").

**NOW THEREFORE** this Agreement witnesses that in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Mirant Canada acknowledges that it is indebted to Enron Canada in the net amount of CDN \$31,960,147.14 ("Enron Canada's Net Proven Claim") after all netting, set-off and deductions and shall allow the Enron Canada Claim in the CCAA Proceedings in the amount of CDN \$31,960,147.14.
2. Mirant Canada shall as soon as practicable, file a plan of compromise and arrangement in the CCAA Proceedings addressed to and affecting all Non-related Creditors and providing for:
  - (a) payment to all Non-related Creditors of 80% (i.e. \$0.80 on the dollar) of their proven claims, promptly following approval of the plan of compromise and arrangement by the Alberta Court; and
  - (b) reservation and preservation of any claims any Non-related Creditors may have against any obligor(s) or guarantor(s) of obligations of Mirant Canada to such Non-related Creditors, including, without limitation, the claim of Enron Canada referred to in paragraph 5 below and TransCanada's Androscoffin Contingent Claim (as defined in the Order granted February 4, 2004 by Justice LoVecchio in the CCAA Proceedings);

(the "Plan").

3. The Parties shall each consent to the Plan. The Non-related Creditors who are Parties shall:
  - (a) vote their respective claims against Mirant Canada in favour of the Plan;
  - (b) support the Plan by making submissions in favour of the Plan in any hearing before the Alberta Court during which the Plan and its fairness is considered by the Alberta Court;
  - (c) not, prior to termination of this Agreement in accordance with paragraph 8 below, sell, transfer, assign or in any other way convey their respective claims against Mirant Canada or an interest therein, without the prior written consent of Mirant Canada and the Mirant U.S. Affiliates.
4. If the Plan is approved at a meeting of creditors of Mirant Canada ("Creditors Meeting") by the requisite majorities of creditors (in accordance with the provisions of the CCAA) and is approved by the Alberta Court, promptly thereafter, Mirant Canada shall pay or cause to be paid to all Non-related Creditors, 80% (i.e. \$0.80 on the dollar) of their respective proven claims.
5. Mirant Corp. acknowledges that pursuant to its guarantee of Mirant Canada's obligations to Enron Canada, after payment by Mirant Canada to Enron Canada of \$0.80 on the dollar of Enron Canada's Net Proven Claim, Enron Canada has a claim against Mirant Corp. for the unpaid balance of Enron Canada's Net Proven Claim, namely CDN \$6,392,029.43 ("Enron Canada's Deficiency"). Promptly following payment by Mirant Canada to Enron Canada of 80% of Enron Canada's Net Proven Claim:
  - (a) Mirant Corp. and Enron Canada shall enter into a stipulation in the U.S. Chapter 11 Proceedings that Enron Canada shall be granted an allowed unsecured claim against Mirant Corp. in the U.S. Chapter 11 Proceedings in respect of and in the amount of Enron Canada's Deficiency. The stipulation shall only be binding or enforceable upon Enron Canada and Mirant Corp. if ordered and entered by the U.S. Bankruptcy Court having jurisdiction in the U.S. Chapter 11 Proceedings ("U.S. Bankruptcy Court Order"); and
  - (b) Mirant Corp. shall promptly apply for and use its best efforts to promptly obtain the U.S. Bankruptcy Court Order.
6. The TransCanada Portland Contingent Claim shall be proven (in accordance with claims process established in the CCAA Proceedings) in an amount allowed by Mirant Canada with the consent of Mirant Corp. or as may be determined by the Alberta Court (or on appeal therefrom) in the event the amount of such claim is disputed. If such claim is disputed, the only parties to the dispute shall be TransCanada, Mirant Canada and Mirant Corp.

7. The Parties agree to proceed as follows in the CCAA Proceedings:
- (a) Mirant Canada and Enron Canada shall each apply promptly to adjourn *sine die* their respective applications currently scheduled for hearing on March 30, 2004, being:
    - (i) an application by Mirant Canada for approval of payment of 2003 Short Term Incentive Payments to four employees; ("Bonus Application"); and
    - (ii) the application by Enron Canada for hearing of its Petition for a Receiving Order against Mirant Canada ("Receiving Order Application");
  - (b) Mirant Canada or Enron Canada shall apply promptly for an order adjourning *sine die* the cross-examinations on affidavits filed in support of their respective applications currently scheduled to be held during the week of March 14, 2004;
  - (c) Mirant Canada shall promptly apply for an Order setting a timetable for a Creditors Meeting to consider and vote on the Plan, to be held by April 16, 2004 and establishing dates for the advertising and mailing of notice of the Creditors Meeting and of any materials to be considered at the Creditors Meeting; and
  - (d) Parties shall consent to adjournment of the Bonus and Receiving Order Applications and shall consent to the other applications referred to in (b) and (c) above.
8. If the approvals, consents, non-objections and authorizations referred to in paragraph 11 below are not all obtained and written confirmation thereof provided on or before April 21, 2004, or if the Plan is not approved at the Creditors Meeting by the requisite majorities of creditors (in accordance with the provisions of the CCAA) or is not approved by the Alberta Court, or if such of the Parties as are Non-related Creditors do not all receive payment from Mirant Canada of 80% of their proven claims by May 3, 2004, then at the option of any of the Parties promptly exercised on notice to the other Parties, this Agreement shall terminate. If this Agreement is terminated in accordance with this provision, then notwithstanding any other term of this Agreement, this Agreement shall be without prejudice to the respective rights of the Parties, and, without limiting the generality of the foregoing, Enron Canada or any other Non-related Creditor may subject to paragraph 10 below proceed with an application against Mirant Canada for a receiving order in bankruptcy.
9. If the approvals, consents, non-objections and authorizations referred to in paragraph 11 below are not all obtained and written confirmation thereof provided

on or before April 21, 2004, or if this Agreement is terminated in accordance with paragraph 8 above, or if Non-related Creditors have been paid 80% of their proven claims by Mirant Canada, Mirant Canada may, subject to paragraph 10 below, proceed with its Bonus Application.

10. If pursuant to paragraphs 8 or 9 above Mirant Canada, Enron Canada, or others proceed with the Bonus Application or Receiving Order Application, the examinations on affidavits, adjourned pursuant to paragraph 7(b) above, shall be rescheduled so that they are completed prior to hearing the Bonus Application or Receiving Order Application.
11. Paragraphs 1, 3, 4, 5 and 6 of this Agreement shall not take effect unless on or before April 21, 2004 Enron Canada, Mirant Canada and the Mirant U.S. Affiliates have each obtained and provided written confirmation to the other Parties that they have obtained any necessary internal, parental, creditors' committee or subcommittee, court or other approvals, consents, non-objections after disclosure, or authorizations to enter into this Agreement.
12. Notwithstanding paragraph 3 above, if the approvals, consents, non-objections and authorizations referred to in paragraph 11 above are not all obtained and written confirmation thereof provided by the time of the Creditors Meeting, then Enron Canada shall be entitled to vote the entire amount of the Enron Canada Claim either for or against the Plan. If in such case Enron Canada votes in favour of the Plan and/or otherwise complies with paragraph 3 of the Agreement, Enron Canada shall not thereby be deemed to have obtained or provided written confirmation to the other Parties of the approvals, consents, non-objections and authorizations referred to in paragraph 11 above.
13. If this Agreement has not been terminated and pursuant to the Plan Enron Canada and Paramount have each been paid 80% of their proven claims, they each agree not to pursue, assist or contribute to any preference or other claim arising from the sale of transportation to Tenaska Marketing Canada, a division of TMV Corp., approved by Order granted February 4, 2004 by Justice LoVecchio in the CCAA Proceedings.
14. Any notices which may be given under or pursuant to this Agreement, shall be in writing and may be given to the parties as follows:

To Mirant U.S. Affiliates:  
c/o Mirant Corporation  
1155 Perimeter Center West  
Atlanta, Georgia 30338-5416  
Fax: (678) 579-5891

Attention: Mr. Jay Wilson

- 7 -

Copy to: Tristram J. Mallett  
Osler Hoskin & Harcourt LLP  
1900, 333 - 7th Avenue S.W.  
Calgary, AB T2P 2Z1  
Fax: (403) 260-7024

To Mirant Canada:  
#650, 440 - 2<sup>nd</sup> Avenue S.W.  
Calgary, AB T2P 5E9  
Fax: (403) 781-8799

Attention: Mr. Rod Pocza

Copy to: Frank R. Dearlove  
Bennett Jones LLP  
4500, 855 - 2<sup>nd</sup> Street S.W.  
Calgary, AB T2P 4K7  
Fax: (403) 265-7219

To Enron Canada Corp.:  
1420, 330 - 5 Avenue S.W.  
Calgary, AB  
T2P 0L4  
Fax: (403) 974-6706

Attention: Mr. Ron Panchuk

Copy to A. Robert Anderson  
Blake, Cassels & Graydon LLP  
3500, 855 - 2<sup>nd</sup> Street S.W.  
Calgary, AB T2P 4J8  
Fax: (403) 260-9700

To Paramount Resources Ltd.  
4700, 888 - 3<sup>rd</sup> Street S.W.  
Calgary, AB  
T2P 5C5  
Fax: (403) 262-7994

Attention: Mr. Chuck Morin

Copy to Brian P. O'Leary, Q.C.  
Burnet, Duckworth & Palmer LLP  
1400, 350 - 7<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 3N9

Fax: (403) 260-0332

To TransCanada  
450 - 1<sup>st</sup> Street S.W.  
Calgary, AB T2P 5H1  
Fax: (403) 920-2200

Attention: Mr. Howard Kvisle

Copy to Howard Gorman  
Macleod Dixon LLP  
3700, 400 - 3rd Avenue S.W.  
Calgary, AB T2P 4H2  
Fax: (403) 264-5973

15. This Agreement may be executed in counterpart and by facsimile.

IN WITNESS OF WHICH the Parties have executed this Settlement Agreement effective March 15, 2004.

MIRANT CORPORATION

Per: [Signature]  
Name: Curtis Morgan  
Title: Executive Vice President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MIRANT AMERICAS ENERGY  
MARKETING INVESTMENTS, INC.

Per: [Signature]  
Name: Curtis Morgan  
Title: Executive Vice President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT AMERICAS ENERGY  
MARKETING, LP**

Per: [Signature]  
Name: Curtis Morden  
Title: Executive Vice President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT SERVICES, LLC**

*3/10*  
Per: [Signature]  
Name: Curtis Morden  
Title: Executive Vice President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT CANADA ENERGY  
MARKETING INVESTMENTS INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT CANADA ENERGY  
MARKETING LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ENRON CANADA CORP.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PARAMOUNT RESOURCES LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSCANADA PIPE LINES LIMITED**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSCANADA GAS SERVICES INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT AMERICAS ENERGY  
MARKETING, LP**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT CANADA ENERGY  
MARKETING INVESTMENTS INC.**

Per: \_\_\_\_\_  
Name: *ROD POZZA*  
Title: *PRESIDENT*

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ENRON CANADA CORP.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSCANADA PIPE LINES LIMITED**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT SERVICES, LLC**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT CANADA ENERGY  
MARKETING LTD.**

Per: \_\_\_\_\_  
Name: *ROD POZZA*  
Title: *PRESIDENT*

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PARAMOUNT RESOURCES LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSCANADA GAS SERVICES INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT AMERICAS ENERGY  
MARKETING, LP**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT SERVICES, LLC**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT CANADA ENERGY  
MARKETING INVESTMENTS INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

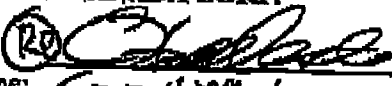
Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT CANADA ENERGY  
MARKETING LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ENRON CANADA CORP.**

Per: RO   
Name: Craig Hildebrand  
Title: President and CEO

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PARAMOUNT RESOURCES LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSCANADA PIPE LINES LIMITED**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSCANADA GAS SERVICES INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT AMERICAS ENERGY  
MARKETING, LP**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT CANADA ENERGY  
MARKETING INVESTMENTS INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ENRON CANADA CORP.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSCANADA PIPE LINES LIMITED**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT SERVICES, LLC**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

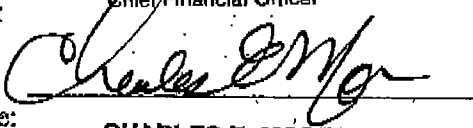
**MIRANT CANADA ENERGY  
MARKETING LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PARAMOUNT RESOURCES LTD.**

Per:   
Name: **BERNARD K. LEE**  
Title: Chief Financial Officer

Per:   
Name: **CHARLES E. MORIN, LL.B.**  
Title: General Counsel  
Corporate Secretary

**TRANSCANADA GAS SERVICES INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT AMERICAS ENERGY  
MARKETING, LP**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT CANADA ENERGY  
MARKETING INVESTMENTS INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ENRON CANADA CORP.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSCANADA PIPE LINES LIMITED**

Per: Garry Lamb  
Name: **GARRY LAMB**  
Title: **Vice-President, Risk Management**

Per: Ron Cook  
Name: **Ron Cook**  
Title: **Vice President, Taxation**

**MIRANT SERVICES, LLC**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIRANT CANADA ENERGY  
MARKETING LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PARAMOUNT RESOURCES LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSCANADA GAS SERVICES INC.**

Per: Garry Lamb  
Name: **GARRY LAMB**  
Title: **Vice-President, Risk Management**

Per: Ron Cook  
Name: **Ron Cook**  
Title: **Vice President, Taxation**

**TRANSCANADA ENERGY LTD.**

Per: Garry Lamb

Name: **GARRY LAMB**

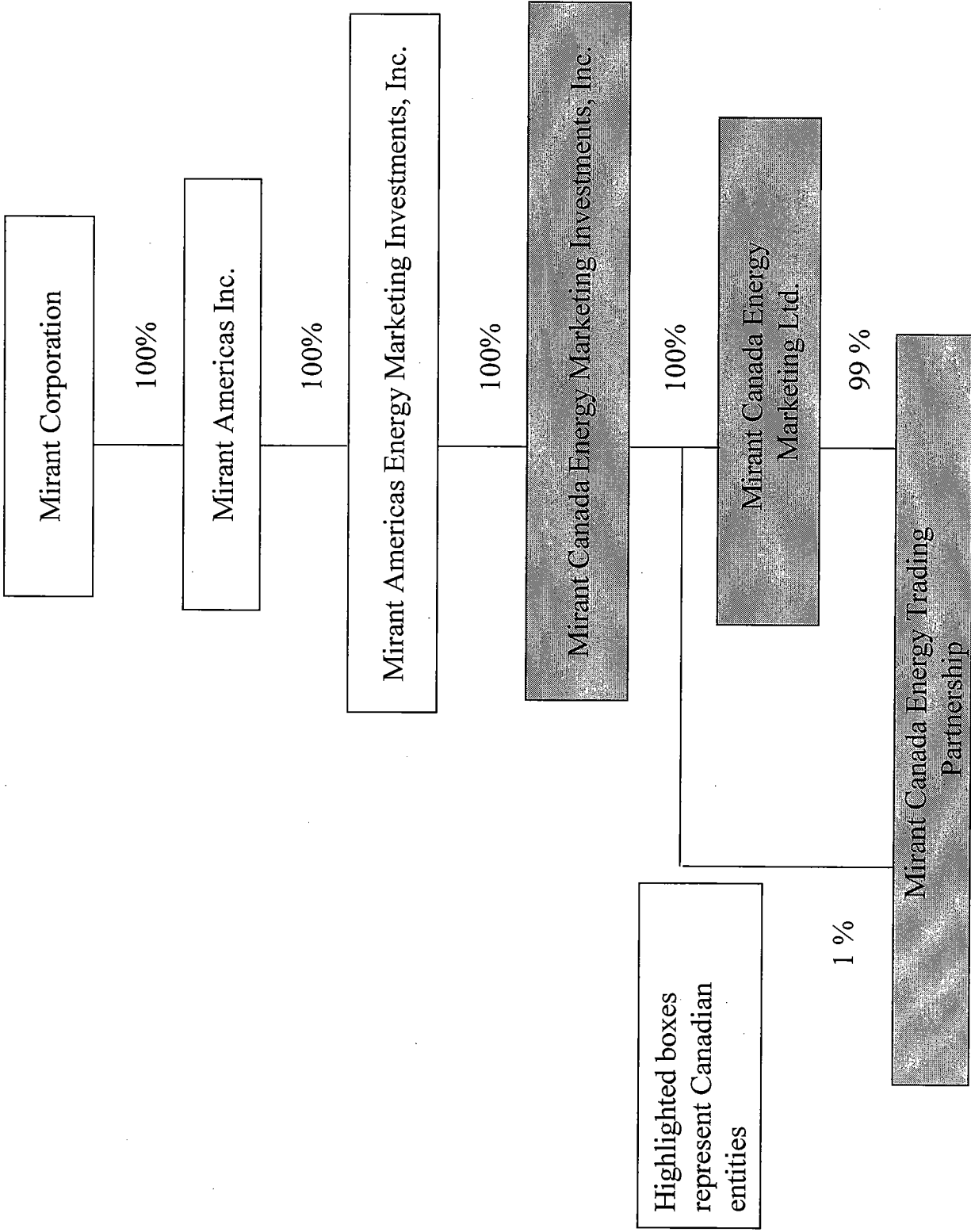
Title: **Vice-President, Risk Management**

Per: Ron Cook

Name: **Ron Cook**

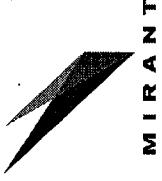
Title: **Vice President, Taxation.**

# **Exhibit B**

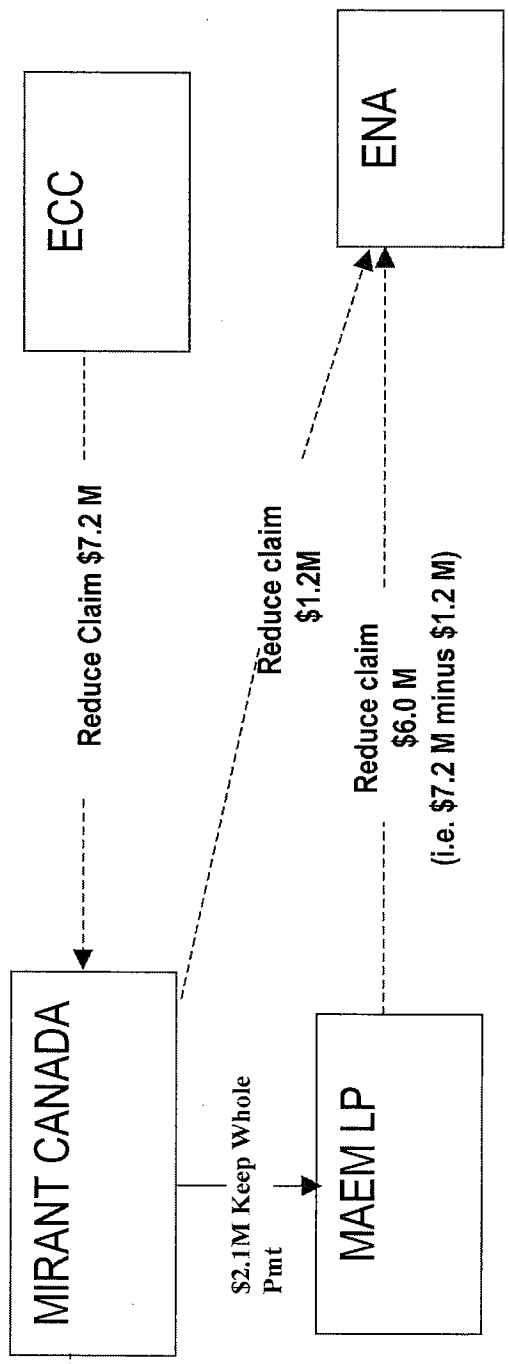


#285330v1

# **Exhibit C**



# Mirant Claims and Enron Claims Netting Settlement



Mirant Canada will make a "keep whole" payment to MAEM LP equal to the market value of the \$6.0 M reduction of MAEM's claim against ENA.

\$6.0M X \$.346 = US \$2.1M "keep whole payment"

* \$.145 =	Estimated recovery on Enron Corp. Guaranty Claims	statement
* \$.201 =	Estimated recovery pursuant to the Enron disclosure	
and plan		
* \$.346 =	Total estimated recovery from Enron	

All amounts shown in US \$ based on exchange rate of 1.3929 (as of July 15, 2003)