

Paul N. Silverstein
S.D.N.Y. Bar No. PS-5098
Richard Baumfield
S.D.N.Y. Bar No. RB-1489
ANDREWS KURTH LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 850-2800
Facsimile: (212) 850-2929

Fredric Sosnick
S.D.N.Y. Bar No. FS-3326
Scott C. Shelley
S.D.N.Y. Bar No. SS-1013
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 848-4000
Facsimile: (212) 848-7179

Jason S. Brookner
Texas State Bar No. 24033684
ANDREWS KURTH LLP
1717 Main Street, Suite 3700
Dallas, Texas 75201
Telephone: (214) 659-4400
Facsimile: (214) 659-4401

**COUNSEL TO THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF MIRANT CORPORATION, *ET AL.***

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

IN RE: § Chapter 11
MIRANT CORPORATION, *et al.*, §
Debtors. § Case No. 03-46590-DML-11
§
§ Jointly Administered

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF MIRANT CORPORATION, *ET AL.* PURSUANT TO
RULES 9023 AND 9024 OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE FOR PARTIAL RECONSIDERATION OF THE COURT'S
JULY 30, 2004 *SUA SPONTE* MEMORANDUM ORDER
EXPANDING ROLE OF EXAMINER**

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

The Official Committee of Unsecured Creditors of Mirant Corporation, *et al.* (the
“Mirant Committee”) for its Motion Pursuant to Rules 9023 and 9024 of the Federal Rules of
Bankruptcy Procedure for Partial Reconsideration of the Court’s *Sua Sponte* Memorandum

Order Expanding Role of Examiner, dated July 30, 2004 (the “Memorandum Order”), respectfully represents:

1. On July 6, 2004, an associate at the Examiner’s counsel’s law firm sent to the undersigned and, among others, the Court, an e-mail, which suggested that an impromptu status conference with the Court had occurred that morning. A responsive e-mail from one of the Mirant Committee’s counsel inadvertently included the Court on its distribution list. After discussions in open Court on July 7, 2004, and an exchange of correspondence, the Court asked the principal parties whether they wanted the Court to continue certain practices in connection with the administration of these Chapter 11 cases, including holding monthly status conferences, monitoring agreed orders and the status of pending matters and discovery, and attempting to address the logistical needs of the parties.¹ In response, by letter dated July 9, 2004 (the “MAGI Committee Letter”), the MAGI Committee asked the Court to cease holding monthly status conferences and requested that all further court related matters be raised only upon formal notice and motion.

2. In reaction to, *inter alia*, the MAGI Committee Letter, the Court entered the Memorandum Order, which relied on the “totality of the record,” and set forth certain of the Court’s concerns over the administration of these cases.² Among other things, the Memorandum Order authorizes and directs the Examiner to conduct monthly status conferences and to take a position on any motion before the Court. Memorandum Order ¶ 1 at p. 9, and ¶ 3 at p. 10.) The Memorandum Order provides that parties will not have access to a record of the Examiner’s monthly status conferences: “[t]he Examiner shall make a recording of each such

¹ See Memorandum Order p. 4 and n. 7.

² Memorandum Order p. 8 n. 12.

status conference which shall not be provided to any entity (including the court) absent order of the court upon cause shown.” *Id.* at p. 9.

3. The Mirant Committee respectfully requests that the Court reconsider and modify that portion of the Memorandum Order described above. The Mirant Committee requests that Court-supervised monthly status conferences be re-instituted. Notwithstanding the MAGI Committee’s request that the Court cease conducting such status conferences, such conferences are specifically authorized by Section 105(d) of the Bankruptcy Code and, with an appropriate record, provide a forum for the Court and parties in interest to attempt to address myriad case matters. Vesting the Examiner with authority henceforth to conduct status conferences without access to the record of such conferences except upon a showing of “cause” would do a disservice to all concerned by cloaking such conferences under an inappropriate shroud of secrecy. Because the Court has indicated that it may give some deference to the Examiner’s views, a complete record of status conferences presided over by the Examiner is essential to insure fairness to all parties in interest.

4. In the Memorandum Order, the Court further directed the Examiner to nominate a representative to the Fee Review Committee. Memorandum Order ¶ 8 at p. 11. In response, the Examiner designated one of his Court-retained attorneys rather than a business person. Such a designation is in marked contrast to the designees sitting on the Fee Review Committee from each of the other principal constituents in this case – none of whom are outside retained counsel to constituencies in these cases. The Mirant Committee believes, and respectfully requests, that the Memorandum Order should be clarified to provide that the Examiner shall designate to the Fee Review Committee a business person as opposed to one of his attorneys.

WHEREFORE, the Mirant Committee respectfully requests that the Court reconsider and modify the portion of its Memorandum Order to (A) provide for the Court to reinstitute monthly status conferences consistent with the practice previously followed by the Court, including with an available record, or (B) authorize and direct the Examiner to conduct monthly case status conferences with a record that would be available to parties in interest, and (C) clarify that the Examiner's designee to the Fee Review Committee should be a business person.

Respectfully submitted this 9th day of August, 2004.

ANDREWS KURTH LLP

By: /s/ Paul S. Silverstein
Paul N. Silverstein
S.D.N.Y. Bar No. PS-5098
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 850-2800
Facsimile: (212) 850-2929

Jason S. Brookner
State Bar No. 24033684
1717 Main Street, Suite 3700
Dallas, Texas 75201
Telephone: (214) 659-4400
Facsimile: (214) 659-4401

SHEARMAN & STERLING LLP

Fredric Sosnick
S.D.N.Y. Bar No. FS-3326
Scott C. Shelley
S.D.N.Y. Bar No. SS-1013
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 848-4000
Facsimile: (212) 848-7179

**COUNSEL TO THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS
OF MIRANT CORPORATION, *ET AL.***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of August, 2004, he caused a true and correct copy of the foregoing document to be served on the parties appearing below via e-mail and first class U.S. Mail, and on the Debtor's Master Service List via first class U.S. mail, postage prepaid.

/s/ Jason S. Brookner
Jason S. Brookner

Thomas E. Lauria, Esq.
White & Case LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, Florida 33131
Email: tlauria@whitecase.com
Attorneys for the Debtors

Robin Phelan
Judith Elkin
Haynes and Boone, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202
Email: phelanr@haynesboone.com
elkinj@haynesboone.com
Attorneys for the Debtors

Deborah Williamson
Tom Rice
Cox & Smith Incorporated
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205
Email: ddwillia@coxsmith.com
trice@coxsmith.com
Attorneys for the MAGI Committee

Bruce Zirinsky
Gregory Petrick
Cadwalader Wickersham & Taft
100 Maiden Lane
New York, New York 10038
Email: bruce.zirinsky@cwt.com
gregory.petrick@cwt.com
Attorneys for the MAGI Committee

George McElreath
Office of the United States Trustee
1100 Commerce Street, Room 9C60
Dallas, Texas 75242
Email: george.f.mcelreath@usdoj.gov

Eric Taube
Hohmann, Taube & Summers, L.L.P.
100 Congress Avenue, Suite 1600
Austin, Texas 78701
Email: erict@hts-law.com
Attorneys for the Equity Committee

Edward Weisfelner
**Brown, Rudnick, Berlack Israels
LLP**
120 West 45th Street
New York, New York 10036
Email: eweisfelner@brbilaw.com
(and lscharf@brbilaw.com, and
hsiegel@brbilaw.com)
Attorneys for the Equity Committee

Rich Roberson
Gardere Wynne Sewell
3000 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Email: rroberson@gardere.com
Attorneys for the Examiner