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

_____ )	
In re )	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> , )	Case No. 03-46590 (DML)
Debtors. )	Jointly Administered
_____ )	<b>Hearing Date and Time:</b>
	<b>October 8, 2003, 10:30 a.m.</b>

**DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 105(a)  
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9006(b)  
EXTENDING THE TIME PERIOD WITHIN WHICH THE DEBTORS  
MAY FILE NOTICES OF REMOVAL UNDER BANKRUPTCY RULE 9027**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), debtors and debtors-in-possession herein, file this Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9006(b) Extending the Time Period Within Which the Debtors May File Notices of Removal Under Bankruptcy Rule 9027 (the "Motion"), and respectfully represent as follows:

## JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the “Petition Date”), certain of the Debtors filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”).<sup>1</sup> On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. commenced chapter 11 cases under the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the motion for an order requesting that the original Debtors’ bankruptcy estates (Case Nos. 03-46588 and 03-46590 through 03-46661) be jointly administered. On September 8, 2003, the Court entered the order approving joint administration of the Mirant EcoElectrica Investments I, Ltd. case (Case No. 03-47927) and Puerto Rico Power Investments, Ltd. case (Case No. 03-47927) with those of the original Debtors.

4. Creditors’ Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of two official unsecured creditors’ committees; one for Mirant Corporation and the other for Mirant Americas Generation, LLC

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<sup>1</sup> Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings (the “Canadian Proceedings”) in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act* (the “CCAA”). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

(collectively, the “Committees”). The appointment lists of members of both official unsecured creditors’ committees were filed in their respective chapter 11 cases on July 25, 2003.

### **RELIEF REQUESTED AND BASIS THEREFOR**

5. By this Motion, the Debtors seek entry of an order, pursuant to Federal Rule of Bankruptcy Procedure 9006(b) (“Rule 9006(b)”), extending the time by which the Debtors must file notices of removal (the “Removal Deadline”) pursuant to Federal Rule of Bankruptcy Procedure 9027(a) (“Rule 9027(a)"). The Debtors request that the Removal Deadline be extended up to and including the date of confirmation of any chapter 11 plan in these proceedings.

6. It is without question that the Debtors’ chapter 11 cases are large and complex. Since the Petition Date, the Debtors, their management and employees, and their professionals have worked diligently to administer these chapter 11 cases and to address a vast number of administrative and business issues. The Debtors have striven and continue to work to operate profitably their businesses as debtors-in-possession in order to maximize the value of their estates.

7. On the Petition Date, the Debtors were defending over 110 legal actions, either on their own behalf or on the behalf of their affiliates, indemnitees or third parties whom the Debtors agreed to defend and assumed liability in such actions (the “Actions”). This number does not include any regulatory proceedings in which the Debtors are involved, actions in which the Debtors are plaintiffs, actions in which the Debtors are creditors in bankruptcy proceedings, bilateral arbitrations, or tax certiorari proceedings (collectively, the “Non-Stayed Actions and Indemnifications”). The Debtors currently are prosecuting, or are the subject of, approximately 100 Non-Stayed Actions and Investigations. The Actions generally involve securities class

action suits, antitrust claims, ERISA class action suits, ratepayer class actions, personal injury, wrongful termination, contract disputes, breach of fiduciary duties, liens on the Debtor's property, and nuisance. Pursuant to the order of this Court, entered on July 16 ,2003, directing the parties to comply with Sections 362 and 525 of the Bankruptcy Code (the "Order"), and pursuant to the automatic stay under Section 362(a) of the Bankruptcy Code, the Debtors have filed Suggestions of Bankruptcy or similar notices in those Actions in which the Debtors are a defendant and which are affected by the Order and automatic stay.

8. As a result of the considerable time and attention that has been required to initiate these chapter 11 proceedings and to operate the Debtors' businesses profitably during these initial weeks of these proceedings, the Debtors, their management and employees, and their professionals have not had sufficient time to investigate fully the existence of any and all pending Actions or to evaluate completely the merits of removing such Actions. Since the Petition Date, the Debtors have been focusing on responding to numerous information requests submitted by the Committees, preparing the schedules of assets and liabilities and statements of financial affairs, and addressing various critical issues attendant with any substantial chapter 11 cases such as the Debtors cases. The Debtors, therefore, seek additional time to perform such investigations and make such determinations.

9. Section 1452(a) of title 28 of the United States Code ("Section 1452(a)") governs removal of pending civil actions to federal court. Specifically, Section 1452(a) provides that "[a] party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such

civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.” 28 U.S.C. § 1452(a).

10. Rule 9027(a)(2) provides that where a claim or cause of action in a civil action is pending when a case under the Bankruptcy Code is filed, “a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case . . . , (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 . . . , or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.” FED. R. BANKR. P. 9027(a)(2).

11. Rule 9027(a)(3) provides that where a claim or cause of action is asserted in another court after the commencement of the case, a notice of removal may be filed only within the shorter of “(A) 30 days after receipt, through service or otherwise, or a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.” FED. R. BANKR. P. 9027(a)(3).

12. An order extending these time periods is within the Court’s equitable powers to enter orders necessary or appropriate to carry out the provisions of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides, in pertinent part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Extensions of time are governed by Rule 9006(b), which provides that “[w]hen an act is required or allowed to be done at or within a specified period by [the Federal Rules of Bankruptcy Procedure] or by a notice given thereunder or by order of the court, the court for cause shown may at any time in its discretion (1) with or without motion or notice

order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by previous order.” FED. R. BANKR. P. 9006(b).

13. “Considered *in pari materia* with Rule 9027, Rule 9006 provides authority to enlarge the thirty-day time period for removing actions arising under the Bankruptcy Code.” Caperton v. A.T. Massey Coal Company, Inc., 251 B.R. 322, 325 (S.D. W.Va. 2000); see also In re Passodelis, 234 B.R. 52, 60 (Bankr. W.D. Pa. 1999) (where the court notes that the removal deadline can be relaxed for excusable neglect even after the deadline is passed).

14. To date, the size and complexity of these chapter 11 proceedings have required a great deal of time and attention by the Debtors, their management and employees, and their professionals. Evaluating extra-bankruptcy litigation in large chapter 11 cases is a mammoth task, which the Debtors believe warrants extension of the removal dates up to and including the date of confirmation of any chapter 11 plan in these proceedings. The Debtors need additional time to determine the number of Actions pending against them and to review such Actions in order to determine which Actions they should seek to remove from state court to federal court. Moreover, requests by debtors for extensions of removal periods have been previously granted in other large chapter 11 proceedings. See e.g., In re Pillowtex, Inc., Case No. 00-4211(SLR) (Bankr. D. Del. 2001); In re Philip Services (Delaware), Inc., Case No. 99-2385 (MFW) (Bankr. D. Del. 1999); In re Favorite Brands Int’l Holding Corp., Case No. 99-0726 (PJW) (Bankr. D. Del. 1999); In re USG Corp., Case No. 01-2094 (RJN) (Bankr. D. Del. 2001); In re W.R. Grace & Co., Case No. 01-1139 (JJF) (Bankr. D. Del. 2001); In re Owens Corning, Case No. 00-3837 (Bankr. D. Del. 2001); In re Federal-Mogul Global, Inc., Case No. 01-10578 (AMW) (Bankr. D. Del. 2002).

15. The Debtors believe that it is prudent to seek an extension to protect their rights to remove those Actions that they deem appropriate to be considered by this Court. The extension sought will afford the Debtors an additional opportunity to make fully informed decisions concerning removal of each Action and will assure that the Debtors do not forfeit valuable rights under Section 1452(a) and Rule 9027. Furthermore, the rights of the Debtors' adversaries will not be prejudiced by such an extension because any party to a prepetition action that is removed may seek to have it remanded to the state court. 28 U.S.C. § 1452(b).

16. Finally, Debtors submit that the relief requested is in the best interest of the Debtors, their estates, and their creditors because it will maximize the Debtors' likelihood of a successful reorganization by allowing the Debtors the time they need to evaluate thoughtfully the Actions against them.

### **CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) granting this Motion and all relief requested herein in full and in all respects; (ii) extending the deadline to file notices of removal pursuant to Rule 9027(a) up to and including the date of confirmation of any chapter 11 plan; and (iii) granting to the Debtors such other and further relief as is just and proper.

Dated: September 10, 2003.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he provided true and correct copies of the foregoing to Bankruptcy Services, LLC and directed them to effect service via First Class United States Mail upon all persons on the Limited Service List and upon all known parties that the Debtors have served with Suggestions of Bankruptcy in connection with known pending litigation matters on the 10<sup>th</sup> day of September, 2003.

/s/ Robin Phelan

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

In re	)	
	)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,	)	
	)	Case No. 03-46590-DML-11
Debtors.	)	Jointly Administered
	)	

**ORDER PURSUANT TO SECTION 105(a) OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 9006(b) EXTENDING  
THE TIME PERIOD WITHIN WHICH THE DEBTORS MAY FILE  
NOTICES OF REMOVAL UNDER BANKRUPTCY RULE 9027**

Came before the Court for consideration the Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9006(b) Extending the Time Period Within Which the Debtors May File Notices of Removal Under Bankruptcy Rule 9027 (the "Motion") filed by Mirant Corporation ("Mirant") and its affiliated debtors (the "Debtors"), as debtors and debtors-in-possession on October 8, 2003; and it appearing that the Court has jurisdiction over this matter and the relief requested in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that due notice of the Motion has been provided as set forth in the certificate of service attached to the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and upon all of the proceedings heard before the Court; and after due deliberation and sufficient cause appearing therefor, it is, therefore, hereby

**ORDERED** that the Motion is granted in full and in all respects; and it is further

**ORDERED** that, pursuant to Federal Rule of Bankruptcy Procedure 9006(b), the time by which the Debtors must file notices of removal pursuant to Federal Rule of Bankruptcy

Procedure 9027(a) is extended up to and including the date of confirmation of any chapter 11 plan in these proceedings.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2003.

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UNITED STATES BANKRUPTCY JUDGE

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