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**COUNSEL FOR THE AGENTS TO  
MIRANT CORPORATION'S PREPETITION BANK LENDERS**

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

IN RE: § Chapter 11  
MIRANT CORPORATION, *et al.*, §  
§ Case No. 03-46590-DML-11  
§  
§ Jointly Administered  
Debtors. §  
§  
§ Hearing Date & Time: August 8, 2003 at 9:00 a.m.

**OBJECTION OF THE AGENTS FOR MIRANT CORPORATION'S PREPETITION  
BANK LENDERS TO THE EMERGENCY MOTION OF THE DEBTORS FOR  
INTERIM AND FINAL ORDER (I) PURSUANT TO 11 U.S.C. § 364(c)(2) AND  
FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001(c)(2) AUTHORIZING THE  
DEBTORS TO OBTAIN INTERIM AND FINAL POSTPETITION SECURED CREDIT  
(II) PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019  
APPROVING COMPROMISE BETWEEN THE DEBTORS AND GE  
CAPITAL FINANCIAL, INC. AND (III) SCHEDULING FINAL HEARING**

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

Citibank, N.A. and Credit Suisse First Boston, the agents (the "Agents") for  
prepetition bank lenders (the "Lenders") under Mirant Corporation's ("Mirant") prepetition

credit agreements (collectively, the “Credit Agreements”)<sup>1</sup> hereby file this objection (this “Objection”) to the Emergency Motion of the Debtors for Interim and Final Order (i) Pursuant to 11 U.S.C. § 364(c)(2) and Federal Rule of Bankruptcy Procedure 4001(c)(2) Authorizing the Debtors to Obtain Interim and Final Postpetition Secured Credit (II) Pursuant to Federal Rule of Bankruptcy Procedure 9019 Approving Compromise Between the Debtors and GE Capital Financial, Inc. and (III) Scheduling Final Hearing (the “Emergency 9019 Motion”) and respectfully represents as follows:

### **Background**

1. On July 14-15, 2003, Mirant Corporation (“Mirant”) and certain of its affiliates (collectively, the “Debtors”) filed petitions under chapter 11 of title 11, United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”). At the time of the filing of the chapter 11 petitions, the Debtors owed the Lenders in excess of \$3 billion under various credit facilities.

2. On July 21, 2003, the Debtors filed the Emergency 9019 Motion, seeking Court authorization to enter into a new employee credit card program with GE Capital Financial, Inc. (“GECF”) and, in connection with the new credit card program, to enter into a “compromise” with respect to a \$927,389 prepetition payment made by the Debtors to GECF (the “Payment”). The Emergency 9019 Motion described the new credit card program and the compromise as part of an integrated package deal, implying that GECF’s willingness to enter into the new credit card agreement was somehow contingent on the Debtors agreeing to eliminate the risk that the Payment might be avoided.

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<sup>1</sup> Specifically, (i) Citibank, N.A. is agent under (a) the US\$450,000,000 Facility C Credit Agreement, dated as of April 1, 1999, and (b) the Participation Agreement, dated as of October 22, 2001 (which agreement is commonly referred to as the “Turbine Facility”), and (ii) CSFB is agent under (x) and the Four-Year Credit Agreement, dated as of July 17, 2001, and (y) the 364-Day Credit Agreement, dated as of July 17, 2001.

3. The Emergency 9019 Motion sets forth the following additional facts relevant to the proposed settlement:

Prior to the Petition Date, Debtor Mirant Services, LLC (Case No. 03-46649) made a payment for the benefit of all the Debtors to GECF in the amount of \$927,389 (the "Payment") to pay down the then-current amount outstanding (but not yet past due) under the [Credit Card] Agreement. The Payment was made to GECF prior to the due date set forth in the Agreement with the expectation that GECF would continue to provide the crucial credit card services under the Agreement. GECF has expressed concern that the Payment may be avoidable under applicable law.

Emergency 9019 Motion, ¶ 13. To address GECF's "concern that the Payment may be avoidable", and purportedly as part of the consideration for the new credit card agreement, the Emergency 9019 Motion proposes that (i) GECF will return cash equal to the amount of the Payment (\$927,389) to the Debtors and (ii) GECF will draw upon a letter of credit issued by Wachovia Bank, National Association ("Wachovia") to recoup not just the amount of the Payment, but also \$75,889 (representing other amounts alleged to be owing under the prepetition credit card agreement), for a total draw of \$1,003,278. Wachovia, on behalf of the Lenders, would be required to pay the sum of \$1,003,278 to GECF and the Lenders in turn would receive a prepetition unsecured claim in that amount against the Debtors.

4. At a Bankruptcy Court hearing on August 6, 2003, counsel for the Debtors announced that the relief the Debtors were seeking in connection with the Emergency 9019 Motion was being modified, and that the Debtors would not be seeking Court approval of the new credit card program, but intended to go forward on Friday, August 8, 2003, with the settlement portion of the motion. In confirmation thereof, the Debtors filed a Notice of Withdrawal of Certain Relief With Respect to the Emergency Motion on the evening of August 6, 2003 (the "Withdrawal Notice"). As described in greater detail, there is no reasonable basis for granting the relief requested in the Emergency 9019 Motion, and especially not on an

expedited basis. Accordingly, as set forth below, the Emergency 9019 Motion should be denied in its entirety.

### **Procedural Objection**

5. Bankruptcy Rule 2002(3) requires 20 days notice of a hearing on the compromise or settlement of a controversy. Even without giving effect to the complete change in the relief requested in the Emergency Motion, as described in the Withdrawal Notice filed last night, the Debtors are seeking to proceed with the Emergency 9019 Motion on 18 days notice. The fact that the Debtors made a material modification to the relief requested on the eve of the hearing is even more troublesome, particularly given the fact that they never sought to shorten notice. Indeed, the manner in which the Debtors altered their relief is part of a disturbing trend by the Debtors to seek relief with no notice (or virtually no notice) to other parties, even where other parties specifically requested notice,<sup>2</sup> on the purported need to seek such the relief on an “emergency basis.” Here, there cannot possibly be a need for emergency relief in light of the Withdrawal Notice, which transformed a purported urgently needed credit card program – that the Debtors apparently now have concluded to be not needed at all – into a roundtrip transaction that provides no economic benefit to GECF, but forces the Lenders to provide approximately \$1

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<sup>2</sup> Although even in the short time since these cases have been filed there have been several instances of the Debtors failing to provide notice to the Lenders as interested parties, two examples highlight the problem. The first occurred on the petition date when the Debtors sought emergency interim relief to protect their trading book. The trading book itself largely was secured by letters of credit issued under one of the Credit Agreements, giving the Lenders more than a passing interest on how the trading motion would work as it pertained to previously posted collateral. Despite many (perhaps as many as a dozen) calls and e-mails to both of Debtors counsel to be provided notice of the hearing, the Lenders were not provided notice thereof until after the fact – at which point they learned that the Debtors saw it fit to give notice to one of its trading counterparts who supported the motion.

The second example involved the order restricting claims trading. At the July 23<sup>rd</sup> interim hearing, counsel for the Agents appeared and argued for several changes to the proposed order originally submitted to the Debtor, even on an interim basis. The Debtors, despite repeated inquires about the status of the revised order, apparently did not think the Agents’ counsel should be provided with an advance copy of the revised form of order, although their counsel saw fit to provide it to others. In fact, the Agents believe that the order entered did not reflect the Courts’ conclusions at the hearing, a matter they continue to take up with Debtors’ counsel, but ultimately may have to seek intervention from the Court (even prior to the next scheduled hearing date on the matter).

million of new cash to the Debtors in exchange for a pre-petition claim. The Emergency 9019 Motion therefore should be denied on procedural grounds, without ever reaching the merits.

### **Substantive Objections**

6. The Agents object to the Emergency 9019 Motion on the grounds that the Emergency 9019 Motion is nothing more than a thinly veiled attempt by the Debtors to characterize as a settlement what is nothing more than a roundtrip transaction, and which would have the Lenders advance over \$1 million to the Debtors, but provide no other benefit to any other party. In essence, the Debtors are seeking to (i) recover a prepetition payment from a vendor and (ii) permit the vendor to be made whole by drawing on a letter of credit. The result of this maneuvering is that the Debtors will receive a benefit of \$927,389, GECF will receive a benefit of \$75,889 and Wachovia (and by extension, the other lenders within its syndicate) will incur a new liability in excess of \$1 million. Now that they have abandoned their desire to restore the credit card program with GECF, the Debtors are receiving no benefit from GECF for this “settlement”, and as a result, the sole effect of the “settlement” is to permit the Debtors to take money from the Lenders.

7. The Debtors offer no legal theory under which this attempted financial sleight of hand is permissible.<sup>3</sup> Obviously, if the Debtors wish to pursue a settlement with GECF merely to provide GECF with comfort that the Payment will not be avoided – which now is of dubious necessity given the fact that the Debtors no longer are seeking to reinstate their credit card

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<sup>3</sup> The Emergency 9019 Motion fails to indicate the Debtors’ theory of how the Payment may be avoidable. The Debtors have conceded that “the Payment was made to GECF prior to the due date set forth in the [credit card agreement].” Accordingly, with respect to the Payment, it appears that GECF would have a *prima facie* ordinary course of business defense to defeat any preference attack. More importantly, the obligations in respect of which the Payment was made were secured by a letter of credit in an amount of up to \$1,500,000, upon which GECF could have drawn if the Payment had not been made. The Payment, therefore, did not enable GECF to receive more than it would have received in a chapter 7 case if the Payment had not been made since GECF would have been paid in full by drawing on the letter of credit.

program with GECF -- a much simpler solution would be to release the avoidance claim against GECF.

8. The fact that the Debtors have not employed this simpler approach reveals that what is really happening here is that the Debtors are using the guise of a settlement to provoke a draw of a letter of credit that otherwise would not have been possible, with the sole purpose of allowing the Debtors to keep the proceeds. With no benefit to the estates – other than taking money from the Lenders – this purported settlement is nothing more than a roundtrip transaction that should not be approved by the Court, and the Emergency 9019 Motion should be denied in its entirety.

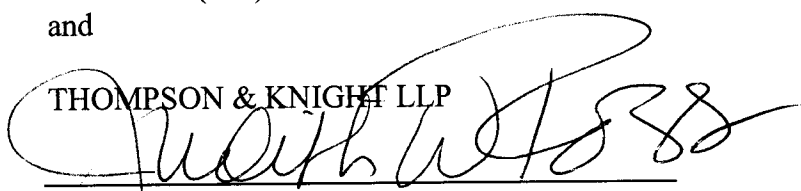
**WHEREFORE**, the Agents respectfully request that this Court enter an order (i) denying the relief requested in the Emergency 9019 Motion and (ii) granting such other and further relief as may be just and proper.

Dated this 7<sup>th</sup> day of August, 2003.

Respectfully submitted,

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I hereby certify that on this, the 7<sup>th</sup> day of August 2003, a true and correct copy of the above and foregoing was served by hand upon:

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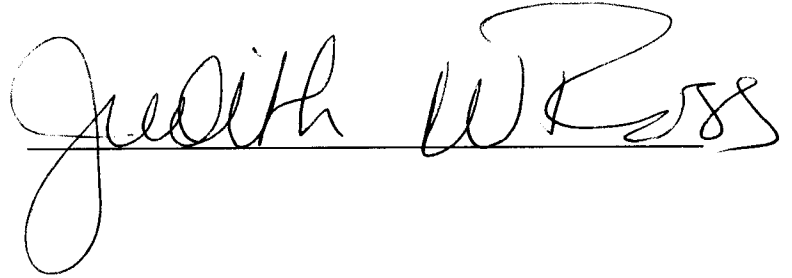
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