

**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. 03-46591(DML)
)	Jointly Administered
Debtors.)	
)	

**ORDER APPROVING DEBTORS' MOTION
FOR AN ORDER PURSUANT TO BANKRUPTCY CODE
SECTION 105(A) STAYING CERTAIN LITIGATION**

Upon the motion, dated September 22, 2003 (the "Motion"), of Mirant Corporation ("Mirant") and its affiliated debtors, as debtors-in-possession (collectively, the "Debtors"), for an order pursuant to Bankruptcy Code section 105(a) staying certain litigation; and upon consideration of (1) the Affidavit of Hugh M. Davenport, Esq. and all exhibits attached thereto in support of the Motion, (2) the written responses in opposition to the Debtors' Motion (collectively, the "Responses") filed by: (i) certain securities plaintiffs, in their own behalf and on behalf of others (the plaintiffs in all securities litigation, collectively, the "Securities Plaintiffs") in (a) In re Mirant Corporation Securities Litigation (the "Consolidated Action"), and (b) Wisniak v. Mirant Americas Generation, LLC (the "Wisniak Action") dated October 7, 2003; (ii) plaintiffs James Brown and Greg Waller, in their own behalf and on behalf of others (collectively, the "ERISA Plaintiffs") in In re Mirant Corporation ERISA Litigation (the "ERISA Action"), dated October 14, 2003; and (iii) Paul Danielson, the plaintiff in Danielson v. Southern Co., (the "Danielson Action"), dated October 18, 2003; (3) a response filed by The Official Unsecured Creditors' Committee of Mirant Americas Generation LLC (the "MAG Committee"), dated October 14, 2003; the (4) Reply in Further Support of Debtors' Motion, dated October 21,

2003; and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided, and that no other or further notice need be provided; upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, this Court hereby makes the following findings:

The Non-Debtor Litigation.

A. On July 16, 2003, this Court entered an Order directing compliance with Sections 362 and 525 of the Bankruptcy Code. The Order directed:

That all persons (including individuals, partnerships and corporations) . . . are stayed, restrained and enjoined from:

- (a) Commencing or continuing, including the issuance or employment of process, any judicial, administrative or other proceeding against any of the Debtors, that was or could have been commenced before the commencement of the Debtors' chapter 11 cases, or recovering a claim against any of the Debtors that arose before the commencement of their chapter 11 cases;
- (b) Enforcing, against any of the Debtors or against property of any of the Debtors, a judgment obtained before the commencement of these chapter 11 cases;
- (c) Taking any act to obtain possession of property of any of the Debtors or of property from any of the Debtors;
- (d) Taking any act to create, perfect or enforce against property of any of the Debtors, any lien to the extent that such lien secures a claim that arose before the commencement of their chapter 11 cases;
- (e) Taking any act to collect, assess or recover a claim against any of the Debtors that arose before the commencement of their chapter 11 cases;
- (f) Offsetting any debt owing to any of the Debtors which arose before the commencement of their chapter 11 cases against any claim against any of the Debtors; and
- (g) Commencing or continuing any proceeding before the United States Tax Court concerning the Debtors.

B. On the Petition Date, the Debtors were defending over a hundred legal actions, either on their own behalf or on behalf of their affiliates, or third parties to whom the

Debtors have or may potentially have indemnification obligations or with whom the Debtors had agreed to assume or retain liability in such actions (the “Litigations”). 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 Litigations and Investigations”). The Debtors currently are prosecuting, or are the subject of, close to a hundred Non-Stayed Litigations and Investigations. The Litigations generally involve securities class action suits, antitrust claims, ERISA class action suits, ratepayer antitrust or unfair practices class action claims, personal injury, wrongful termination, contract disputes, breach of fiduciary duties claims, liens on the Debtor’s property, and other torts.

C. The Order and automatic stay of Bankruptcy Code Section 362(a), however, only affect the matters if, and, possibly, just to the extent the claims are made directly against one or more of the Debtors. To the extent the Litigations involve officer or director individual defendants or third-parties to whom one or more Debtors have (or may be found to have) indemnity obligations and/or whose liability the Debtors have assumed and agreed to defend, and no Debtor is a named defendant or participates, those matters continue to proceed notwithstanding the Debtors’ Chapter 11 petitions.

D. Certain current and former officers and directors of the Debtors are named as defendants in the lawsuits described in Table A in the attached Exhibit A. The current officers and directors named as defendants in the lawsuits described in Table A are necessary to the Debtors’ reorganization and that such individuals’ time and effort should be reserved to the continuing operations and restructuring efforts of the Debtors rather than expended in litigation. Moreover, the Debtors have asserted that the current and former officers and directors described

in Table A are entitled to or have a claim for indemnification from the Debtors pursuant to the respective by-laws of the Debtors and under the laws of Delaware, the state of incorporation of the Debtors.

E. Certain entities are named as defendants in the lawsuits described in Table B in the attached Exhibit A. The entities in Table B may be entitled to indemnification, including reimbursement of defense costs, or have a claim for indemnification by (or may be determined to have been indemnified by) the Debtors. The Debtors contend that such defendants may have received an absolute indemnity by, or may be determined to have been indemnified by, the Debtors, because they are third-parties with whom the Debtors had entered into indemnification agreements. Pursuant to their indemnification obligations, the Debtors may be responsible for paying the defense costs and any liability incurred by the foregoing defendants, which may impose a negative impact on the estate. The Debtors assert they have also agreed to assume or retain various liabilities of certain entities in Table B.

F. Permitting pursuit of a claim against officers and directors, past or present, (or other third party indemnitees) may force the Debtors to protect their interests notwithstanding the stay applicable to Debtors. A finding against any current or former officer or director might be argued to impute liability to the Debtors under the theory of respondeat superior and collateral estoppel. Thus, the Debtors' rights could be impinged even though a stay as to them is in place if the claims against the officers and directors are allowed to proceed.

G. The Debtors have asserted that they can satisfy the requirements under Bankruptcy Code section 105(a) for a stay of the litigation described in Tables A and B of Exhibit A. First, there is substantial likelihood that the Debtors will be able to reorganize successfully because (1) the Debtors have little, if any, secured debt; (2) this Court has already

found that the Debtors are administratively solvent; and, (3) according to the recently filed schedules and statement of affairs, the assets of the Debtors are worth more than their aggregate liabilities. There is an appreciable risk that the continuation of the litigation described in Tables A and B of Exhibit A will impede the Debtors' ability to reorganize successfully and will have a negative effect on the estate. The Debtors will, thus, be harmed if such litigation is not enjoined. Such harm outweighs any delay of the litigation described in Exhibit A or any public harm caused by the issuance of a stay. Successful reorganization of public companies maximizes value, preserves jobs, and serves the public interest in general. Accordingly, a stay of proceedings against the non-Debtor defendants is necessary any appropriate with respect to the litigation described in Tables A and B in Exhibit A.

H. Of the parties to the Litigations listed in Tables A and B of Exhibit A, only the plaintiffs in the Consolidated Action, the Wisniak Action, the ERISA Action, and the Danielson Action (collectively, the "Objective Parties") served objections to the Debtors' Motion.

WHEREFORE, based upon the foregoing, it is hereby:

CONCLUDED, that under 28 U.S.C. § 1334(b), this Court has jurisdiction to enjoin the litigations described in Tables A and B of Exhibit A (collectively, the "Litigations") because such third-party actions are "related to" the Debtors' bankruptcy cases. In re Zale Corp., 62 F.3d 746, 751-52 (5th Cir. 1995), citing Celotex Corp. v. Edwards, 514 U.S. 300, 307 (1995); In re Walker, 51 F.3d 562, 568-69 (5th Cir. 1995); Quattrone Accountants, Inc. v. I.R.S., 895 F.2d 921, 926 (3d Cir. 1990). For the reasons stated herein and in the Motion, this Court has "related to" jurisdiction over the Litigations because their outcome "could conceivably have an effect on the estate," and "could alter the debtor's rights, liabilities, options, or freedom of action and

which in any way [could] impact[] upon the handling and administration of the bankrupt estate.”

Celotex, 514 U.S. at 308 n.6; it is therefore:

ORDERED, that, except as set forth below, the Motion is granted; and it is further

ORDERED, that, the Motion, as it applies to the ERISA Actions is continued and shall be heard on November 19, 2003 at 10:30 a.m.; and it is further

ORDERED, that, with respect to each Litigation, all present or prospective parties thereto are enjoined from prosecuting any claim or cause of action against any non-Debtor defendant as to whom such a party is on notice that such defendant (i) is a current or former officer or director of any Debtor, (ii) is an entity to which any Debtor has or may have any indemnity obligation, (iii) or is an entity with respect to which any Debtor has assumed or retained liability with respect to the claims asserted, pursuant to Bankruptcy Code Sections 105(a) and 362(a); it is further

ORDERED, that any party affected by this Order may seek from this Court a modification of the provisions hereof (a) to the extent that the circumstances described in this Order have changed in any material respect or (b) the passage of six months from the date hereof. The Court will also entertain requests, on a case-by-case basis, to permit discovery to proceed in a Litigation or to allow the hearing and determination of dispositive motions in a Litigation, but in no event shall any judgment be entered in a Litigation without express leave of this Court; and it is further

ORDERED, that the Debtors may release any enjoined party from the constraints of this Order, provided that such release be in writing, with a copy to each of the official committees appointed in this action; and it is further

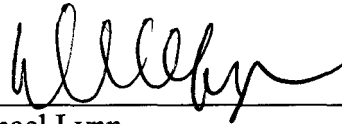
ORDERED, that this Order does not modify the rights of any enjoined party to participate in discovery conducted by any official committee appointed in these cases or any similar fiduciary or by any party in interest; and it is

ORDERED, that this Order does not modify or, terminate or condition in any respect the stay applicable in these cases pursuant to Bankruptcy Code Section 362; and it is further

ORDERED, that, to the extent not granted herein, the objections of the Objective Parties are overruled; and it is further

ORDERED, that the Danielson Action is to be governed by separate order pursuant to the Agreement announced on the record at the November 5, 2003 hearing and is not subject to the terms of this Order.

Dated: November 19, 2003



D. Michael Lynn,
United States Bankruptcy Judge

EXHIBIT A

TABLE A: INDIVIDUAL DEFENDANTS

CASE NAME	COURT AND CASE NUMBER	DATE ACTION FILED	DEBTOR DEFENDANT	RELATED DEFENDANTS	TYPE OF CASE
Bustamante v. Dynegy, Inc., et al.	- Sup. Ct. of California, Los Angeles (BC 249705) - S.D. Ca. (01-CV-01445; 01-CV-01447; JCCP Nos. 4204 & 4205; MDL 1405) 9 th Cir: 02-572009	05/02/2001	Mirant, Inc.; Mirant Americas Energy Marketing; Mirant California; Mirant Delta, LLC; Mirant Potrero, LLC	- A.W. Dahlberg (current director) - S. Marce Fuller (current officer and director)	Ratepayer manipulation claims under Cartwright Act and CA Business & Professions Code
California Public Employees' Retirement Plan, et al v. Mirant Corporation, et al. ("Calpers")	Delaware Court of Chancery, New Castle County (0359-NC)	6/10/2003	Mirant Corp.; Mirant Americas, Inc.; Mirant Americas Generation, LLC	- S. Marce Fuller (current officer and director) - Harvey Wagner (current officer) - Richard Pershing (current officer) - Raymond Hill (former officer) - Gary Morsches (former officer) - Randall Harrison (former officer) - William Holden III (current officer) - Edwin Adams (former officer) - David Lesar	Breach of fiduciary duty

TABLE A: INDIVIDUAL DEFENDANTS

CASE NAME	COURT AND CASE NUMBER	DATE ACTION FILED	DEBTOR DEFENDANT	RELATED DEFENDANTS	TYPE OF CASE
Mary Cichocki, derivatively on behalf of nominal defendant Mirant Corp. v. A.D. Correll, et al.	N.D. Ga. (1:02 CV 3022)	11/7/2002	Mirant Corp.	(current director) - Ray Robinson (current director) - A.W. Dahlberg (current director) - Stuart Eizenstat (current director) - Robert McCollough (current director) - A.D. Correll (current director) - Carlos Ghosn (former director) - William Hjerpe (former director) - James McDonald (current director) - A.D. Correll (current director) - A.W. Dahlberg (current director) - Stuart E. Eizenstat (current director) - S. Marce Fuller (current officer and director) - Carlos Ghosn (former director) - David J. Lesar	Shareholder derivative action

TABLE A: INDIVIDUAL DEFENDANTS

CASE NAME	COURT AND CASE NUMBER	DATE ACTION FILED	DEBTOR DEFENDANT	RELATED DEFENDANTS	TYPE OF CASE
In re Mirant Corp. Derivative Litigation (consolidates Kester and White suits)	Superior Ct of Fulton Co., State of GA (2002CV55014)	6/26/2002 & 8/9/2002 (consolidated on 3/1/32003)	Mirant Corp.	(current director) - James F. McDonald (current director) - Ray M. Robinson (current director) - A.D. Correll (current director) - A.W. Dalhberg (current director) - Stuart E. Eizenstat (current director) - S. Marce Fuller (current officer and director) - Carlos Ghosn (former director) - David J. Lesar (current director) - James F. McDonald (current director) - Ray M. Robinson (current director)	Shareholder derivative action
In re Mirant Corporation ERISA Litigation (consolidates Brown and Waller suits)	N.D. Ga. (1:03-CV-1027BBM)	4/17/2003 & 6/3/2003 (consolidated on 9/2/2003)	Mirant Corp.	- Vance Booker (current officer) - S. Marce Fuller (current officer and director) - Raymond D. Hill	ERISA class action

TABLE A: INDIVIDUAL DEFENDANTS

CASE NAME	COURT AND CASE NUMBER	DATE ACTION FILED	DEBTOR DEFENDANT	RELATED DEFENDANTS	TYPE OF CASE
				<ul style="list-style-type: none"> (former officer) - James A. Ward (former officer) - A. W. Dahlberg (current director) - A.D. Correll (current director) - Elmer B. Harris (former director) - William J. Hjerpe (former director) - David J. Lesar (current director) - W.L. Westbrook (former officer and director) - Stuart E. Eizenstat (current director) - Carlos Ghosn (former director) - James F. McDonald (current director) - Roy M. Robinson (current director) - Richard Pershing (current officer) - Michael L. Smith (former officer) - Dianne W. 	

TABLE A: INDIVIDUAL DEFENDANTS

CASE NAME	COURT AND CASE NUMBER	DATE ACTION FILED	DEBTOR DEFENDANT	RELATED DEFENDANTS	TYPE OF CASE
In Re Mirant Corporation Securities Litigation (consolidates 20 suits)	N.D. Ga. (1:02-CV-1467-BBM)	5/29/2002	Mirant Corp.	<ul style="list-style-type: none"> - Davenport (current officer) - S. Marce Fuller (current officer and director) - Raymond D. Hill (former officer) - Richard J. Pershing (current officer) - James A. Ward (former officer) - A.W. Dahlberg (current director) - H. Allen Franklin (former director) - Elmer B. Harris (former director) - W.L. Westbrook (former officer and director) 	Securities suit
Lewis Pettingill et al. v. Marce Fuller et al.	Ct. of Chancery of the State of DE, New Castle Co. (19793NC)	7/30/2002	Mirant Corp.	<ul style="list-style-type: none"> - S. Marce Fuller (current officer and director) - Raymond Hill (former officer) - Richard J. Pershing (current officer) - James A. Ward (former officer) - A.W. Dahlberg 	Shareholder derivative action

TABLE A: INDIVIDUAL DEFENDANTS

CASE NAME	COURT AND CASE NUMBER	DATE ACTION FILED	DEBTOR DEFENDANT	RELATED DEFENDANTS	TYPE OF CASE
Joseph T. Pokalsky v. Southern Company Energy Marketing, et al.	Sup. Ct., GA, Fulton Co. (No. 00VS004019G)		Mirant Americas Energy Marketing, LP; Mirant Services, LLC	(current director) - A.D. Correll (current director) - Stuart E. Eizenstat (current director) - Carlos Ghosn (former director) - David J. Lesar (current director) - James R. McDonald (current director) - Ray Robinson (current director)	
Gil Wisniak, et al. v. Mirant Americas Generation, LLC	Superior Ct. of Fulton Co., State of GA (2003CV-71095), removed to N.D. Ga. On July 22, 2003 (1:03-CV-2049BBM)	6/11/2003	Mirant Americas Generation, LLC	- Richard J. Pershing (current officer) - J. William Holden III (current officer) - Stephen G. Gillis (current officer) - S. Marce Fuller (current officer and director) - Raymond D. Hill (former officer)	Dispute regarding benefits due following termination Securities class action

**TABLE B: INDEMNIFICATION OF THIRD PARTIES
AND ASSUMPTION OF LIABILITY**

CASE NAME	COURT AND CASE NUMBER	DATE ACTION FILED	THIRD PARTY	DEBTOR DEFENDANT	TYPE OF CASE
Beres, et al. v. State Line Energy, L.L.C. et al.	Indiana Supreme Court – Lake County (45D02-9912-CT-0447)	6/16/2000	State Line Energy, LLC	None	Personal injury
Lori Bulhoes v. Pacific Gas & Electric Company, et al	Superior Court California - San Francisco (CGC-02-406261)	4/2/2002	Pacific Gas & Electric Co.; PG&E Corporation	Mirant Corp.; Mirant California	Personal injury
Claro v. Southern Company, et al.	Indiana Circuit Court – St. Joseph County (71C01-9906-CP-00875)	7/28/1999	SEI State Line, Inc.; State Line Energy, L.L.C.	None	Personal injury
Danielson v. Southern Company et al.	Illinois Circuit Court – Cook County (98-L 9731)	8/5/1999	Southern Company; Commonwealth Edison; State Line Energy, L.L.C.; SEI State Line, Inc.; State Line Holding Corp.	Mirant Corp. f/k/a Southern Energy, Inc.; Mirant Services LLC f/k/a Southern Energy Resources, Inc.	Personal injury
Leach v. Southern Company et al.	Lake Circuit Court, Crown Point, Lake County, Indiana (45C01-0004-CT-	8/5/1999	Southern Company; Commonwealth Edison; State Line Energy, L.L.C.; SEI State Line, Inc.; State Line Holding	Mirant Corp. f/k/a Southern Energy, Inc.; Mirant Services LLC f/k/a Southern Energy	Personal injury

**TABLE B: INDEMNIFICATION OF THIRD PARTIES
AND ASSUMPTION OF LIABILITY**

CASE NAME	COURT AND CASE NUMBER	DATE ACTION FILED	THIRD PARTY	DEBTOR DEFENDANT	TYPE OF CASE
In re Mirant Corporation ERISA Litigation (consolidates Brown and Waller)	00230) N.D. Ga. (1:03CV-1027BBM)	4/17/2003 & 6/3/2003 (consolidated on 9/2/2003	Corp. The Southern Company; T. Rowe Price Trust Company	Resources, Inc. Mirant Corp.	ERISA class actions
In Re Mirant Corporation Securities Litigation (consolidates 20 suits)	N.D. Ga. (1:02-CV-1467-BBM)	5/29/2002	The Southern Company; Underwriter Defendants: Goldman, Sachs & Co., Morgan Stanley Dean Witter, Banc of America Securities LLC, Credit Suisse First Boston Corp., J.P. Morgan Securities Inc., Lehman Brothers Inc., Solomon Smith Barney Inc., ABN AMRO Incorporated, Blaylock & Partners L.P., Chase Securities Inc., Commerzbank Aktiengesellschaft, The Williams Capital Group, L.P.	Mirant Corp.	Securities Suit

TABLE B: INDEMNIFICATION/ASSUMED LIABILITY: PEPCO ASBESTOS SUITS

PLAINTIFF LAST NAME	FIRST NAME	DOCKET #	STATE	CITY/COUNTY
Anastasi	Robert	24x02000991	MD	Baltimore City
Arnold	Frederick	24X01002031	MD	Baltimore City
Baker	Andrew	24x99001668	MD	Baltimore City
Barrett	William	CAL90-18263	MD	Baltimore City
Burnette	Lacy	24x99001741	MD	Baltimore City
Cannon	Lee	24x02000826	MD	Baltimore City
Chajkowski	Frank	24x99001663	MD	Baltimore City
Chatman, Sr.	James	24x00001401	MD	Baltimore City
Cherry	Lucius	24x92160505	MD	Baltimore City
Dandois	John	24x01000941	MD	Baltimore City

TABLE B: INDEMNIFICATION/ASSUMED LIABILITY: PEPCO ASBESTOS SUITS

PLAINTIFF LAST NAME	FIRST NAME	DOCKET #	STATE	CITY/COUNTY
Decatur	Noble	24x0001323	MD	Baltimore City
Donohue	Nancy	24x01001436	MD	Baltimore City
Ely	Eugene	24x00001267	MD	Baltimore City
Ferrandi	Anthony	24x99001724	MD	Baltimore City
Foster	Lawrence	24x02000265	MD	Baltimore City
Fredricksen	Charles	24X01000438	MD	Baltimore City
Goldsborough	Harry	24x01000864	MD	Baltimore City
Hall, Sr.	Leonard	24x01002071	MD	Baltimore City
Harris	Maurice	24x02000930	MD	Baltimore City
Hawkins	William	24x01001137	MD	Baltimore City

TABLE B: INDEMNIFICATION/ASSUMED LIABILITY: PEPCO ASBESTOS SUITS

PLAINTIFF LAST NAME	FIRST NAME	DOCKET #	STATE	CITY/COUNTY
Hayes	Douglas	24x02000998	MD	Baltimore City
Hicks	Monroe	24x00001285	MD	Baltimore City
Hope	Edward	24x02000824	MD	Baltimore City
Irving	Michael	24x02000935	MD	Baltimore City
Jones, Jr.	Joseph	24x02001264	MD	Baltimore City
Keydash	Anthony	24x99001662	MD	Baltimore City
Kolman, Jr.	Chester	24x01001894	MD	Baltimore City
Lamb	Fred	24x02000999	MD	Baltimore City
Lang, Sr.	Joseph	24x93176518	MD	Baltimore City
LaPaglia	Thomas	24x99001666	MD	Baltimore City

TABLE B: INDEMNIFICATION/ASSUMED LIABILITY: PEPCO ASBESTOS SUITS

PLAINTIFF LAST NAME	FIRST NAME	DOCKET #	STATE	CITY/COUNTY
Machala	August	24x92585534	MD	Baltimore City
McCowan	John	24x01000435	MD	Baltimore City
McDonough, Sr.	John	24x91213519	MD	Baltimore City
Miller	Paul	24x02000372	MD	Baltimore City
Moreland	James	24X01000539	MD	Baltimore City
Nelson	Archie	24x92160503	MD	Baltimore City
Nelson, Sr.	Harold	24x02001001	MD	Baltimore City
Nichols	Norman	24x99000374	MD	Baltimore City
O'Connor, Jr.	Lawrence	24X99001722	MD	Baltimore City
Paris	Wilfred	24x02000375	MD	Baltimore City

TABLE B: INDEMNIFICATION/ASSUMED LIABILITY: PEPCO ASBESTOS SUITS

PLAINTIFF LAST NAME	FIRST NAME	DOCKET #	STATE	CITY/COUNTY
Richburg	Oneal	24x02000281	MD	Baltimore City
Rickman	Alma	24x01001098	MD	Baltimore City
Ritter	William	24x99001140	MD	Baltimore City
Roe	Arthur	24x01000073	MD	Baltimore City
Shiflett	James	24x99002578	MD	Baltimore City
Smith	Joseph	24x99002590	MD	Baltimore City
Sosnowski	Alexander	24x00001433	MD	Baltimore City
Suit	Walter	24x01000626	MD	Baltimore City
Sullivan	John	24x99000857	MD	Baltimore City
Sweet	William	24x02001004	MD	Baltimore City

TABLE B: INDEMNIFICATION/ASSUMED LIABILITY: PEPCO ASBESTOS SUITS

PLAINTIFF LAST NAME	FIRST NAME	DOCKET #	STATE	CITY/COUNTY
Tyler	Samuel	24x02001044	MD	Baltimore City
Wajer	Anthony	24x01001185	MD	Baltimore City
Woods	Morris	24x99001723	MD	Baltimore City
Wuechner	Freidrich	24X02000844	MD	Baltimore City
Young	Charles	24x01002062	MD	Baltimore City

