

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

ENTERED

AWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

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

ORDER PURSUANT TO 11 U.S.C. §§ 328(a) AND 1103(a) AND FED. R. BANKR. P. 2014 AUTHORIZING THE EMPLOYMENT AND RETENTION OF MILLER BUCKFIRE LEWIS YING & CO., LLC AS FINANCIAL ADVISOR AND INVESTMENT BANKER TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MIRANT CORPORATION ET AL.

Upon consideration of the Application dated September 11, 2003 (the "Application"), filed by The Official Committee of Unsecured Creditors of Mirant Corporation, et al. (the "Committee"), seeking an order authorizing the Committee's retention of Miller Buckfire Lewis Ying & Co., LLC ("MBLY") as financial advisor and investment banker to the Committee, effective as of August 5, 2003; and upon the engagement letter dated as of August 5, 2003 between MBLY and the Committee (the "Engagement Letter") and the Affidavit of Kenneth A. Buckfire (the "Buckfire Affidavit"), which were attached to the Application; and capitalized terms used and not otherwise defined herein having the meanings set forth in the Application and the Buckfire Affidavit; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND THAT:

A. This Court has jurisdiction over these cases and over the Application pursuant to 28 U.S.C. §§ 157 and 1334, and venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Notice of the Application has been given in accordance with the statements made in the Application and the associated certificate of service, and no other or further notice is necessary.

C. MBLY and each of its members, officers, directors and employees represent no interest adverse to the Committee or to the Debtors' estates such that would disqualify MBLY from representation of the Committee in these Chapter 11 cases.

D. The retention of MBLY as the Committee's financial advisor and investment banker, on the terms set forth in the Engagement Letter (as modified by this Order), is in the best interests of the Committee and the persons whose interests the Committee represents.

E. The Monthly Advisory Fee of \$150,000 per month specified in Section 2(a) of the Engagement Letter constitutes a "reasonable term and condition of employment" pursuant to section 328(a) of the Bankruptcy Code.

F. This Court's Order Restricting Pursuit of Certain Persons, dated August 5, 2003 (as the same has subsequently been extended or amended, including by the Court's September 29, 2003 Order Extending Order Restricting Pursuit of Certain Persons, the "Protected Persons Order"), which is made applicable to MBLY by the terms of this Order, provides reasonable protections to MBLY that accomplish the legitimate purposes that otherwise would be accomplished through the Indemnification Provisions that are incorporated in the Engagement

Letter (the “Indemnification Provisions”), and make it unnecessary for this Court to consider or approve the Indemnification Provisions.

G. In agreeing to act as the Committee’s financial advisor and investment banker on the terms set forth herein, MBLY is relying on the protections afforded by the Protected Persons Order. In the absence of those protections, MBLY would have required the approval of the Indemnification Provisions as a condition to MBLY’s agreement to provide services to the Committee.

IT IS THEREFORE ORDERED THAT:

1. The Committee’s employment and retention of MBLY as its financial advisor and investment banker to perform the services described in the Application, effective as of August 5, 2003 and on the terms and conditions set forth in the Application and the Engagement Letter, is approved, provided, however:

(a) The Indemnification Provisions are not approved and shall not be effective, for the reasons stated above (without prejudice to MBLY’s rights to renew its request for the Court’s approval of the Indemnification Provisions for the period from and after August 5, 2003 if the Protected Persons Order is terminated, expires or otherwise does not provide the protections it is expected to provide);

(b) The definition of the “Fee Period” in section 2(b) of the Engagement Letter is hereby modified so as to replace the words “the term of this engagement or within the twelve full months following the termination of this engagement” with the words “the term of this engagement or within the two full months following the termination of this engagement, or such later time as is found reasonable by the Court”; and

(c) In the event that the Engagement Letter is terminated without Cause (as defined in section 6 of the Engagement Letter) and without the payment of a Transaction Fee pursuant to section 2(b) of the Engagement Letter, MBLY shall have the right to seek additional compensation, in addition to its Monthly Fees, based on the time spent by MBLY in its performance of services for the Committee and the reasonable value of those services, upon application to and as determined by the Court.

2. Fees payable to MBLY pursuant to the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code, except that the Court may deny approval of the Transaction Fee payable under Section 2(b) of the Engagement Letter, or of other fees sought pursuant to Section 2(b) of the Engagement Letter after the conclusion of the engagement, to the extent that such fees are unreasonable when compared to the fees paid to, and results obtained by, other comparable investment banking and financial advisory firms in other Chapter 11 cases involving comparable services where such Court was not bound by the terms of the employment agreement.

3. Notwithstanding the foregoing, MBLY will file applications for allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in §§ 330 and 331 of the Bankruptcy Code, and in accordance with the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Chapter 11 Professionals and Committee Members entered by the Court on August 1, 2003, and the Memorandum Order Regarding Compensation of Professionals entered by the Court on August 27, 2003, any applicable Bankruptcy Rules, the applicable local bankruptcy rules, any

other orders of this Court, and any procedures as may be fixed by order of this Court; provided, however, that the approval of MBLY's fees and expenses will be subject to the review standards set forth above; and provided further, that MBLY shall only be required to maintain time records, for services rendered post-petition, in half-hour increments, and MBLY shall not be required to provide or conform to any schedule of hourly rates.

4. MBLY and its affiliates, members, managers, directors, officers and employees hereby are deemed to be "Protected Professionals" who are entitled to the protections set forth in the Protected Persons Order.

5. The retention of MBLY shall be subject to review for continuation at the Court's discretion.

6. To the extent that the Engagement Letter is inconsistent with the Application, the terms of the Engagement Letter shall govern, and to the extent that this Order is inconsistent with any prior order or the Engagement Letter, the terms of this Order shall govern.

7. This Order shall be effective from August 5, 2003 through and including the date of the Final Order on the Application.

8. This Order shall become a Final Order on the twenty-seventh (27th) day after entry of the Order without further notice or hearing unless an objection to the Order is timely filed with the Court and served on MBLY on or before twenty-six (26) days after entry of the Order.

Dated: February 2, 2004


HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE