

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

**ENTERED**

THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET  
TAWANA D. MARSHALL, CLERK

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

**ORDER GRANTING DEBTORS' MOTION PURSUANT TO FEDERAL RULE  
OF BANKRUPTCY PROCEDURE 9019 APPROVING SETTLEMENT  
AGREEMENT AND RELEASE BETWEEN MIRANT AMERICAS ENERGY  
MARKETING, LP, MIRANT CORPORATION, MORGAN STANLEY CAPITAL  
GROUP INC. AND MORGAN STANLEY**

Upon the Motion dated June 3, 2004 filed by Mirant Corporation and its above-captioned affiliated debtors (collectively, the "Debtors"), as debtors and debtors-in-possession, pursuant to rule 9019 of the Federal Rules of Bankruptcy Procedure requesting an order allowing Debtors Mirant Corporation ("Mirant Corp.") and Mirant Americas Energy Marketing, LP ("MAEM") to enter into a "Settlement Agreement and Release" (the "Settlement Agreement") with Morgan Stanley Capital Group ("MSCG") and Morgan Stanley ("MS" and, collectively with MSCG, "Morgan Stanley");<sup>1</sup> and this Court finding that the Settlement Agreement is fair and equitable and in the best interests of creditors and satisfies the standard for approval of settlement agreements set forth in *In re Cajun Electric Power Cooperative, Inc.*, 119 F.3d 349, 355 (5th Cir. 1997); *see also, In re Zale Corp.*, 62 F.3d 746, 754 (5th Cir. 1995) for the reasons stated in the Motion; 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;

<sup>1</sup> Unless otherwise defined herein, capitalized terms have the same meaning set forth in the Motion.

upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

It is hereby:

**ORDERED**, that the motion is GRANTED; it is further

**ORDERED**, that the Settlement Agreement is approved (including the releases set forth therein), and MAEM and Mirant Corp. are authorized to perform thereunder; it is further

**ORDERED**, that MSCG shall pay **\$36,500,000.00** to MAEM within five Business Days after the Bankruptcy Court Order Date (as defined in the Settlement Agreement) on account of MSCG's termination of certain contractual relationships with MAEM, and the settlement of such amounts, as described in the Motion; it is further

**ORDERED**, that all new, industry standard trading contracts entered into between MAEM and MSCG, including, but not limited to, ISDA, EEI, WSPP, GISB and/or NAESB master agreements, and specifically including, but not limited to, such master agreements of the type and with at least terms such as those described in Exhibit A attached hereto, and various other master agreements, "long-form confirmations", netting agreements, master netting agreements, collateral agreements and/or credit support agreements or annexes relating thereto (including all related schedules, exhibits, annexes and confirmations), and any transactions thereunder, as may be amended, restated or supplemented from time to time, entered into between MAEM and MSCG (collectively, the "New Postpetition Trading Contracts") shall be deemed Postpetition Trading Contracts (as defined in the Final Trading Order,<sup>2</sup> and as such

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<sup>2</sup> The "Final Trading Order" is more specifically described as the "Final Order Authorizing The Debtors To (I) Comply With Terms Of Pre-Petition Trading Contracts, (II) Enter Into Post-Petition Trading Contracts In The Ordinary Course Of Business, (II) Provide Credit Support Relating To Both Pre- And Post-Petition Trading Contracts, And (IV) Authorizing Assumption

(continued )

definition may be modified by the Court) entered into in the ordinary course of business by MAEM and MSCG, to the extent that (a) such New Postpetition Trading Contracts are “forward contracts,” “commodity contracts” and/or “swap agreements” as such terms are defined in sections 101 or 761 of the Bankruptcy Code; and (b) MSCG is a “forward contract merchant,” “commodity broker” and/or “swap participant” as such terms are defined in section 101 of the Bankruptcy Code in connection with such New Postpetition Trading Contracts; it is further

**ORDERED**, that such New Postpetition Trading Contracts shall be entitled to all protections for Postpetition Trading Contracts provided in the Final Trading Order; provided, however, that entry into any New Postpetition Trading Contracts and/or any transactions thereunder shall not constitute a Waiver Event (as defined in the Final Trading Order) with respect to any of the Prepetition Trading Contracts (as defined in the Final Trading Order) by and among the Parties (including but not limited to the Agreements, the Guarantees and the Transactions), or otherwise adversely affect MSCG's right to cause or have caused the liquidation or termination of any such Prepetition Trading Contracts.

Dated: June 23, 2004



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HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

( continued)

Of Pre-Petition Trading Contracts” entered on August 27, 2003 by this Court in this bankruptcy case.

## EXHIBIT A

### Master Allowance Purchase and Sale Agreement (the "Master Agreement"):

Parties: Morgan Stanley Capital Group Inc. and Mirant Americas Energy Marketing, L.P. (collectively, the "Parties")

Transactions Governed by Master Agreement: Transactions (each, a "Transaction") for the purchase, sale or exchange of (1) United States Environmental Protection Agency or state authorizations for emissions of sulfur dioxide and/or nitrogen oxide during specified time periods ("Allowances"), and (2) rights, but not the obligation unless exercised, to purchase or sell one or more Allowances pursuant to the terms of certain call options or put options ("Options").

Purchase Price and Quantity: The purchase price for and quantity of Allowances and Options purchased, sold or exchanged under each Transaction shall be as agreed to by the Parties or their respective representatives and as listed in the written notice confirming the specific terms of each such Transaction (each, a "Confirmation").

Credit Assurance: A Party (the "Posting Party") shall provide the other Party (the "Requesting Party") with a cash prepayment, an irrevocable standby letter of credit, a guarantee by third party, and/or other security, in a form and amount acceptable to the Requesting Party in its sole discretion, in the event the Requesting Party has reasonable grounds for insecurity concerning the Posting Party's ability to perform any of its obligations under the Master Agreement or under any Transaction.