

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

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
**EN RECD**  
MANA C. WINSTON, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

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

**ORDER GRANTING DEBTORS' MOTION PURSUANT TO SECTIONS  
105 AND 363 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019  
ESTABLISHING PROCEDURES FOR SETTLEMENT OF  
TERMINATED SAFE HARBOR CONTRACTS**

Upon the "Motion Pursuant To Sections 105 And 363 Of The Bankruptcy Code And Bankruptcy Rule 9019 Establishing Procedures For Settlement Of Terminated Safe Harbor Contracts" (the "Motion")<sup>1</sup> dated December 31, 2003, filed by Mirant Corporation and its affiliated debtors (collectively, the "Debtors") for the entry of an order establishing and authorizing procedures for settlement of certain, specified terminated safe harbor contracts pursuant to that certain Trading Contract Settlement Protocol which has been filed with this Court under seal (the "Original Protocol"); and it appearing that this Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b); and it appearing that venue of this proceeding and this Motion is proper in this district in accordance with 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having

<sup>1</sup> Unless otherwise defined herein, capitalized terms have the same meaning ascribed to them in the Motion.

been given as set forth on the certificate of service annexed to the Motion and the affidavit filed by Bankruptcy Services LLC; and it appearing that no other or further notice is necessary; and it further appearing that the Debtors have withdrawn their request to approve the Original Protocol and now seek approval of a Revised Trading Contract Settlement Protocol (the "Revised Protocol), a copy of which is attached hereto as Exhibit A; and this Court finding that the Trading Contracts are within the class of controversies that may be resolved pursuant to the Revised Protocol without notice or a hearing (except as required under the Revised Protocol) under Federal Rule of Bankruptcy Procedure 9019(b); and this Court further finding that permitting settlement of Trading Contracts pursuant to the Revised Protocol is in the best interests of the Debtors, their estates and their creditors; and after due consideration and sufficient cause appearing therefor,

It is hereby:

**ORDERED**, pursuant to Federal Rule of Bankruptcy Procedure 9019(b), the Debtors are authorized to settle Trading Contracts according to, and in the manner provided by, the Revised Protocol, a copy of which is attached hereto as Exhibit A (and incorporated herein as though set forth in full) without further hearing or notice except as required under the Revised Protocol; the Notice Parties shall comply with their obligations set forth therein; it is further

**ORDERED**, that non-Debtor parties to the Trading Contracts that are the subject of a settlement under the Revised Protocol are entitled to rely on the written representations of an officer of the Debtors that the Revised Protocol has been complied with in the same manner as though an order approving the particular settlement had been entered by the Court; it is further

**ORDERED**, that the Notice Parties shall treat all information received in connection with the Revised Protocol as highly sensitive and confidential information (and as "Subject

Material” under that certain “Order Approving Specified Information Blocking Procedures and Permitting Trading in the Debtors’ Securities, Bank Debt, Purchase or Sale of Trade Debt and Issuing of Analyst Reports Upon Establishment of a Screening Wall Effective July 25, 2003” signed by this Court on August 18, 2003, hereinafter referred to as the “Screening Order”), and no Notice Party shall file with the Bankruptcy Court or serve upon (or deliver to) other parties in interest (other than the Debtors or other Notice Parties) any pleading or notice which discloses such information; provided however, such confidential information may be filed with this Court under seal pursuant to an order authorizing such information to be filed under seal and in accordance with the Screening Order; it is further

**ORDERED**, that this Court, in its discretion, will hear objections by a Notice Party to a settlement under the Revised Protocol in camera, as necessary to protect the confidentiality of a particular settlement; it is further

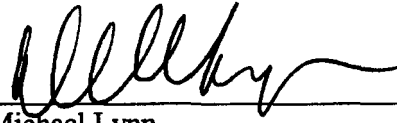
**ORDERED**, that notwithstanding the fact that settlement of Trading Contracts may be authorized hereunder without the entry by this Court of a specific order approving same, in undertaking their obligations under the Revised Protocol, the members of the “Committees,” the “Protected Managers,” and the “Protected Professionals” shall be deemed “Protected Persons”<sup>2</sup> under the “Order Restricting Pursuit of Certain Persons” signed by this Court on September 29, 2003, and extended by the “Order Extending Order Restricting Pursuit of Certain Persons” signed by this Court on August 5, 2003 (as such orders may be further extended or modified from time to time, collectively, the “Orders”); such “Protected Persons” shall be afforded the

---

<sup>2</sup> As those terms are defined in the “Order Restricting Pursuit of Certain Persons” signed by this Court on September 29, 2003, and extended by the “Order Extending Order Restricting Pursuit of Certain Persons” signed by this Court on August 5, 2003.

protections contained in the Orders as though an order approving each settlement of a Trading Contract authorized under the Revised Protocol had been entered by this Court.

Dated: February 24, 2004

A handwritten signature in black ink, appearing to read "D. Michael Lynn", written over a horizontal line.

D. Michael Lynn,  
United States Bankruptcy Judge

## EXHIBIT A

### REVISED TRADING CONTRACT SETTLEMENT PROTOCOL

1. **Settlement of Trading Contracts.** The Debtors may enter into agreements with a counterparty to a Trading Contract that provide for the settlement of claims and obligations arising out of a Trading Contract. The Debtors will provide to each Committee and the DIP Lender (collectively, the "Notice Parties") full and complete details of any proposed settlement of Trading Contract claims or obligations, including but not limited to the Settlement Information. Such information shall be delivered in accordance with Section 10 below. The Debtors may enter into agreements reasonably necessary to memorialize or facilitate the settlement of a Trading Contract (which may include mutual releases of claims relating to or arising solely from the settled Trading Contract). Notwithstanding anything herein to the contrary, the Debtors shall not submit any more than five (5) Trading Contract settlements to the Notice Parties for review in any calendar week.

2. **Response to Settlement of Trading Contracts.** The Notice Parties will have ten (10) calendar days after service of the information described in Section 1 to review the proposed settlement (and, if requested prior to the expiration of the 10-day period, an additional five calendar (5) days) and determine whether or not the proposed settlement (a) falls within the standard of approval required by Fed. R. Bankr. P. 9019(a); (b) is "fair and equitable and in the best interest of the estate." *In re Cajun Electric Power Cooperative, Inc.*, 119 F.3d 349, 355 (5th Cir. 1997); and (c) "fall[s] beneath the lowest point in the range of reasonableness." *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991).

3. **Resolution of Responses to Settlement of Trading Contracts.** (a) If no Notice Party timely objects to a proposed settlement, the proposed settlement shall be approved and the Debtors may consummate said settlement without further order of the Bankruptcy Court. (b) If any Notice Party timely informs the Debtors in writing that they object to the proposed settlement, and sets forth the reasons why the proposed settlement does not comport with the requirements of Section 2, the Debtors will (i) seek to resolve the objection with the objecting Notice Party; and/or (ii) file a motion (a "Settlement Motion") with the Bankruptcy Court seeking approval of the settlement in accordance with the Bankruptcy Rules and orders of the Bankruptcy Court. In such an event, such settlement agreements shall not be approved unless and until the objections are resolved or the Bankruptcy Court orders such relief. No Notice Party shall file any objection to a settlement with the Bankruptcy Court; provided however, a Notice Party may file with the Bankruptcy Court an objection to a Settlement Motion, subject to the requirements of Section 6 hereof.

4. **Allocation.** Any monies paid to, or received by, the Debtors (or associated claim determination) relating to a combined settlement of Trading Contract claims of more than one of the Debtors (through master netting agreements or otherwise) pursuant to this Protocol or a Settlement Motion, shall be provisionally allocated in accordance with the example set forth on Exhibit A attached hereto; provided however, such allocations are subject to reallocation pursuant to agreement among the Notice Parties and the Debtors, or order of the Bankruptcy Court. All rights are reserved in regard to final allocation. The Debtors shall disclose to the Notice Parties the allocation set forth in the previous paragraph in regard to settlements entered

into hereunder at the same time other information required to be disclosed under said protocol is disclosed to the Notice Parties.

5. **Set-off and Resort to Collateral.** (a) To the extent any settlement of claims and obligations arising out of a terminated Trading Contract under this Protocol involves the right (or asserted right) of recoupment or the setting off of debts and claims between the parties thereto, such rights (or asserted rights) may be taken into consideration and resolved in good faith in reaching a settlement under this Protocol and without further order of the Bankruptcy Court. (b) Any settlement of claims and obligations arising out of a terminated Trading Contract may include provisions relating to the exhaustion of collateral (or a draw upon a letter of credit) in favor of either party to the Trading Contract.

6. **Confidentiality.** The Notice Parties shall treat all information received in connection with this Protocol as highly sensitive and confidential information (and as "Subject Material" under that certain "Order Approving Specified Information Blocking Procedures and Permitting Trading in the Debtors' Securities, Bank Debt, Purchase or Sale of Trade Debt and Issuing of Analyst Reports Upon Establishment of a Screening Wall Effective July 25, 2003" signed by the Bankruptcy Court on August 18, 2003 and hereinafter defined as the "Screening Order"). No Notice Party shall file with the Bankruptcy Court or serve upon (or deliver to) other parties in interest (other than the Debtors or other Notice Parties) any pleading or notice which discloses such information unless and until such information is no longer "Subject Material" as defined in the Screening Order; provided however, such confidential information may be filed under seal with the Bankruptcy Court pursuant to an order authorizing such information to be filed under seal and in accordance with the Screening Order.

7. **Previously Filed Protocol Superseded.** This Protocol shall supersede that certain protocol filed under seal with the Bankruptcy Court pursuant to the *Ex Parte* Order Authorizing Debtor to File Trading Contract Settlement Protocol Under Seal signed by the Bankruptcy Court on January 5, 2004. The terms of this Protocol shall govern the settlement of a Trading Contract.

8. **Procedure Review.** If at any time during the period in which the Protocol is in effect, the Notice Parties believe that the procedures set forth herein do not adequately protect the rights of creditors or equity holders, any of the Notice Parties may, on ten (10) days notice to the other Notice Parties and the Debtors file a motion with the Bankruptcy Court requesting that the Protocol be altered, revised or terminated. A response to any such motion must be filed not later than two (2) days before the hearing on such motion.

9. **Definitions.** The following terms have the definitions set forth below.

"Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

"Bankruptcy Court" means the United States Bankruptcy Court for the Northern District of Texas (Fort Worth Division).

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court.

**“Confirmation”** means a document evidencing a transaction under a Trading Contract.

**“Committees”** means (a) the Official Committee of Unsecured Creditors of Mirant Corporation (**“Mirant Committee”**), (b) the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC (**“MAG Committee”**), (c) the Equity Committee for Mirant Corporation (**“Equity Committee”**).

**“Debtors”** mean, collectively, the debtors and debtors-in-possession in the administratively consolidated case of In re Mirant Corporation currently pending in the United States Bankruptcy Court for the Northern District of Texas (case number 03-46590).

**“DIP Lender”** means any entity that provides (or has provided) financing authorized by the Bankruptcy Court pursuant to, and authorized by, Bankruptcy Code section 364.

**“Final Trading Order”** means 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, (III) Provide Credit Support Relating To Both Pre- And Post-Petition Trading Contracts, And (IV) Authorizing Assumption Of Pre-Petition Trading Contracts” entered on August 27, 2003 in the Debtors’ bankruptcy case.

**“Protocol”** means this revised Protocol for the settlement of Trading Contracts.

**“Settlement Information”** means (a) copies of all the Trading Contracts which are being settled, including but not limited to Confirmations (unless the Committees’ advisors agree otherwise), master agreements, termination notices, netting agreements; (b) a spreadsheet listing the details of each of the Trading Contracts which are being settled, including but not limited to, the term of the contract, when and by which party the contract was terminated, the amount of collateral held by the settling party and the amount of damages or replacement costs and associated methodology (if applicable); (c) a spreadsheet listing the details of other balances included within the settlement agreement, including accounts receivable and accounts payable; (d) a copy of the proposed settlement agreement and the history of settlement negotiations (if applicable); and (e) the Spreadsheet defined below.

**“Spreadsheet”** means a spreadsheet listing (a) the name of the settling parties; (b) the proposed settlement amount; (c) the amount of the settling party’s original settlement offer; (d) a description of settlement terms; (e) the amount and type of collateral held by the settling parties and the extent and manner in which such collateral is being exhausted in connection with the proposed settlement; (f) the Debtors’ mark-to-market value of each Trading Contract being settled; and the counterparty’s best offer; and (g) a description of the Trading Contracts being settled (e.g., power swaps, coal options, physical gas contracts, etc.).

**“Trading Contract”** means any contract that a party thereto asserts in good faith (a) is subject to section 555, 556, 559, or 560 of the Bankruptcy Code, and (b) has (i) been validly liquidated, terminated or rejected by the Debtors, or automatically, or (ii) expired in accordance with its terms, including without limitation amounts shown on the books and records of the Debtors as accounts receivable or accounts payable; provided, however, “Trading Contract” shall not include a contract that has been assumed by the Debtors under Bankruptcy Code section 365, or is subject to the Final Trading Order.

Terms used in the singular include the plural.

10. **Notices.**

(a) **Notice Parties.** All information required to be provided to the Notice Parties under this Protocol shall be delivered to the following persons by hand-delivery, first-class mail, Federal Express (or other next-day courier service), or e-mail:

To: **The MAG Committee:**

Gregory M. Petrick  
Cadwalader Wickersham & Taft, LLP  
100 Maiden Lane  
New York, NY 10038  
E-mail: [gregory.petrick@cwt.com](mailto:gregory.petrick@cwt.com)  
Telephone: (212) 504-6373  
Facsimile: (212) 504-6666

Salvatore LoBiondo  
Kroll Zolfo Cooper  
101 Eisenhower Parkway  
3<sup>rd</sup> Floor  
Roseland, NJ 07068  
E-mail: [SLobiondo@krollzolfocooper.com](mailto:SLobiondo@krollzolfocooper.com)  
Telephone: (973) 618-5155  
Facsimile: (973) 618-9432

To: **The Mirant Committee:**

Mark Thompson  
Simpson Thatcher & Bartlett  
425 Lexington Avenue  
New York, NY 10017-3954  
E-mail: [mthompson@stblaw.com](mailto:mthompson@stblaw.com)  
Telephone: (212) 455-2000  
Facsimile: (212) 455-2502

Mr. David Shimko  
Risk Capital Management Partners,  
1790 Broadway Suite 1500,  
New York, NY 10019  
E-mail: [shimko@e-rcm.com](mailto:shimko@e-rcm.com)  
Telephone: (212) 918-1880  
Facsimile: (212) 918-1879

To: **The Equity Committee:**

Leslie H. Scharf, Esq.  
Brown Rudnick Berlack Israels LLP

120 West 45th Street  
New York, New York 10036  
E-mail: [lscharf@brbilaw.com](mailto:lscharf@brbilaw.com)  
Telephone: (212) 704-0100  
Facsimile: (212) 704-0196

-and-

Anders J. Maxwell, Managing Director  
Peter J. Solomon Company  
767 5th Avenue  
New York, New York 10153  
E-mail: [amaxwell@pjsolomon.com](mailto:amaxwell@pjsolomon.com)  
Telephone: (212)508-1600  
Facsimile: (212)508-1633

To: DIP Lender:

Stephen Youngman, Esq.  
Weil, Gotshal & Manges LLP  
200 Crescent Court, Suite 300  
Dallas, TX 75201  
E-mail: [stephen.youngman@weil.com](mailto:stephen.youngman@weil.com)  
Telephone: (214) 746-7758  
Facsimile: (214) 746-7777

(b) Debtors. All information required to be provided to the Debtors under this Protocol shall be delivered to the following persons by hand-delivery, first-class mail, Federal Express (or other next-day courier service), or e-mail:

Sonnet Edmonds, Esq.  
1155 Perimeter Center West  
Atlanta, GA 30338  
Email: [sonnet.edmonds@mirant.com](mailto:sonnet.edmonds@mirant.com)  
Telephone: (678) 579-5119  
Facsimile: (678) 579-5890

Jason D. Schauer, Esq.  
633 West Fifth Street Suite 1900  
Los Angeles, California 90071-2007  
Email: [jschauer@whitecase.com](mailto:jschauer@whitecase.com)  
Telephone: (213) 620-7729  
Facsimile: (213) 687-0758

**EXHIBIT A**

*(Provisional Allocation Method)*

Facts: MAEM is \$10M out of the money with a non-Debtor counterparty to a Trading Contract and MAG is in the money \$5M with that same counterparty. In a termination, assuming that the Debtors settle with the counterparty for \$6M (versus the \$5M that the Debtors would have calculated the counterparty to be owed), both MAG and MAEM would share that burden. On an absolute value basis, MAEM is contributing 67% of the total gross value and MAG is contributing 33% of the gross value.

Allocation: Therefore, MAEM would owe \$10.67M ( $\$10M + .67(\$1M)$ ) and MAG would be due \$4.67M ( $\$5M - .33(\$1M)$ ). Of the \$10.67M owed by MAEM, \$6M would be allocated to the counterparty, and \$4.67 would be allocated to MAG as settlement for MAG's in the money positions.