

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

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

_____)	
In re)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46591(DML)11
)	Jointly Administered
Debtors.)	
_____)	

**ORDER APPROVING COMPROMISE PURSUANT TO F.R.B.P. 9019
BETWEEN THE DEBTORS AND GE CAPITAL FINANCIAL, INC.**

On this day, the Court heard the Motion, dated July 21, 2003 (the "Motion"),¹ of Mirant Corporation and its affiliated debtors (collectively, the "Debtors"), as debtors-in-possession, for an order (1) 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, (2) pursuant to Federal Rule of Bankruptcy Procedure 9019 approving compromise between the Debtors and GE Capital Financial, Inc. ("GECF"), (3) scheduling a final hearing on the allowance of postpetition secured credit, and (4) authorizing other relief requested in the Motion, all as more fully set forth in the Motion; and upon consideration of the Affidavit of Larry Wells in support of the Motion sworn to on the 21st day of July, 2003 and the Affidavit of John W. Ragan in Support of First Day Motions and Applications sworn to on the 14th day of July, 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notice of the Motion has been provided, and that no other or further notice need be provided; and the Debtors, having withdrawn their request in the Motion pursuant to Bankruptcy Code Section 364(c)(2) and Federal Rule of Bankruptcy Procedure 4001(c)(2), to obtain postpetition secured credit on a final basis by entering into, and performing the terms of, (i) a New Agreement and (ii) the Term Sheet, insofar as it relates to approval of the New Agreement; and the Court, having found that the Compromise for which approval is sought in the

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

Motion satisfies Federal Rule of Bankruptcy Procedure 9019(a) and the factors for approval of compromises set forth in *In the Matter of Cajun Electric Power Cooperative, Inc.*, 119 F.3d 349 (5th Cir. 1997) in that the Compromise is fair and equitable and in the best interests of the estate and its creditors and that parties to the Compromise have acted in good faith; and after hearing argument by counsel for the Debtors, counsel for the two official committees of unsecured creditors and counsel for the objecting parties, Citibank, N.A. and Credit Suisse First Boston, and upon consideration of all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that, having withdrawn their request in the Motion pursuant to Bankruptcy Code Section 364(c)(2) and Federal Rule of Bankruptcy Procedure 4001(c)(2), to obtain postpetition secured credit on a final basis by entering into, and performing the terms of, a New Agreement and the Term Sheet in regards to the New Agreement, no final relief shall be entered with respect to such request; and it is further

ORDERED that the certain "Purchasing Card Program Agreement" dated June 15, 2001 between Mirant and GECF (the "Agreement") shall be deemed terminated effective upon entry of this Order; and it is further

ORDERED that the Compromise with GECF regarding the return of the \$927,389 Payment set forth in the Motion is approved and shall be effected in the following manner:

(a) GECF shall deposit \$927,389 into a segregated trust account maintained by the Debtors' counsel, White & Case, LLP (the "Trust Account");

(b) GECF shall then draw upon the LC in an amount equal to (i) the Payment, plus (ii) other amounts owing under the Agreement as of July 15, 2003 (the Petition Date) in the amount of \$75,889, and (iii) charges incurred prior to the Petition Date, but which were posted to the Debtors' account after the Petition Date, in the amount of \$66,219, for a total draw under the LC not to exceed \$1,069,498 (plus an amount equal to any additional prepetition charges which have not been processed as of the date hereof);

(c) upon receipt of the \$1,069,498 from the Issuing Bank, the \$927,389 held in the Trust Account shall be returned to the Debtors for the benefit of their estates;

(d) the Debtors and GECF shall take all reasonable steps to terminate the LC either (i) after GECF has confirmed there are no other prepetition charges under the Agreement which have not been posted to the Debtors' account, or (ii) within thirty (30) days after entry of this Order, whichever is the first to occur; and it is further

ORDERED that the Debtors shall reimburse GECF for its reasonable attorneys fees incurred in connection with the Motion and the relief requested therein in an amount equal to the lesser of (i) 35% of the actual fees incurred by GECF in connection with the Motion or (ii) \$8,750.

ORDERED that if the draw under the LC for any reason whatsoever is not fully effectuated, the \$927,389 shall be returned to GECF; and it is further

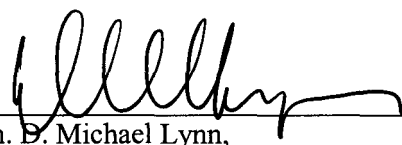
ORDERED that upon consummation of the Compromise set forth above, and only after payment of the \$927,389 to the Debtors from the Trust Account and GECF's confirmed receipt of \$1,069,498, as contemplated herein:

(a) the Debtors and their estates shall release GECF from all claims, liabilities, and causes of action, relating to or arising out of the Agreement or the draw under the LC; and

(b) GECF shall release the Debtors and their estates from any claims against property of the Debtors' estates; and it is further

ORDERED that the relief granted herein is without prejudice to any of the rights of the issuing bank of the LC with respect to any draw on the LC by GECF.

Dated: September 10, 2003.



Hon. B. Michael Lynn,
United States Bankruptcy Judge

PREPARED BY:

Judith Elkin

State Bar No. 06522200

Ian Peck

State Bar No. 24013306

HAYNES AND BOONE, LLP

901 Main Street

Suite 3100

Dallas, TX 75202

(214) 651-5000