

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

ENTFRED

TAWANA C. MARRIAGE, CLERK
THE DATE OF ENTRY IS
ON THE COURT DOCKET

In re)
)
MIRANT CORPORATION, et al.,)
)
Debtors.)
_____)

Case No. 03-46591 (DML)11
Jointly Administered

SECOND AMENDED AND RESTATED ORDER DEFINING ROLE OF EXAMINER

The court having entered its Order Directing Appointment of Examiner on April 7, 2004; and the United States Trustee having appointed William K. Snyder (the "Examiner") as examiner in these administratively consolidated cases; and the court having entered its Order Approving Appointment of Examiner on April 13, 2004; and upon consideration of the proceedings to date in these cases; and after hearing argument and testimony, the court finds as follows:

1. In further definition of the duties and powers set forth in the court's Order Directing Appointment of Examiner, the Examiner in accordance with 11 U.S.C. § 1106(b) shall have and be limited to the following duties and powers subject to further order of this court:

a. Prospective or Ongoing Transactions.

i. Upon written or oral request (to be confirmed in writing or e-mail) of any Debtor, one or more directors of any Debtor, counsel to the Debtors, any committee appointed pursuant to 11 U.S.C. § 1102, or the United States Trustee, or at the direction of the court, the Examiner shall review any prospective or on-going transaction or course of dealing between any Debtor and any insider of such Debtor, which transaction or course of

dealing such Debtor intends to take without (i) notice or hearing, and (ii) any opportunity for the court to determine whether such transaction or course of dealing is fair and consistent with the best interests of creditors and the estate of each Debtor affected by such transaction or course of dealing.

- ii. In analyzing any transaction or course of dealing pursuant to the above paragraph (a)(i), the Examiner shall not utilize his own professionals, unless authorized to do so by the court, but rather shall rely on business judgment. The Examiner shall confer with the Debtors and the Debtors' counsel if he determines that a transaction or course of dealing is not fair to any Debtor or is not consistent with the best interests of the creditors and the estate of each of the Debtors affected by the transaction or course of dealing.
- iii. Following such conference with the Debtors, the Examiner shall report to the court, the United States Trustee, the Debtors and the entity at the request of which the transaction or course of dealing was reviewed. Unless the Debtor intends to proceed with a transaction or course of dealing which, in the Examiner's judgment, is unfair to any Debtor or will prejudice the creditors or the estate of any Debtor, the report shall be limited to the advice that the transaction or course of dealing has been analyzed and the applicable Debtor's or Debtors' conduct is and will be consistent with the fiduciary responsibility of a debtor-in-possession. In all

other instances, the Examiner shall report as he sees fit, subject to the limitations contained in this order.

b. Potential Causes of Action

- i. Upon 10 days notice to the court and entities entitled to notice pursuant to FED. R. BANKP. P. 2002(i), the Examiner shall undertake an investigation of any potential causes of action or basis for claim objection or claim subordination available to any Debtor against any insider past or present or any member of a committee appointed pursuant to 11 U.S.C. § 1102, which cause of action is identified to him by the Debtors, counsel to the Debtors, any committee appointed pursuant to 11 U.S.C. § 1102, the United States Trustee or the court. In his investigation, to the extent practicable and consistent with his professional judgment, the Examiner shall rely on work-product, reports, or such other materials made available to him by the Debtors, any committee appointed pursuant to 11 U.S.C. § 1102 or any other party-in-interest. If the Examiner determines that another party in interest is investigating the cause of action, upon determining that efficiency and economy are best served by doing so, he may, upon 10 days notice to the entity identifying the cause of action and all other entities entitled to notice pursuant to FED. R. BANKR. P. 2002(i), defer to such other party provided such party agrees to report to the Examiner regarding the results of such investigation.

ii. The Examiner shall, subject to the limitations contained in this order, report to the court, upon notice to parties-in-interest as provided in FED. R. BANKR. P. 2002(i), regarding the advisability of pursuing any potential cause of action which he investigates or which is investigated by another party in interest as provided in subsection (b)(i). In formulating his report, the Examiner shall specifically address (a) the merits of the cause of action, including the probability of success, (b) the cost of pursuing such cause of action, (c) the effect of pursuing such cause of action on the timing of the Debtors' reorganization, (d) the affect on the Debtors' business of pursuing such cause of action, and (e) the potential effect on the return to creditors and interest holders of any of the Debtors.

c. Facilitation of Communications

The Examiner, upon the request of any party in interest or the U.S. Trustee, shall mediate any dispute which is interfering with communications or negotiations among the parties or otherwise act to facilitate communications and negotiations among the parties. In the event the Examiner concludes that communications or negotiations are impracticable, he shall so report to the court regarding the matters under discussion or negotiation and the reasons why communications or negotiations are unable to progress.

2. The Examiner shall be deemed not to have waived or impaired any privilege which could otherwise be claimed by any entity that cooperates with him. Any communication to the Examiner submitted as privileged or confidential shall not, absent waiver by the claiming

party or order of the court, be discoverable from the Examiner. To the extent the Examiner must include confidential or privileged material in any report he submits to the court, his complete report shall be made only to the court, under seal, with a copy to the party claiming privilege or confidentiality, and such report shall be redacted or otherwise protected prior to the Examiner's transmission of it to other parties.

3. The Examiner may, with court approval, retain counsel and such other professionals, such as forensic accountants, appraisers, or experts as he deems necessary in taking the actions within the scope of this order. The Examiner may immediately employ and utilize the services of Corporate Revitalization Partners LLC ("CRP") and Gardere Wynne Sewell LLP ("Gardere") to assist the Examiner in the performance of his duties; and shall promptly file appropriate applications for employment of CRP effective as of the commencement of the Examiner's appointment and for employment of Gardere effective as of April 27, 2004. The Examiner shall promptly report to the court at any time that his rolling quarterly average total billings (including his and his professionals' fees and expenses) are anticipated to exceed \$500,000.00. Such report shall include a description of the tasks the Examiner must perform and a budget showing the estimated cost of their performance. Such report shall be served upon the Debtors, Debtors' counsel, counsel for any committee appointed pursuant to 11 U.S.C. § 1102, the United States Trustee, and all parties requesting notice under FED. R. BANKR. P. 2002(i), and unless objection to specific tasks in such report is made within 15 days, or upon order of the court, the Examiner shall be authorized to instruct his professionals to provide such

services and such professionals shall be entitled to seek compensation consistent with the terms of this order.

4. The Examiner shall make an initial report on June 30, 2004. In such initial report, the Examiner shall identify what transactions or causes of action he initially intends to investigate and set out his estimates of when he will complete each such investigation and anticipated costs to be incurred in conducting such investigation.
5. All Protected Persons (as that term is used in this court's Orders Restricting Pursuit of Certain Persons entered on August 5 and September 29, 2003) and any entity which intends to seek any compensation or reimbursement under 11 U.S.C. § 503(b)(2), (3) or (4) in these cases shall cooperate with the Examiner. The Examiner shall coordinate investigative efforts of all such parties. All such entities and the Examiner shall endeavor to avoid any unnecessary duplication of effort in these chapter 11 cases. In connection with any investigation, all such entities and the Examiner shall make every effort to accommodate the Debtors' operating needs and constraints. The Examiner shall immediately report to the court any failure to comply with this paragraph.
6. The Examiner and any professionals employed by him are Protected Persons and Protected Professionals (as set forth in this court's Orders Restricting Pursuit of Certain Persons entered on August 5 and September 29, 2003). The Examiner and his professionals shall be compensated pursuant to the procedures set forth herein.

Based on the foregoing, it is therefore

ORDERED as follows:

1. The Examiner is hereby granted the duties and powers set forth in paragraphs 1(a), (b) and (c), above.
2. The Examiner shall be deemed not to have waived or impaired any privilege which could otherwise be claimed by any entity that cooperates with him, and shall comply in all respects with the procedures and obligations set forth in paragraphs 2 - 4, above.
3. The Examiner and his professionals shall not be called upon to testify except on the court's own motion and shall not be subject to subpoena regarding the matters that are the subject of the Examiner's investigation or reports. This paragraph shall not prevent the Examiner from introducing such testimony or other evidence he deems appropriate in any hearing in which he is a participant. As necessary to protect confidential information, and notwithstanding anything else herein, reports of the Examiner shall be submitted under seal with copies provided to the Debtors, the committees appointed pursuant to §1102 of the Bankruptcy Code and the United States Trustee, unless otherwise ordered by the Court.
4. All Protected Persons (as that term is used in this court's Orders Restricting Pursuit of Certain Persons entered on August 5 and September 29, 2003) and any entity which intends to seek any compensation or reimbursement under 11 U.S.C. § 503(b)(2), (3) or (4) in these cases shall cooperate with the Examiner.
5. The Examiner and any professionals employed by him are hereby deemed to be Protected Persons and Protected Professionals (as set forth in this court's Orders Restricting Pursuit of Certain Persons entered on August 5 and September 29, 2003).

6. The Examiner and his professionals shall be compensated pursuant to the following procedures:
- a. On or before the 25th day of each month following the month for which compensation is sought, each Applicant shall serve a detailed statement of services rendered and expenses incurred during the prior month, including time records for the prior month (the “Monthly Statement”) upon (i) Dean Nancy B. Rapoport of the University of Houston School of Law and (ii) the Office of the United States Trustee (the “Application Recipients”).
 - b. The Application Recipients shall have ten days after the date of receipt thereof to review the Monthly Statements and raise objections, if any, to each statement. At the expiration of the ten day objection period, in consultation with the Office of the United States Trustee, Dean Rapoport shall issue written notice to counsel for the Debtors authorizing and directing the Debtors to pay 100% of the fees and 100% of the out-of-pocket expenses identified in each Monthly Statement, except such fees or expenses as to which an objection may be served by an Application Recipient as provided in paragraph (b) below.
 - c. In the event that an Application Recipient has an objection to the compensation or reimbursement sought in a particular Monthly Statement, the Application Recipient shall, within ten days after the receipt of the statement, send via email or facsimile to (i) the Examiner, (ii) the Applicant to whose statement an objection is made, and (iii) the other Application Recipient, a written “Objection to Fee Statement” setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting party and the party to whose Monthly Statement an objection has been submitted shall attempt to reach an agreement regarding the objection.
 - d. If an objection to a Monthly Statement is not resolved by the parties within fifteen days after an objection is served in accordance with the foregoing paragraph, Dean Rapoport shall issue written notice to counsel for the Debtors authorizing and directing the Debtors to pay in full the fees and out-of-pocket expenses identified in each Monthly Statement as to which there is no objection. The objecting Application Recipient and the Applicant submitting the disputed Monthly Statement shall then deliver to the Court, for *in camera* review and determination, the disputed Monthly Statement and the objection. The Applicant shall be permitted to deliver to the Court a response to the objection within five days of the delivery of the Monthly Statement and the objection to the Court.
 - e. On or before 15th day of the second month following the end of the quarter, each Applicant shall submit to the Application Recipients a “Quarterly Compensation Summary” containing a certification of the relationship between the rates

regularly charged in these cases and rates charged to any of such Applicant's clients in a bankruptcy case (other than a bankruptcy case where the economics of the case require otherwise) and other clients, generally, for comparable services, and a summary of time expended, costs incurred and tasks accomplished or addressed during the period for which compensation is sought; provided, however, that any format of Quarterly Compensation Summary satisfactory to Dean Rapoport shall satisfy the requirements of this Order.

- f. Any fees or expenses paid in accordance with the foregoing procedures shall be subject to re-review only upon a sufficient showing by an Application Recipient as to why no objection was made to the fees and expenses previously approved.
- g. The pendency of an objection stating that payment of compensation for fees or reimbursement of expenses was improper as to a particular monthly statement shall not disqualify a Professional from the further payment of fees and expenses incurred thereafter.
- h. Upon completion of their respective duties related to these cases, each Applicant seeking compensation shall file with the court and provide to each Application Recipient a final fee application as contemplated by 11 U.S.C. § 330 and FED. R. BANKR. P. 2016, including a Compensation Summary (each a "Final Compensation Summary"), which shall include a summary of time expended, costs incurred and tasks accomplished as a result of such Applicant's efforts during these cases (with appropriate time records to be made available at the Application Recipients' request).
- i. The Application Recipients shall maintain the confidentiality of the Monthly Statements, and the Monthly Statements shall not be discoverable by any party or subject to subpoena without a separate order from the Court following notice and a hearing.

Signed this 7th day of July, 2004.



D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE