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**COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED
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**PROPOSED CO-COUNSEL TO THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF MIRANT CORPORATION, ET AL.**

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

IN RE:	§	Chapter 11
	§	
MIRANT CORPORATION, <i>et al.</i> ,	§	Case No. 03-46590-DML-11
	§	
	§	Jointly Administered
Debtors.	§	
	§	

**SUPPLEMENT TO APPLICATION PURSUANT TO BANKRUPTCY CODE
SECTIONS 328 AND 1103 AND RULE 2014 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE FOR ENTRY OF AN ORDER AUTHORIZING THE
EMPLOYMENT OF SHEARMAN & STERLING LLP AS CO-COUNSEL TO THE**

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MIRANT CORPORATION, ET AL., EFFECTIVE AS OF MAY 5, 2004

TO THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE:

1. Shearman & Sterling LLP (“Shearman & Sterling”) hereby supplements (this “Supplement”) the Application Pursuant to Bankruptcy Code Sections 328 and 1103 and Rule 2014 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Authorizing the Employment of Shearman & Sterling LLP as Co-Counsel to the Official Committee of Unsecured Creditors of Mirant Corporation, *et al.*, Effective as of May 5, 2004 (the “Original Application”), filed with the Court on May 6, 2004. By the Supplemental Declaration of Fredric Sosnick in Support of the Application Pursuant to Bankruptcy Code Sections 328 and 1103 and Rule 2014 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Authorizing the Employment of Shearman & Sterling LLP as Co-Counsel to the Official Committee of Unsecured Creditors of Mirant Corporation, *et al.*, Effective as of May 5, 2004 (the “Supplemental Declaration”), which is submitted herewith, Shearman & Sterling supplements the S&S Rule 2014 Statement. Capitalized terms used but not otherwise defined herein have the meanings assigned to such terms in the Original Application, and paragraphs 1 through 6 of the Original Application are incorporated herein by reference.

Supplemental Disclosure

2. The purpose of the Supplemental Declaration is to provide additional disclosure regarding Shearman & Sterling’s prepetition representation of certain underwriters of the Debtors’ securities (collectively, the “Underwriting Representations”). Although Shearman & Sterling does not qualify as a “disinterested person” (as such term is defined in section 101(14)

of the Bankruptcy Code) by virtue of those representations, that fact is not relevant to Shearman & Sterling's fitness to serve as counsel to the Mirant Committee.

3. Section 1103(b) of the Bankruptcy Code is the sole statutory provision that addresses a committee's right to select counsel. Thus, the only standard that is relevant to a committee's retention of counsel is that:

An attorney or accountant employed to represent a committee appointed under section 1102 of this title may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case....

11 U.S.C. § 1103(b). Accordingly, under the plain meaning of section 1103(b) of the Bankruptcy Code, a professional employed and retained by a creditors committee – unlike a professional retained by a trustee under section 327(a)¹ – need not be “disinterested.” *In re Enron Corp.*, No. 01-16034 (AJG), 2002 WL 32034346 , at *7 (Bankr. S.D.N.Y. May 23, 2002), *aff'd In re Enron Corp.*, No. 02 Civ. 5638 (BSJ), 2003 WL 223455 (S.D.N.Y. Feb. 3, 2003); *accord In re Mesta Machine Co.*, 67 B.R. 151, 157-58 (Bankr. W.D. Pa. 1986) (same); *also In re Jensen-Farley Pictures, Inc.*, 47 B.R. 557, 579 (Bankr. D. Utah 1985) (same).

4. Although the issue of “disinterestedness” is not relevant for purposes of retention under section 1103(b) of the Bankruptcy Code, it *may* be relevant for compensation purposes under section 328(c). That a professional who is not “disinterested” would not automatically be denied compensation is manifest from the language of the statute: “... the court *may* deny allowance of compensation . . . if . . . such professional is not a disinterested person” 11

¹ Section 327(a) of the Bankruptcy Code, unlike section 1103(b), specifically provides that “the trustee . . . may employ one or more attorneys . . . that are disinterested persons” 11 U.S.C. § 327(a).

U.S.C. § 328(c) (emphasis added).² Accordingly, based upon the permissive nature of section 328(c), courts (including at least two in the Fifth Circuit) have allowed compensation for professionals that were not “disinterested persons,” particularly when the professionals had disclosed all potential conflicts and an actual conflict did not exist.³

5. In the instant case, adequate disclosure of potential conflicts has been made and no actual conflict exists. As was mentioned in the S&S Rule 2014 Statement, each of the Underwriting Representations were terminated prior to the Petition Date. Moreover, no actual conflict could exist as a result of the Underwriting Representations because even if the Mirant Committee were to elect to pursue a course of action against the underwriters, Andrews Kurth LLP, Shearman & Sterling’s co-counsel, would be in a position to advise the Mirant Committee in connection therewith.

² See *In re Prince*, 40 F.3d 356, 359 (11th Cir. 1994) (“[T]he language of 11 U.S.C. § 328(c) *permits* a court to deny compensation to professionals found not to be disinterested persons, but does not *require* a denial of fees in those instances.”) (emphasis in original); see also *Gray v. English*, 30 F.3d 1319, 1323-24 (10th Cir. 1994) (same); *In re CIC Investment Corp.*, 192 B.R. 549, 553 (9th Cir. BAP 1996) (same); *In re Petro-Serve Ltd.*, 97 B.R. 856, 865 (Bankr. S.D. Miss. 1989) (same); *In re Global Marine, Inc.*, 108 B.R. 998, 1006 (Bankr. S.D. Tex. 1987) (same); *In re GHR Energy Corp.*, 60 B.R. 52, 68 (Bankr. S.D. Tex. 1985) (same).

³ See, e.g., *Global Marine*, 108 B.R. at 1006 (court in Fifth Circuit allowing compensation for conflicted attorney after balancing benefits to bankruptcy estate against effects of actual conflict, even after having found actual conflict); see also *GHR Energy*, 60 B.R. at 68 (court in Fifth Circuit allowing fees after determining that, although counsel no longer was “disinterested,” actual conflict did not exist); see generally *Prince*, 40 F.3d at 360 (“[I]n the absence of actual injury or prejudice to the debtor’s estate, this sanction [denial of fees] should not be rigidly applied.”); *In re Diamond Mortgage Corp. of Ill.*, 135 B.R. 78, 96 (Bankr. N.D. Ill. 1990) (“In exercising that discretion [under section 328(c)], the court needs to balance the draconian impact of the loss of fees for services actually rendered by a professional . . . and the denial of reimbursement of expenses actually incurred and paid . . . in [the] representation of the debtor against the actual injury or prejudice to the estate from [the] failure to live up to the requirements of [section] 328(c). Also relevant is the question of whether the lawyer made full disclosure to the court of problems which might exist in meeting the requirements of [section] 328(c).”); *Mesta Machine Co.*, 67 B.R. at 157-58 (“Section 1103(b) does not specifically require attorneys to be ‘disinterested persons’ under section [101(14)] of the Code. However, if counsel is not a ‘disinterested person’, compensation for services rendered and reimbursement for expenses incurred may be denied by the court *unless adequate disclosure is made and prior approval of the court is obtained.*”) (emphasis added).

Notice

6. Notice of this Supplement has been provided to the Debtors, the UST, counsel to the MAGI Committee and the Equity Committee and all parties who have filed a notice of appearance and request for service of pleadings in these chapter 11 cases. The Mirant Committee respectfully submits that such notice is appropriate under the circumstances and that no other or further notice is necessary or required.

Respectfully submitted this 10th day of May, 2004.

ANDREWS KURTH LLP

By: /s/ Monica S. Blacker
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MIRANT CORPORATION**

CERTIFICATE OF SERVICE

The undersigned certifies that she served the foregoing document on the Debtors' Master Service List on this 6th day of May 2004 via U.S. First Class Mail, postage paid.

/s/ Monica S. Blacker
Monica S. Blacker

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

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IN RE: § Chapter 11
MIRANT CORPORATION, *et al.*, §
§ Case No. 03-46590-DML-11
§
§ Jointly Administered
Debtors. §
§
-----X

**SUPPLEMENTAL DECLARATION OF FREDRIC SOSNICK IN SUPPORT
OF THE APPLICATION PURSUANT TO BANKRUPTCY CODE SECTIONS 328
AND 1103 AND RULE 2014 OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE FOR ENTRY OF ORDER AUTHORIZING THE EMPLOYMENT
OF SHEARMAN & STERLING LLP AS CO-COUNSEL TO THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS OF MIRANT CORPORATION, ET
AL., EFFECTIVE AS OF MAY 5, 2004**

FREDRIC SOSNICK declares and says:

1. I hereby supplement the Declaration of Fredric Sosnick in Support of the Application Pursuant to Bankruptcy Code Sections 328 and 1103 and Rule 2014 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Authorizing the Employment of Shearman & Sterling LLP as Co-Counsel to the Official Committee of Unsecured Creditors of Mirant Corporation, *et al.*, Effective as of May 5, 2004 (the "Original Declaration"), filed with the Court on May 6, 2004. Capitalized terms used but not otherwise defined herein have the meanings assigned to such terms in the Original Declaration, and paragraphs 1 through 4 of the Original Declaration are incorporated herein by reference.

2. Exhibit A hereto provides additional details (which have been ascertained to date) regarding the underwriting work that was generally described in paragraph 9 of the Original Declaration.

3. Exhibit B hereto supplements Exhibit B of the Original Declaration.

I declare under penalty of perjury the foregoing to be true and correct to the best
of my knowledge.

Dated: New York, New York
May 10, 2004

/s/ Fredric Sosnick

Fredric Sosnick

EXHIBIT A

Issuer	Description of Work	Estimated Date of Closing
Mirant Corporation	➤ Represented Credit Suisse First Boston in underwriting of 60 million shares of common stock	➤ 12/20/01
	➤ Represented Banc of America Securities LLC in public offering of \$370 million, 5.75% convertible senior notes due 2007	➤ 07/08/02
	➤ Represented Salomon Smith Barney in underwriting of Rule 144A offering of \$750 million, 2.5% convertible senior notes due 2021	➤ 05/31/01
Mirant Americas Generation, Inc.	➤ Represented Lehman Brothers and Salomon Smith Barney in underwriting of Rule 144A and Regulation S offerings of: (i) \$500 million, 7.625% senior notes due 2006; (ii) \$850 million, 8.300% senior notes due 2011; and (iii) \$400 million, 9.125% senior notes due 2031	➤ 04/26/01
Non-Debtor Affiliates	➤ Represented Credit Suisse First Boston in Rule 144A and Regulation S offering of \$73 million, 10.20% notes due 2006 with Mirant Trinidad Investments, Inc., as issuer	➤ 02/02/01

EXHIBIT B

AT&T Corporation

Deutsche Bank Luxembourg S.A.

Development Bank of Singapore

General Electric

Georgia Pacific Corporation

GE Power Systems

HSBC Bank

Lord Abbett & Company