

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

U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF TEXAS
ENTERED
 AWANA 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. 03-46590(DML)11
)	Jointly Administered
)	
Debtors.)	
)	

**ORDER GRANTING DEBTORS' MOTION PURSUANT TO
 SECTIONS 105(a) AND 546(c) OF THE BANKRUPTCY CODE FOR APPROVAL
 OF PROCEDURES FOR THE TREATMENT OF RECLAMATION CLAIMS**

On this day, the Court considered the Debtors' Motion Pursuant to Sections 105(a) and 546(c) of the Bankruptcy Code for Approval of Procedures for the Treatment of Reclamation Claims (the "Motion") filed by Mirant Corporation and its above-captioned affiliated debtors, Debtors and Debtors-in-Possession in the above-captioned cases, (collectively, the "Debtors"). After reviewing the pleadings on file and the evidence presented at hearing and considering the arguments of counsel, it appears to the Court that the Motion has merit and should be granted. Therefore, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Debtors may implement the following procedures to reconcile all asserted claims to reclaim goods sold to the Debtors (the "Reclamation Claims") on the terms set forth below:

- (a) On or before April 10, 2004, the Debtors will begin to implement the Reclamation Procedures in accordance with this Order (the "Reclamation Claims Procedure Order") by filing with this Court and serving, along with a copy of the Reclamation Claims Procedure Order, a statement identifying the Reclamation Claims of which the Debtors have received notice and the Debtors' proposed treatment of the Reclamation Claims (the "Notice Statement"). The Notice Statement will

contain the following:

- (i) the name of the party asserting the Reclamation Claim (the "Claimant");
 - (ii) the amount of the asserted Reclamation Claim;
 - (iii) the address, telephone, and facsimile number to which all communications regarding the asserted Reclamation Claim will be sent by the Debtors;
 - (iv) the date upon which the Debtors received notice of the Reclamation Claim;
- and
- (v) the Debtors' proposed treatment of the Reclamation Claim.

The Debtors will provide a letter to the Claimants listed on the Notice Statement detailing the preliminary reclamation analysis, and the Debtors' proposed treatment of the Reclamation Claim. The Debtors will serve the Notice Statement upon all parties listed on the Notice Statement and upon the Limited Service List.

(b) On or before May 10, 2004, all persons or entities asserting a Reclamation Claim that dispute the proposed treatment of their Reclamation Claim contained in the Notice Statement must notify Debtors' counsel in writing of their dispute of the proposed treatment (the "Notice of Dispute"). Additionally, any party or entity that believes it has a Reclamation Claim that has been omitted from the Notice Statement must send a Notice of Dispute to Debtors' counsel. Accompanying the Notice of Dispute, parties must provide Debtors' counsel with all documentation (i) in support of the asserted Reclamation Claim (including documents and invoices showing the items that were delivered to the Debtors during the reclamation period as well as appropriate shipping records and bills of lading that prove that the items were in fact delivered during the reclamation period) and (ii) demonstrating that timely notice of the asserted Reclamation Claim was

provided to the Debtors. Parties must serve the Notice of Dispute and supporting documentation on Debtors' counsel at the following address:

Mark J. Elmore, Esq.
Haynes and Boone, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202
Telephone: 214.651.5265
Facsimile: 214.200.0905

(c) The Debtors shall have until June 10, 2004 (the "Reconciliation Period") to: (i) review its business records to determine the validity of the facts and circumstances alleged in the Notice of Dispute; (ii) inform the holder of its findings; and (iii) use its discretion to determine whether the proposed allowed amount of each Reclamation Claim should be revised, either upward or downward. After reviewing the Reclamation Claims in light of the additional information provided with the Notice of Dispute, the Debtors will file a revised statement listing those Reclamation Claims which the Debtors believe to have been correctly asserted and allowable according to applicable law (the "Statement of Reclamation Claims"). The Statement of Reclamation Claims will identify (i) the Claimant asserting the Reclamation Claim and (ii) the proposed treatment of the Claimant's Reclamation Claim. The Debtors shall file the Statement of Reclamation Claims with the Court on or before June 10, 2004 and shall serve the Statement of Reclamation Claims upon all persons or entities identified on the Statement of Reclamation Claims, the Notice Statement, all persons who provided Debtors' counsel with a Notice of Dispute, and the Limited Service List.

(d) The Debtors shall treat the Reclamation Claims, determined as set forth in this Order, in accordance with applicable law, including Section 546(c)(2) of the Bankruptcy Code, in the amount as indicated in the Statement of Reclamation Claims. Accordingly, to the extent proceeds

exist in the reclamation goods after satisfaction of any prior secured claims against such goods, the Debtors shall treat such allowed Reclamation Claims as administrative expense claims payable according to the terms of the Debtors' confirmed plan of reorganization after considering possible claims and defenses to avoidance actions and applying the provisions of 11 U.S.C. § 502(d). In proposing this reclamation process and proposed treatment, the Debtors do not admit or concede that they were insolvent (either collectively or separately).

(e) If a party asserting a Reclamation Claim disagrees with any part of the Statement of Reclamation Claims, such party shall file and serve a written request for judicial adjudication of the Reclamation Claim (the "Request for Judicial Resolution") on or before July 10, 2004. The Request for Judicial Resolution must allege, with specificity, that such Reclamation Claim meets all the requirements for treatment as a valid reclamation claim pursuant to applicable state law and Section 546(c) of the Bankruptcy Code.

(f) After filing the Request for Judicial Resolution, the Court will establish a hearing date, which will be used to establish discovery procedures and fix trial dates to adjudicate the treatment of the Reclamation Claim.

(g) In the event that a party asserting a Reclamation Claim does not file and serve a Request for Judicial Resolution prior to July 10, 2004, then the holder of a Reclamation Claim shall be deemed to have waived any objection to the Debtors' proposed treatment of the Reclamation Claim described in the Statement of Reclamation Claim. If a Reclamation Claim is not included in the Statement of Reclamation Claims or is included as a claim of zero, a Claimant failing to file and serve a Request for Judicial Resolution would concede that no Reclamation Claim is allowable.

(h) The failure of a party asserting a Reclamation Claim materially to comply with these procedures shall constitute a waiver of such party's right to object to the proposed determination of

such Reclamation Claim as set forth in the Debtors' Statement of Reclamation Claim (including the right to object to the Debtors' omission of a Reclamation Claim from such Statement of Reclamation Claim), unless the Court orders otherwise. The relevant deadlines as contemplated by this Motion are as follows:

SUMMARY OF RECLAMATION CLAIM PROCESS DEADLINES		
Deadline	Debtors' Deadlines	Claimants' Deadlines
April 10, 2004	Debtors' Notice Statement	
May 10, 2004		Notice of Dispute
June 10, 2004	Debtors' Statement of Reclamation Claim	
July 10, 2004		Requests for Judicial Resolution

(i) If a person or entity asserting a Reclamation Claim (i) fails to submit a timely Notice of Dispute, or (ii) submits a Notice a Statement of Dispute but thereafter (absent agreement respecting such Reclamation Claim with the Debtors) fails to file and serve a timely Request for Judicial Resolution, such party shall be bound by the Debtors' determination of such Claimant's Reclamation Claim as set forth in the Debtors' Statement of Reclamation Claims with respect thereto (including the Debtors' failure to list a Reclamation Claim on such statement).

(j) The Court shall retain jurisdiction over the Debtors and the holders of Reclamation Claims with respect to any matter, claims, rights or disputes arising from or related to the Reclamation Claims or the Reclamation Procedures, including, without limitation, its implementation.

SIGNED this 31 day of March, 2004.



HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE