

Thomas E Lauria
State Bar No. 11998025
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
Telephone: (214) 651-5000
Facsimile: (214) 651-5940

PROPOSED ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

In re)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML-11
)	Jointly Administered
Debtors.)	
)	Hearing Date and Time: To Be Set

**APPLICATION FOR ENTRY OF AN INTERIM AND ORDER
PURSUANT TO SECTION 327(A) OF THE BANKRUPTCY CODE
AUTHORIZING THE EMPLOYMENT OF FORSHEY & PROSTOK, L.L.P.
AS SPECIAL CONFLICTS COUNSEL TO THE DEBTORS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, file this Application for Entry of an Order Pursuant to Section 327(a) of the Bankruptcy Code Authorizing the Employment of Forshey & Prostok, L.L.P. as Special Conflicts Counsel to the Debtors (the “Application”) and in support of this Application, Debtors respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. On July 14 and 15, 2003, Mirant Corporation and seventy-four of its affiliates filed voluntary petitions in this court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. Joint Administration Request is Pending. The Debtors have moved the court to jointly administer the bankruptcy estates of the Debtors.

4. The Creditors’ Committee. No creditors’ committee has yet been appointed in these cases by the United States Trustee. Further, no trustee or examiner has been requested or appointed in any of the Debtors’ chapter 11 cases.

Retention of Forshey & Prostok, L.L.P.

5. Contemporaneously herewith, the Debtors are applying to retain White & Case LLP (“White & Case”) and Haynes and Boone, LLP (“Haynes and Boone”) as co-counsel under a general retainer to represent them in these chapter 11 cases. The Debtors believe that representation by Forshey & Prostok, L.L.P. (“Forshey & Prostok”) will be needed in matters that the Debtors may encounter which are not appropriately handled by White & Case or Haynes and Boone because of potential conflict of interest issues or, alternatively, which can be more efficiently handled by Forshey & Prostok. This will avoid unnecessary litigation and reduce the

overall expenses of administering these cases. Thus, the Debtors seek to engage Forshey & Prostok as special conflicts counsel with White & Case and Haynes and Boone.

6. White & Case, Haynes and Boone and Forshey & Prostok will carefully coordinate their efforts and clearly delineate their duties to prevent any duplication of effort. The Debtors believe that rather than resulting in any extra expense to the Debtors' estates, the efficient coordination of efforts of counsel will greatly add to the effective administration in these chapter 11 cases.

7. Forshey & Prostok has stated its desire and willingness to act in these cases and render the necessary professional services as special conflicts counsel for the Debtors. To the best of Debtors' knowledge, the members and associates of Forshey & Prostok do not have any connection with or any interest adverse to the Debtors, their creditors, or any other party in interest, or their respective attorneys and accountants, except as may be set forth in the affidavit of J. Robert Forshey, the senior member of Forshey & Prostok annexed hereto ("Forshey Affidavit").

8. The Debtors understand that Forshey & Prostok hereafter intends to apply to the Court for allowances of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code (or as otherwise allowed by order of this Court), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the Local Bankruptcy Rules for the Northern District of Texas (the "Local Rules") for all services performed and expenses incurred after the Commencement Date.

9. The Debtors believe that they are retaining Forshey & Prostok on any reasonable terms and conditions. The Debtors submit that the most reasonable terms and conditions are those charged by Forshey & Prostok to the Debtors and other clients on a daily

basis in a competitive market for legal services. Therefore, the Debtors and Forshey & Prostok have agreed that Forshey & Prostok shall be paid its customary hourly rates for services rendered that are in effect from time to time, as set forth in the Forshey Affidavit, and shall be reimbursed according to Forshey & Prostok's customary reimbursement policies.

10. To the best of the Debtors' knowledge, information and belief, other than in connection with this case Forshey & Prostok has no connection with the Debtors, their creditors or any other party-in-interest herein or their respective attorneys or accountants, except to the extent that Forshey & Prostok may have represented certain creditors of the Debtors in matters unrelated to this bankruptcy case.

11. To the best of the Debtors' knowledge, information and belief, Forshey & Prostok represents no interest adverse to the Debtors or to its estates in the matters for which it is proposed to be retained and is a "disinterested person" as defined in section 101(14) of the Bankruptcy Code. The Debtors submit that their employment of Forshey & Prostok would be in the best interests of the Debtors, their estates and creditors. A declaration executed on behalf of Forshey & Prostok in accordance with the provisions of section 327 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2014, Local Bankruptcy Rule 2016(b), and U.S. Trustee Guidelines, is incorporated herein by reference. The Debtors' knowledge, information and belief regarding the matters set forth herein are based, and made in reliance, upon that declaration.

NOTICE

12. No trustee, examiner, or creditors' committee has been appointed in these chapter 11 cases. Notice of this Application was served on the United States Trustee for the Northern District of Texas and the creditors holding the fifty (50) largest unsecured claims against the Debtors' estates on a consolidated basis. Because of the administrative nature of the relief requested herein, the Debtors submit no other or further notice be given.

13. No previous request for relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the Application in all respects and grant the Debtors such other and further relief as it deems just and proper.

Dated: Fort Worth, Texas
July 16, 2003

HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
(214) 651-5000

By: /s/ Ian T. Peck

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Ian Peck
State Bar No. 24013306

-and-

Thomas E Lauria
State Bar No. 11998025
Michelle C. Campbell
State Bar No. 24001828
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, Florida 33131
(305) 371-2700

**PROPOSED ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing Application and Affidavit upon all parties on the attached service list via United States first class mail, postage prepaid, on the 16th day of July, 2003 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Ian T. Peck

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

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

DECLARATION OF J. ROBERT FORSHEY IN SUPPORT OF APPLICATION FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 327(A) AND 328 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT OF FORSHEY & PROSTOK, L.L.P., AS SPECIAL CONFLICTS COUNSEL TO THE DEBTORS

I, J. Robert Forshey, state and declare:

"I am an attorney at law admitted to practice before this Court. I am also a partner in the law firm of Forshey & Prostok, L.L.P. ("Forshey & Prostok") which maintains a business address at Suite 1290, 777 Main Street, Fort Worth, Texas, 76102. I make this declaration in support of the Application For Entry of An Order Pursuant to Section 327(a) and 328 of the Bankruptcy Code Authorizing the Employment of Forshey & Prostok, L.L.P., as Co-Counsel to the Debtors. The facts set forth in this declaration are personally known to me based upon personal knowledge and if called as a witness I would and could competently testify thereto:

1. "Neither I, Forshey & Prostok, nor any member hereof insofar as I have been able to ascertain, has any connection with the debtors in this chapter 11 case, or any other party in interest herein, or their respective attorneys and accountants; except as set forth below.

2. From time to time, Forshey & Prostok has represented TXU Energy and Lone Star Gas in unrelated matters, who may be creditors in the Debtors' bankruptcy. Forshey & Prostok does not currently represent TXU Energy or Lone Star Gas in any pending matter and frequently represents debtors against whom TXU Energy and/or Lone Star Gas hold a claim. Forshey & Prostok has not represented either TXU Energy or Lone Star Gas with respect to any matter

involving these Debtors.

3. "Forshey & Prostok may have in the past, represented some creditor or party in interest to this matter. However, Forshey & Prostok has never represented any creditor or party in interest in regard to this matter.

4. "Neither I, Forshey & Prostok, nor any member thereof, insofar as I have been able to ascertain, represents an interest materially adverse to the Debtors or the Debtors' estates in the matters upon which Forshey & Prostok is to be employed. I believe Forshey & Prostok is a "disinterested person" as that term is defined in § 101(14) of the Bankruptcy Code.

5. "The foregoing constitutes the statement of Forshey & Prostok pursuant to § 504 of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016(b).

6. "The attorneys at Forshey & Prostok who will be principally responsible for the representation of the Debtors will be J. Robert Forshey and Jeff Prostok. Additionally, the services of other partners, associates, or paralegals at Forshey & Prostok may be utilized to take advantage of available economic efficiencies. An abbreviated copy of the biographies of the firm's lawyers is attached hereto as **Exhibit "A."** J. Robert Forshey's billing rate for this matter is \$350 per hour; Jeff Prostok's billing rate for this matter is \$325 per hour. From time to time the billing rate of Forshey & Prostok personnel working on this case may change, which rate changes will then be passed on to the Debtors.

7. "Forshey & Prostok seeks to be reimbursed in full for all travel costs, long distance calls, express mail, special or hand deliveries, copying costs at up to \$0.20 per page, document processing, overtime help, overtime meals, Lexis, Westlaw, court fees, transcript costs, facsimile costs and all extraordinary expenses, subject to court approval.

8. "Forshey & Prostok does not hold a prepetition claim against the Debtors' estates. As discussed above, Forshey & Prostok was paid in full for all services previously performed for the Debtors and any retainer amounts were previously refunded to the Debtors.

9. "Forshey & Prostok has received a prepetition retainer in the amount of \$5,000 to cover prepetition services incurred in preparation of the commencement of this case.

10. "These sums have been applied to prepetition charges and expenses. The remaining balance will be placed in the firm's trust account."

11. "No compensation will be paid to Forshey & Prostok without Court approval."

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7 day of July, 2003.



J. Robert Forshey

EXHIBIT "A"

J. Robert Forshey, admitted to Bar, 1979, Texas; U.S. District Court, Northern, Western and Eastern Districts of Texas; U.S. Court of Appeals, 5th Circuit. Education: Baylor University (B.A., magna cum laude, 1976; J.D., cum laude, 1979). Phi Alpha Delta. Symposium Editor, *Baylor Law Review*, 1978-79. Board Certified, Business Bankruptcy Law, Texas Board of Legal Specialization.

Jeff P. Prostok, admitted to bar, 1984, Texas; U.S. District Court, Northern, Western and Eastern Districts of Texas; U.S. Court of Appeals, 5th Circuit. Education: University of Texas (B.B.A. 1981); Southern Methodist University (J.D. 1984). Phi Delta Phi. Member: Tarrant County Bankruptcy Bar, American Bankruptcy Institute. Board Certified, Business Bankruptcy Law, Texas Board of Legal Specialization.

Barrett, Lee, admitted to bar, 2000, Texas; U.S. District Court, Northern District of Texas. Member: State Bar of Texas; Tarrant County Young Lawyers Association. Education: Eastern New Mexico University, B.S., Texas Tech School of Law, J.D. 2000.

Berryman, Blake L., admitted to bar 1988, Texas; U.S. District Court, Northern District of Texas; 1996, New Mexico. Education: Southern Methodist University (B.A. 1985; J.D. 1988). Member: State Bar of Texas; State Bar of New Mexico.

Maben, Matthew G., admitted to the bar, 2002, Texas, U.S. District Court, Northern District of Texas, 2002. Member: State Bar of Texas; Education: Baylor University (B.A.1999); SMU School of Law, J.D. 2002

McGrath, Julie, admitted to bar, 1997, Texas; U.S. District Court, Northern District of Texas. Member: State Bar of Texas; Tarrant County Young Lawyers Association. Education: Texas Tech Univ. (B.A., 1992); Texas Tech School of Law (J.D. 1997).

Stagg, Linda L., admitted to bar, 1989, South Carolina; 1994 Texas, and U.S. District Court, Northern District, Texas. Education: Tarkio, Missouri (B.A.); University of Pittsburgh (J.D. 1989). Member: State Bar of Texas; South Carolina Bar; American Bankruptcy Institute.

Maben, Matthew G., admitted to the bar, 2002, Texas, U.S. District Court, Northern District of Texas, 2002. Member: State Bar of Texas; Education: Baylor University (B.A.1999); SMU School of Law, J.D. 2002