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**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
	§	
MIRANT CORPORATION, <u>et al.</u> ,	§	CASE NO. 03-46590-DML
	§	Jointly Administered
	§	
Debtors.	§	Hearing Date and Time: To Be Set

**APPLICATION FOR INTERIM AND FINAL APPROVAL OF EMPLOYMENT
OF HAYNES AND BOONE, LLP AS ATTORNEYS FOR THE DEBTORS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), Debtors and Debtors-In-Possession, file this Application for Interim and Final Approval of Employment of Haynes and Boone, LLP as Attorneys for the Debtors (the "Application"). In support of the Application, the Debtors rely upon the *Affidavit of Judith Elkin in Support of the Application (the "Elkin Affidavit")* submitted herewith. The Debtors present this Application and respectfully represent the following:

**APPLICATION FOR INTERIM AND FINAL APPROVAL OF EMPLOYMENT
OF HAYNES AND BOONE, LLP, AS ATTORNEYS FOR THE DEBTORS**

D-1143164.2

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The relief requested in the Application is authorized under 11 U.S.C. § 327 and may be implemented in accordance with Fed.R.Bankr.P 2014. This Application also includes an initial disclosure required by 11 U.S.C. § 329, Fed.R.Bankr.P 2016(b), and Local Bankruptcy Rule 2016.1.

PROCEDURAL BACKGROUND

2. The Cases. On July 14, 2003 (the Petition Date”), each of the Debtors filed a voluntary petition in this court for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (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. Concurrently with the filing of the Application, the Debtors have moved the court for joint administration 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 HAYNES AND BOONE, LLP

5. Haynes and Boone has represented the Debtors since April, 2003. By this Application, the Debtors seek to employ and retain Haynes and Boone as their co-counsel in

connection with various matters, including the Debtors' commencement and prosecution of their Chapter 11 cases as described herein, *nunc pro tunc* to the Petition Date. Pursuant to Section 327(a) of the Bankruptcy Code, the Debtors request that the Court approve the employment of Haynes and Boone as their co-counsel to perform the extensive legal services that will be necessary during these Chapter 11 cases. The Debtors have been informed that Robin Phelan and Judith Elkin will act as lead Haynes and Boone counsel for the Debtors in these Chapter 11 Cases.

6. Haynes and Boone will represent the Debtors in these Chapter 11 cases along with co-counsel White & Case LLP ("W&C"). Haynes and Boone and W&C have discussed a division of responsibilities in connection with the representation of the Debtors and will make every effort to avoid and/or minimize duplication of services to the Debtors.

7. The Debtors have selected Haynes and Boone as their co-counsel because of the firm's extensive experience in bankruptcy and reorganization matters and their substantial bankruptcy and reorganization practice in the Northern District of Texas. The Debtors believe that Haynes and Boone and its attorneys are fully qualified to work with W&C to deal effectively and efficiently with many of the potential legal issues and problems that may arise in the context of the Debtors' Chapter 11 cases.

8. The employment of Haynes and Boone is appropriate and necessary to enable to Debtors to execute faithfully their duties as debtors and debtors-in-possession. Subject to further order of this Court, it is proposed that Haynes and Boone be employed to work as co-counsel with W&C to:

a. take all necessary actions to protect and preserve the estates of the Debtors, including the prosecution of actions on the Debtors' behalf, the defense of any actions commenced against the Debtors, the negotiation of disputes in which the Debtors are involved, and the preparation of objections to claims filed against the Debtors' estates;

b. prepare on behalf of the Debtors all necessary motions, applications, answers, orders, reports, and papers in connection with the administration and prosecution of the Debtors' Chapter 11 cases;

c. assist the Debtors in connection with any proposed sale of assets pursuant to Bankruptcy Code section 363;

d. advise the Debtors in respect of bankruptcy, energy, real estate, regulatory, securities, labor law, intellectual property, licensing and tax matters or other such services as requested; and

e. perform all other legal services in connection with these Chapter 11 cases.

9. It is necessary that the Debtors employ counsel to render the foregoing professional services. Haynes and Boone has stated its desire and willingness to act as co-counsel with W&C in these Chapter 11 cases and render the necessary professional services as attorneys for the Debtors.

HAYNES AND BOONE'S CONNECTIONS AND LACK OF CONFLICTS

10. To the best of the Debtors' knowledge, the partners, counsel and associates of Haynes and Boone 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 set forth herein and in the annexed *Elkin Affidavit*.

11. Notwithstanding the foregoing, the Debtors hereby disclose to the Court, in connection with the representation of all of the Debtors by Haynes and Boone, that there are certain interrelationships between and among the Debtors. The Debtors do not believe, however, that their relationships to one another pose any conflict of interest in these Chapter 11 cases because of their general unity of interest at all levels. Accordingly, the Debtors submit that Haynes and Boone's representation of all of the Debtors is permissible under the Bankruptcy Code and is in the best interests of all parties in interest.

PROPOSED ARRANGEMENT FOR COMPENSATION

12. Prior to the Petition Date, Haynes and Boone received payment from the Debtors in the amount of \$161,331.97 for services rendered and expenses incurred in connection with the preparation of these Chapter 11 cases and other related matters. Such amount has been applied to all outstanding pre-petition fees and expenses incurred. In addition, Haynes and Boone received from the Debtors a retainer in the amount of \$300,000 for services to be rendered and expenses to be incurred in connection with their representation of the Debtors in these Chapter 11 cases, plus Haynes and Boone received from the Debtors pre-payment of the approximately \$100,000 filing fee to be incurred in the filing of these cases. To the extent the filing fee

prepayment exceeds the amount of the actual filing fee, the balance will be added to the \$300,000 case retainer.

13. Subject to Court approval, and in accordance with § 330(a) of the Bankruptcy Code, compensation will be payable to Haynes and Boone on an hourly basis, plus reimbursement of actual, necessary expenses incurred by Haynes and Boone. The primary attorneys and paralegals within Haynes and Boone who will represent the Debtors and their current standard hourly rates are set forth below:

- a. Robin E. Phelan, Partner \$550.00 per hour;
- b. Judith Elkin, Partner \$495.00 per hour;
- c. Ian T. Peck, Associate \$245.00 per hour;
- d. Meredyth A. Purdy, Associate \$260.00 per hour; and
- e. Kim Morzak, Paralegal \$160.00 per hour.

14. The hourly rates set forth above are subject to periodic adjustments to reflect economic and other conditions. From time to time, other attorneys and paralegals from Haynes and Boone may serve the Debtors in connection with the matters for which Haynes and Boone will be retained.

15. The hourly rates set forth above are Haynes and Boone's standard hourly rates for work of this nature. These rates are set at a level designed to fairly compensate Haynes and Boone for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. It is Haynes and Boone's policy, in all areas of practice, to charge its clients for all additional expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, telephone and telecopier toll and other charges, mail and

express mail charges, special or hand delivery charges, document processing, photocopying charges, travel expenses, expenses for “working meals,” and computerized research. Haynes and Boone will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to Haynes and Boone’s other clients and consistent with applicable U.S. Trustee guidelines.

16. Haynes and Boone's compliance with the requirements of sections 330, 504, and 1103 of the Bankruptcy Code and Bankruptcy Rule 2014, as well as the Local Rules of this Court, is set forth in detail in the *Elkin Affidavit*.

REQUEST FOR INTERIM APPROVAL

17. Haynes and Boone began performing services for the Debtors on or about July 14, 2003. In order to ensure the prompt presentation of this Application, the Debtors request that the Court consider this Application as soon as is convenient for the Court and grant the relief requested herein.

18. Notice of this Application has been given to the Office of the United States Trustee for the Northern District of Texas and the Debtors’ fifty (50) largest unsecured creditors on a consolidated basis, appropriate federal and state agencies, and any persons requesting notice. The Debtors submit that no other or further notice need be provided.

19. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order approving the Debtors' Application for Employment of Haynes and Boone, LLP as Attorneys for the

Debtors *nunc pro tunc*, effective as of the Petition Date, as set forth above and granting such other relief as is just and proper.

DATED: July __, 2003

RESPECTFULLY SUBMITTED,

MIRANT CORPORATION, ET AL.

By: 

-and-

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PROPOSED ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she provided true and correct copies of the Application and Affidavit in Support thereof to Bankruptcy Services, LLC and directed them to effect service upon all persons on the attached Service Lists via facsimile and email transmission, where indicated, or via overnight courier, on the 15th day of July, 2003.

s/ Michelle Campbell

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