

U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF TEXAS
 FIVE FIVE
 TAWANA [unclear] CLERK
 THE DATE OF ENTRY IS
 ON THE COURT'S DOCKET

**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
Debtors.)	Jointly Administered

**EMERGENCY ORDER PURSUANT TO SECTIONS 105(a), 362 AND 541
 OF THE BANKRUPTCY CODE ESTABLISHING PROCEDURES FOR
 (I) REQUIRING NOTICE IN ADVANCE OF CERTAIN TRANSACTIONS
 REGARDING CLAIMS AGAINST AND EQUITY INTERESTS IN MIRANT
 CORPORATION, AND (II) THE IMPOSITION OF SANCTIONS FOR VIOLATING
THE NOTIFICATION PROCEDURES**

Upon the motion dated July 21, 2003 (the "Motion") of Mirant Corporation and its affiliated debtors, as debtors-in-possession (collectively, the "Debtors"), for emergency, interim and final orders pursuant to 11 U.S.C. §§ 105(a), 362 and 541 of title 11 of the United States Code (the "Bankruptcy Code") establishing procedures for (i) providing advance notice of certain transactions involving claims against and equity interests in Mirant, and (ii) the imposition of sanctions for non-compliance; ~~due and proper notice has been given~~ *being adequate under 11 U.S.C. §102*; and upon due deliberation and sufficient cause appearing therefor, it is hereby

1
Waller
~~PROVIDED THAT~~ *Accepted upon Debtors' representatives*
for purpose of this order that:

A. The Debtors' consolidated net operating loss ("NOL") carryforwards and certain other tax attributes are property of the Debtors' estates and are protected by the automatic stay prescribed in section 362 of the Bankruptcy Code.

B. Unmonitored trading and accumulation of claims or shares by creditors in claims against, and stockholders in interests in, the Debtors prior to the Debtors' emergence from chapter 11 could severely limit the Debtors' ability to utilize their NOL carryforwards and certain other tax attributes for U.S. federal income tax purposes, as set forth in the Motion.

C. The procedures requested in the Motion to notify holders of claims against and interests in the Debtors that (i) certain notice procedures must be satisfied prior to the consummation of a sale or other transfer of certain claims against the Debtors and (ii) acquirers and transferors of claims against or interest in the Debtors that fail to comply with the notice procedures established by this Court may be subject to monetary sanctions and/or entry of an order rendering the non-complying transaction null and void, are necessary and proper in order to preserve the Debtors' NOL carryforwards and certain other tax attributes and are therefore in the best interests of the Debtors, their estates, and their creditors.

D. The relief requested in the Motion is authorized on an emergency interim basis under sections 105(a), 362 and 541 of the Bankruptcy Code.

THEREFORE, IT IS ORDERED THAT:

1. The Motion is granted on an interim, emergency basis until a ~~final~~ hearing *Waller* can be held.

2. Until further order of this Court to the contrary, any sale or other transfer *by a Specified Claims Holder or Specified Holder* ~~in violation of the procedures set forth in the Motion~~ shall subject the acquirer and transferor to sanctions as set forth herein. *W.C.*

3. Until further order of this Court to the contrary, any sale or other transfer *by a Specified Claims Holder or Specified Holder* ~~in violation of the procedures set forth in the Motion~~ shall constitute an act in violation of the automatic stay prescribed in sections 362 and 105(a) of the Bankruptcy Code.

4. Specified Claims Holders. Any person or entity within the meaning of Section 382 ("Entity") that proposes to either (a) sell, transfer, exchange, or otherwise hypothecate its ownership¹ of Specified Claims,² or (b) purchase, acquire or otherwise obtain ownership of Specified Claims resulting in an Entity owning an aggregate amount of Specified Claims that equals or exceeds \$250 million (including principal and accrued interest as of the Petition Date and that Entity's prior ownership of Specified Claims) *is a Specified* ~~must~~, at least ten (10) days *Claims Holder* before any such transaction (the "Waiting Period"), file with this Court and serve on the Debtors ~~and their attorneys a notice in the form attached to the Motion as Exhibit E (the "Proposed Transaction Notice").~~ The Debtors shall follow the procedures set forth below with respect to any ~~Proposed Transaction Notice~~ received.

¹ "Ownership" shall be determined in accordance with applicable rules under Section 382, and thus, shall include, but not limited to, direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries and Entities would be considered to beneficially own a ratable share of all interests owned by a pass-through entity), ownership by members of such person's family and persons acting in concert, and in certain cases, the creation or issuance of an option (in any form). Any variation of the term "ownerships" (e.g., own) shall have the same meaning.

² "Specified Claims" means general unsecured claims, including claims incurred in the ordinary course of business, against the Debtors (including all debt securities issued by Mirant or its debtor subsidiaries), and all preferred securities issued by Mirant (which are treated for federal income tax purposes as indebtedness of the Debtors).

5. Specified Holders. Any Entity (i) who owns less than 4.75% of any class of Specified Shares³ who proposes to purchase, acquire, or otherwise obtain ownership of an amount of any class of Specified Shares which, when added to such Entity's total ownership of such class of Specified Shares, if any, equals or exceeds 4.75% of such class of Specified Shares, or (ii) in the case of an Entity who owns at least 4.75% of any class of Specified Shares who proposes to purchase, acquire, or otherwise obtain ownership of any additional Specified Shares, must, at least ten (10) days before any such transaction, file with the Court and serve on the Debtors and their attorneys the Proposed Transaction Notice. The Debtors shall follow the procedures set forth below with respect to any Proposed Transaction Notice.

6. Procedures Upon Receipt of a Proposed Transaction Notice. The Debtors shall have ten (10) days after receipt of a Proposed Transaction Notice to obtain ^{injunction} injunctive relief prohibiting the transaction. If no order enjoining the transfer is entered within such ten (10) day period, then such transaction may proceed solely as set forth in the notice. Further transactions within the scope of this paragraph must be the subject of additional notices as set forth herein with an additional ten (10) day waiting period. If the Debtors voluntarily advise such Entity in writing prior to the 10th day that they do not object, the Entity may proceed with the transaction. *all*

7. Notice of Ownership of Specified Claims. Each Entity that owns at least \$250 million (including principal and accrued interest as of the Petition Date) of Specified Claims, must, within fifteen (15) days of this Court's entry of the Interim Order, file with this Court and serve on the Debtors and their attorneys a notice containing the ownership information substantially in the form attached to the Motion as Exhibit F.

³ "Specified Shares" means each class of common stock of Mirant Corporation.

8. Procedures for Non-Compliance With Order. In the event any Entity fails to comply with Court orders implementing the relief requested herein (a “Non-Complying Entity”), the following sanctions procedures apply: (a) the Debtors shall deliver to the Non-Complying Entity a Notice of Non-Compliance in the form of Exhibit G attached to the Motion which shall set forth (among other things) the sanctions requested by the Debtors against the Non-Complying Entity, which may include monetary sanctions, or the reversal of the non-compliant transaction; (b) within five (5) days after service of the Notice of Non-Compliance, the Non-Complying Entity shall file with the Court and serve upon the Debtors a response (the “Response”) to said notice, and obtain a hearing date so that the Notice of Non-Compliance and any Response is heard not later than ten (10) days after service of the Notice of Non-Compliance (the Response shall state the date and time of the hearing date obtained by the Non-Complying Entity); (c) (i) if a Response is timely filed and served, the Court may hear the matter within ten (10) days after service of the Notice of Non-Compliance, (ii) if a response is not timely filed and served as required, then the Court may enter an order granting the sanctions requested by the Debtors in the Notice of Non-Compliance.

9. The Debtors may waive, in writing, any and all restrictions, stays and notification procedures.

10. The Debtors shall serve a notice of the entry of this Order, substantially in the form annexed to the Motion as Exhibit H (but revised to reflect the emergency nature of the relief) describing the authorized procedures on (i) Office of the United States Trustee for the Northern District of Texas, (ii) the holders of the fifty largest unsecured claims on a consolidated basis against the Debtors, (iii) any indenture trustee(s) or transfer agent(s) for the Specified Claims or Specified Shares, as applicable, and (iv) those persons who have formally appeared

and request service in these cases pursuant to Bankruptcy Rule 2002. Upon receipt of such notice, any indenture trustees and transfer agents shall send such order to all holders of the Specified Claims or Specified Shares, as applicable, registered with such indenture trustee or transfer agent. Any such registered holder shall, in turn, provide such notice to any holder for whose account such registered holder holds Specified Claims or Specified Shares, as applicable. Any such holder shall, in turn, provide such notice to any person or entity for whom such holder holds the Specified Claims or Specified Shares, as applicable.


W 11. The requirements set forth in this Order are in addition to the requirements of Rule 3001(e) of the Federal Rules of Bankruptcy Procedure and applicable securities, corporate, and other laws, and do not excuse compliance therewith.

12. The relief granted in this Order is intended solely to permit the Debtors to protect, preserve and maximize the value of their NOL carryforwards and certain other tax attributes. Accordingly, except to the extent this Order expressly conditions trading in claims against and interests in the Debtors, nothing in this Order or in the Motion shall or shall be deemed to prejudice, impair or otherwise alter or affect the rights of any holders of claims against or interests in the Debtors, including in connection with the treatment of any such claims or interests under any plan of reorganization. Moreover, promptly upon receiving the Ownership information to be provided by holders pursuant to this Order and from time to time following any updates thereto or other material change in underlying facts or circumstances, the Debtors shall use reasonable efforts to determine, in good faith, whether there exists a reasonable possibility that section 382(1)(5) of the Internal Revenue Code will be available in connection with the formulation and implementation of the Debtors' plan of reorganization, and upon a determination that no such reasonable possibility exists, the Debtors shall promptly inform this

Court of such determination, in which case the Court shall amend this Order to vacate the portions of this Order that require notice by certain holders of Specified Claims of intent to acquire Specified Securities.

13. An interim hearing on the Motion shall take place on July 23, 2003 at 9:00A.

Dated: July 21, 2003



D. Michael Lynn,
United States Bankruptcy Judge