

ENTERED

JAWANA C. MARSHALL, 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)
))	Jointly Administered
Debtors.))	
))	

**FINAL ORDER PURSUANT TO 11 U.S.C. § 362(d) FOR LIMITED
MODIFICATION OF THE AUTOMATIC STAY SOLELY
TO ALLOW CERTAIN APPELLATE PROCEEDINGS TO PROCEED**

On the 8th day of August, 2003, the Court heard the Motion Pursuant to Section 362(d) to Modify the Automatic Stay Solely to Allow Certain Appellate Proceedings to Proceed (the “Motion”)¹ filed by Mirant Corporation and its affiliated debtors, as debtors-in-possession (collectively, the “Debtors”). At the hearing, appearances were made by counsel for (i) the Debtors, (ii) the two official unsecured creditors committees for Mirant Corporation and Mirant Americas Generating, LLC, and (iii) certain creditors, and a limited appearance was made by counsel for the Attorney General for the State of California, who stated that by making a limited appearance he was not waiving the State’s sovereign immunity under the Eleventh Amendment to the U.S. Constitution. The Debtors took no position on whether the State has such immunity at this hearing, and no arguments in this regard are waived by either party. It appearing that this Court has jurisdiction over this matter; and that due and proper notice has been given; and upon

¹ Unless otherwise defined herein, capitalized terms have the same meaning ascribed to them in the Motion.

presentation of oral argument by the Debtors, comments by the Attorney General for the State of California, and due deliberation of the issues presented, it is hereby determined as follows:

1. The Motion seeks limited relief with respect to the following non-bankruptcy cases (the “Actions”) currently on appeal to the Ninth Circuit (defined herein as the “Appeals”):

- In People of the State of California ex rel. Bill Lockyer v. Mirant Corporation, et al., C-02-1914 VRW (C.D. Cal.), appeal pending, 03-15638 (9th Cir.) (regarding the sale of a type of wholesale energy capacity referred to as ancillary services) (“Ancillary Services Action”).
- Public Utility District of Snohomish, et al v. Dynegy Power Mktg, et al., CV-02-01993-RHW (S.D. Cal), appeal pending, 03-55191 (9th Cir.) (regarding allegations that the Mirant Defendants, or some of them, and other non-Mirant related entities manipulated wholesale energy markets) (“Snohomish”).
- People of the State of California ex rel. Bill Lockyer v. Mirant Corporation, et al., C-02-2207 VRW (C.D. Cal.), appeal pending, 03-15585 (9th Cir.) (regarding whether filings by the Mirant Defendants with the Federal Energy Regulatory Commission (“FERC”) of rates charged for wholesale electricity complied with federal law) (“Unfiled Rate Action”).

2. It is not necessary for the Court to determine the applicability of the automatic stay to the Appeals at this time.

3. Based on the status of the Appeals and the representations of the Debtors as to their success in the Actions to date, and in the interests of promoting the efficient administration of these chapter 11 estates, the automatic stay should be modified, to the extent necessary and applicable, to permit all actions to be taken for the Appeals to be decided by the Ninth Circuit, including rehearing en banc if sought.

4. To the extent the resolution of the Appeals by the Ninth Circuit, including rehearing en banc if such review is sought, does not finally resolve the Actions, any person may seek further review by this Court, as they deem necessary and appropriate, on the issue of the applicability of the automatic stay of Section 362 of the Bankruptcy Code.

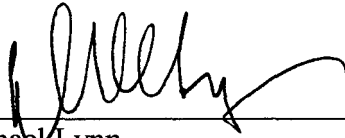
Based upon the foregoing, and other good cause having been shown, it is hereby,

ORDERED AS FOLLOWS:

1. While the Court did not reach the issue of the applicability of the automatic stay to the Appeals, the Motion is granted and the automatic stay provided by Section 362 of the Bankruptcy Code is modified, to the extent necessary and applicable, to permit all actions to be taken for the Appeals to be decided by the Ninth Circuit, including rehearing of the Appeals en banc if such review is sought.

2. The 10-day stay provided by Bankruptcy Rule 4001(a)(3) is waived.

DATED: August 13, 2003



D. Michael Lynn
United States Bankruptcy Judge

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