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PROPOSED ATTORNEYS FOR THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF MIRANT AMERICAS GENERATION, LLC.

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)	
)	Hearing Date and Time: To Be Set

**EMERGENCY MOTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF MIRANT AMERICAS GENERATION, LLC
FOR THE ENTRY OF ORDER APPROVING SPECIFIED
INFORMATION BLOCKING PROCEDURES AND PERMITTING
TRADING OF THE DEBTORS' SECURITIES, TRADING BANK DEBT PURCHASE
OR SALE OF TRADE DEBT AND ISSUING OF ANALYST REPORTS UPON
ESTABLISHMENT OF A SCREENING WALL EFFECTIVE JULY 25, 2003**

The Official Committee of Unsecured Creditors (the "Committee") of Mirant Americas Generation, LLC ("MAGI"), by and through its undersigned proposed counsel,¹ hereby submits this emergency motion (the "Motion") for the entry of an order, pursuant to 11 U.S.C. § 105(a), approving information blocking procedures and permitting trading in each of

¹ The Committee intends promptly to file an application to retain Cox & Smith Incorporated and Cadwalader, Wickersham & Taft LLP as its counsel in these cases.

the above-captioned debtors' ("Debtors") Securities (defined below) and its bank debt ("Bank Debt"), the purchase or sale of trade debt and the issuing of analyst reports to the public or to such Committee member's clients ("Analyst Reports") in certain situations. In support of the Motion, the Committee respectfully represents as follows:

BACKGROUND

1. On July 14, 2003 (the Petition Date), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are authorized to operate their business and manage their properties as debtors in possession. By order of the Court, the Debtors' chapter 11 cases are being jointly administered for procedural purposes only.

3. On July 25, 2003, pursuant to section 1102(a) of the Bankruptcy Code, the United States Trustee for the Northern District of Texas appointed seven entities to the Committee, certain of which hold Securities² and bank debt ("Bank Debt") issued by the Debtors.

JURISDICTION

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 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.

RELIEF REQUESTED

5. By this Motion, the Committee requests the entry of an order determining that those Committee members, who are engaged in the trading of Securities or Bank Debt for others

² "Securities" is used in this Motion as such term is defined in Section 2(a)(1) of the Securities Act of 1933, including the following, but only to the extent they constitute securities thereunder: stock; notes; bonds; debentures; participations in, or derivatives based upon or relating to, any of the Debtors' debt obligations or equity interests.

or for their own accounts as a regular part of their business or the issuing of Analyst Reports, (collectively, the “Securities Trading Committee Members”), will not violate their fiduciary duties as Committee members by trading in the Debtors’ Securities, trading Bank Debt, purchasing or selling trade debt or issuing Analyst Reports during the pendency of the Debtors’ chapter 11 cases, provided that any Securities Trading Committee Member carrying out or issuing such trade or Analyst Reports establishes, effectively implements and adheres to the information blocking policies and procedures (collectively, the “Screening Wall”) that are consistent with those described in the form of declaration annexed hereto as Exhibit A. Nothing herein shall have any impact on, or prohibit or curtail or restrict, the trading practices of a Committee member’s affiliates.

6. The term “Screening Wall” refers to a procedure established by an institution to isolate its trading and analyst activities from its activities as a member of an official committee of unsecured creditors in a chapter 11 case. A Screening Wall includes, among other things, such features as the employment of different personnel to perform certain functions, physical separation of the office and file space, procedures for locking committee related files, among other things. Such procedures prevent the Securities Trading Committee Member’s trading personnel from use or misuse of non-public information obtained by the Securities Trading Committee Member’s personnel engaged in Committee-related activities (“Committee Personnel”) and also precludes Committee Personnel from receiving inappropriate information regarding such Securities Trading Committee Member’s trading in Securities or Bank Debt in advance of such trades and information to be included in analyst reports.

7. Although members of the Committee owe fiduciary duties to the creditors of this estate, the Securities Trading Committee Members also may have fiduciary duties to maximize returns to their respective clients through trading securities. Thus, if a Securities Trading

Committee Member is barred from trading the Debtors' Securities, trading Bank Debt, or purchasing or selling trade debt during the pendency of these Bankruptcy Cases because of its duties to other creditors, it may risk the loss of a beneficial investment opportunity for itself and/or its clients and, moreover, may breach the aforesaid fiduciary duty to such clients. Alternatively, if a Securities Trading Committee Member resigns from the Committee, its interests may be compromised by virtue of taking a less active role in the reorganization process. Securities Trading Committee Members should not be forced to choose between serving on the Committee and risking the loss of beneficial investment opportunities or foregoing service on the Committee and possibly compromising its responsibilities by taking a less active role in the reorganization process.

8. As evidence of its implementation of the procedures detailed herein, any Committee member that wishes to trade in the Debtors' Securities, trade in the Bank Debt, purchase or sell trade debt or issue Analyst Reports shall cause to be filed with the Bankruptcy Court a Screening Wall Declaration by each individual performing Committee related activities in the above-captioned chapter 11 cases in the form annexed hereto as Exhibit A. That declaration will state that such individual shall comply with the terms and procedures consistent with those set forth in this Motion.

BASIS FOR RELIEF

9. As set forth above, the relief requested is consistent with numerous other orders entered by the bankruptcy courts. *See, e.g., Enron Corp., et al*, No. 01-16034 (AJG) (Bankr. S.D.N.Y. 2002); *In re Paracelsus Healthcare Corp., No. 00-38590-H5-11* (Bankr. N.D. Tex. 2000); *In re Flag Telecom Holdings Ltd., et al*, Nos. 02-11732 through 02- 11736 and 02-11975 through 02-11979 (ALG) (Bankr. S.D.N.Y. 2002); *In re Global Crossing Ltd., et al.*, Nos. 02-40187 through 02-40241 (REG) (Bankr. S.D.N.Y. 2002); *In re The Finova Group, Inc.*, No. 01-

0697 (PJW) (Bankr. D. Del. Apr. 12, 2001); *In re GST Telecom, Inc.*, No. 00-1982 (GMS) (Bankr. D. Del. Oct. 19, 2000); *In re Vista Eyecare, Inc.*, No. A00-65214 (Bankr. D. Ga. June 1, 2000); *In re Sun Healthcare Group, Inc.*, No. 99-3657 (MFW) (Bankr. D. Del. Dec. 11, 1999); *In re ICO Global Communications Services Inc.*, No. 99-2933 (MFW) (Bankr. D. Del. Sept. 21, 1999); *In re Acme Metals Inc.*, No. 98-2179 (MFW) (Bankr. D. Del. Dec. 21, 1998); *In re Mid American Waste Systems, Inc.*, No. 97-104 (PJW) (Bankr. D. Del. Feb. 21, 1997); *In re Ace-Texas, Inc.*, No. 96-166 (PJW) (Bankr. D. Del. July 17, 1996); *In re Farley*, No. 91-15610 (Bankr. N.D. Ill. Nov. 8, 1991); *In re America West Airlines, Inc.*, No. 91-07505 (Bankr. D. Ariz. Oct. 23, 1991); *In re Harvard Industries, Inc.*, Nos. 91-104, 91-479 through 91-487 (Bankr. D. Del. July 15, 1991); *In re Federated Dep't Stores, Inc.*, No. 1-90- 00130, 1991 Bankr. LEXIS 288 (Bankr. S.D. Ohio Mar. 7, 1991).

10. Each of these orders provides that a committee member does not violate its fiduciary duties as a committee member by trading in the debtor's securities, so long as it acts in accordance with certain information blocking procedures approved by the Bankruptcy Court.

11. In the seminal decision on this issue, *In re Federated Dep't Stores, Inc.*, No. 1-90-00130, 1991 Bankr. LEXIS 288 (Bankr. S.D. Ohio Mar. 7, 1991), the Bankruptcy Court -- agreeing with the position of the SEC on this issue -- stated that the movant, Fidelity Management & Research Company,

will not be violating its fiduciary duties as a committee member and accordingly, will not be subjecting its claims to possible disallowance, subordination, or other adverse treatment, by trading in securities of the Debtors . . . during the pendency of these [c]ases, provided that Fidelity employs an appropriate information blocking device or "[Screening] Wall" which is reasonably designed to prevent Fidelity trading personnel from receiving any nonpublic committee information through Fidelity committee personnel and to prevent Fidelity committee personnel from

receiving information regarding Fidelity's trading in securities of the Debtors... in advance of such trades.

In re Federated Dep't Stores, Inc., 1991 Bankr. LEXIS 288 at *2. The Federated Court approved Fidelity's Screening Wall procedures, which, as here, included: (i) a written acknowledgement by personnel performing committee work that they could receive non-public information and were aware of the Screening Wall procedures in effect; (ii) a prohibition on the sharing of nonpublic committee information with certain other employees; (iii) separate file space for committee work which is inaccessible to certain other employees; (iv) restrictions on committee personnel's access to trading information; and (v) a compliance review process. Similarly, the order in *Federated* only covered those committee members actually engaged in the trading of securities as a regular part of their business. The Screening Wall procedures outlined here parallel those protections established in the *Federated* case and followed in subsequent cases.

WHEREFORE, the Committee respectfully requests that the Court enter an Order: (i) approving the Screening Wall procedures set forth herein; (ii) determining that any Committee member, acting in any capacity and engaged in securities trading as a regular part of its business or the issuance of Analyst Reports, will not violate its fiduciary duties as a Committee member, and, accordingly, the Committee members' claims will not be subject to possible disallowance, subordination or other adverse treatment, and the allowance of such Committee member's claim will not be impacted in any manner as a result of these activities, provided that such Committee member follows the procedure set forth herein to insulate its trading in the Debtors' securities, trading in the Bank Debt, purchasing or selling trade debt and analyst activities from its Committee related activities; (iii) that the relief requested herein shall be effective July 25, 2003; and (iv) granting such other and further relief as is just and proper.

Dated: July 29, 2003
Fort Worth, Texas

Respectfully submitted,

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By: /s/ Deborah D. Williamson
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Texas State Bar No. 21617500

**PROPOSED ATTORNEYS FOR THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS OF
MIRANT AMERICAS GENERATION, LLC.**

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July, 2003, a true and correct copy of the above and foregoing *Emergency Motion* was served by United States first class mail on the parties on the attached Service List(s).

/s/ Deborah D. Williamson

Deborah D. Williamson

EXHIBIT "A"

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CREDITORS OF MIRANT AMERICAS GENERATION, LLC.**

**IN THE UNITED STATES BANKRUPTCY COURT
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FORT WORTH DIVISION**

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

DECLARATION OF [DECLARANT]

I, [DECLARANT], hereby declare:

1. I have personal knowledge of each of the facts stated in this Declaration, except for those facts stated on information and belief, and, as to those facts, I am informed and believe them to be true. I am submitting this Declaration on behalf of [INSTITUTION] ("Restricted Entity"), in order to advise the United States Trustee for the Northern District of Texas of the information blocking procedures designed to prevent Restricted Entity trading personnel, analysts and its investment advisory personnel from receiving any non-public information concerning the chapter 11 cases of

EXHIBIT "A"

the above-captioned debtors (the "Debtors") through Restricted Entity personnel, representatives or agents ("Restricted Entity Committee Personnel") performing activities related to the Official Committee of Unsecured Creditors (the "Committee") in the Debtors' chapter 11 cases and to prevent Restricted Entity Committee Personnel from receiving information regarding Restricted Entity's trading in Securities of the Debtors in advance of such trading.

2. I am a [TITLE] of Restricted Entity, which (i) serves as an investment adviser on behalf of certain client accounts that beneficially own securities or other claims or interests in Debtors' chapter 11 cases and/or (ii) beneficially owns such securities, in its own name or in the name of one or more funds or accounts. In that capacity, I am a representative that serves on committees in out-of-court restructurings and chapter 11 reorganization cases. [DESCRIBE OTHER RELEVANT DUTIES].

3. In conjunction with Restricted Entity's existing information blocking procedures and this Declaration, Restricted Entity has established and will maintain the following internal procedures: (i) Restricted Entity Committee Personnel shall execute an internal memorandum (the "Procedures Memorandum") acknowledging that they may receive non-public information and that they are aware of the information blocking procedures which are in effect with respect to the Debtors' Securities and will follow these procedures; (ii) subject to paragraph 4 hereof, Restricted Entity Committee Personnel will not directly or indirectly share any non-public information generated by, received from or relating to Committee activities or Committee membership ("Information") with any other employees, representatives or agents of Restricted Entity, including Restricted Entity's investment advisory personnel or analysts issuing reports to the public or to such Committee member's clients, and Restricted Entity Committee

EXHIBIT "A"

Personnel shall use good faith efforts not to share any material Information concerning the Debtors' chapter 11 cases with any Restricted Entity employee reasonably known to be engaged in trading activities with respect to the Debtors' Securities or Bank Debt on behalf of Restricted Entity and/or its clients, except that a good faith communication of publicly available information shall not be presumed to be a breach of the obligations of Restricted Entity or any Restricted Entity Committee Personnel hereunder; (iii) Restricted Entity Committee Personnel will maintain all files containing information received in connection with or generated from committee activities in secured cabinets inaccessible to other employees of Restricted Entity; (iv) Restricted Entity Committee Personnel will not receive any information regarding Restricted Entity's trades in the Debtors' Securities or Bank Debt in advance of the execution of such trades, except that Restricted Entity Committee Personnel may review such reports and systems showing Restricted Entity's purchases and sales and ownership of Debtors' Securities (provided that Restricted Entity Committee Personnel may review the usual and customary internal reports and systems showing Restricted Entity's purchases and sales on behalf of Restricted Entity or its clients and the amount and class of claims, interests or securities owned by Restricted Entity or its clients to the extent that such personnel would otherwise review such reports in the ordinary course and such reports are not specifically prepared with respect to the Debtors); (v) Restricted Entity's compliance personnel shall periodically review Restricted Entity's trades of the Debtors' Securities or Bank Debt to determine if there is any reason to believe that such trades were not made in compliance with the information blocking procedures and shall keep records of such review; (vi) Restricted Entity shall take those steps necessary to restrict the exchange of Information through electronic means between Restricted Entity Committee Personnel and all other Restricted Entity

EXHIBIT "A"

Personnel in a manner consistent with the foregoing procedures, which shall be monitored by Restricted Entity's compliance personnel; and (vii) so long as Restricted Entity is a member of the Committee, it shall confirm to the Committee counsel and the United States Trustee every six months in a declaration continued compliance with the procedures described herein, and shall immediately disclose to the Committee's counsel and the United States Trustee any breaches of such procedures.

4. Notwithstanding any of the above, Committee Personnel may share Information with (a) senior management of Restricted Entity who, due to their duties and responsibilities, have a legitimate need to know such Information provided that such individuals (i) otherwise comply with the procedures herein; and (ii) use such Information only in connection with their senior managerial responsibilities; (b) regulators, auditors, designated legal and compliance personnel for the purpose of rendering legal advice to the Committee Personnel, and to the extent that such Information may be accessible by internal computer systems, Restricted Entity administrative personnel who service and maintain such systems, each of whom, by internal policy or agreement, will agree not to share Information with other employees and will keep such Information in files inaccessible to other employees; and (c) other Restricted Entity employees, representatives and agents who (i) are not or will no longer be involved with trading or investment advisory activities with respect to the Debtors' Securities or Bank Debt; and (ii) execute the Procedures Memorandum.

5. The Restricted Entity Committee Personnel assigned to the Debtors' chapter 11 cases will be myself and [SECOND REPRESENTATIVE], who is [TITLE] of Restricted Entity. [SECOND REPRESENTATIVE] will submit a separate Declaration affirming [his/her] intention to comply with the screening procedures described herein. In

EXHIBIT "A"

the event any other individual Restricted Entity representative is chosen to act as a Committee representative on behalf of Restricted Entity in the Debtors' chapter 11 cases, such individual will also submit a Declaration affirming [his/her] intention to comply with the screening procedures described herein prior to accepting any responsibilities in connection therewith.

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

Executed this ____ day of [MONTH], 2003, at [CITY], [STATE].

[DECLARANT]

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PROPOSED ATTORNEYS FOR THE OFFICIAL COMMITTEE OF UNSECURED
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IN THE UNITED STATES BANKRUPTCY COURT
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In re)	Chapter 11 Case
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MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590 (DML)
)	Jointly Administered
Debtors)	
)	Hearing Date and Time: To Be Set

**ORDER APPROVING SPECIFIED INFORMATION BLOCKING
PROCEDURES AND PERMITTING TRADING IN THE DEBTORS'
SECURITIES, BANK DEBT, PURCHASE OR SALE OF TRADE DEBT AND ISSUING
OF ANALYST REPORTS UPON ESTABLISHMENT OF A SCREENING WALL
EFFECTIVE JULY 25, 2003**

Upon the emergency motion (the "Motion") of the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC ("Committee") appointed in these chapter 11 cases concerning the above-captioned debtors (collectively, the Debtors), for the entry of an order pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), approving specified information blocking procedures and permitting trading in the

Debtors' Securities (as defined below) or bank debt ("Bank Debt"), the purchase and sale of trade debt and issuing of analyst reports to the public or to such Committee members' clients ("Analyst Reports," and activities relating thereto "Analyst Activities") in certain situations, and all exhibits attached thereto; and adequate notice of the Motion having been given; and the Court being satisfied that the relief requested in the Motion is necessary, appropriate and in the best interests of the Committee, its constituents, the creditors, and the Debtors' estates; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted, subject to the terms and conditions of this Order.
2. The information blocking policies and procedures described substantially in the form of declaration annexed to the Motion as Exhibit A (the "Screening Wall Declaration"), which are designed to prevent the misuse of committee information are hereby authorized and approved.
3. Committee members, acting in any capacity and engaged in the trading of Securities (defined below) or bank debt, purchasing or selling trade debt and/or issuing Analyst Reports as a regular part of their business, will establish and effectively implement and strictly adhere to the information policies and procedures detailed in the Screening Wall Declaration. For purposes of this Order, the term "Securities" is used as such term is defined in Section 2(a)(1) of the Securities Act of 1933, including the following, but only to the extent they constitute securities thereunder: stock; notes; bonds; debentures; participations in, or derivatives based upon or relating to, any of the Debtors' debt obligations or equity interests. So long as the Committee members establish, implement and adhere to the information policies and procedures in the Screening Wall Declaration, each Committee member shall not be deemed to have violated any duties as a Committee member and, accordingly, the Committee members' claims

will not be subject to possible disallowance, subordination or other adverse treatment and allowance of such Committee member's claim will not be impacted in any manner as a result of such Committee members' trading and Analyst Activities.

4. As evidence of its implementation of the procedures detailed in the Screening Wall Declaration, any Committee member that intends to trade in the Debtors' Securities or Bank Debt, purchase or sell trade debt, issue Analyst Reports or otherwise seeks to avail itself of the protections of this Order will, as a precondition to such activity, cause to be filed with the Bankruptcy Court a Declaration or Affidavit of each individual performing Committee-related activities in the above-captioned chapter 11 bankruptcy cases on behalf of that Committee member, stating that such individual shall comply with and adhere to the terms and procedures set forth in the Screening Wall Declaration.

5. This Order shall apply only to those Committee members that are engaged in the trading of Securities or Bank Debt, the purchase or sale of trade debt or the issuance of Analyst Reports as a regular part of their business and shall be effective July 25, 2003.

Dated: Fort Worth, Texas
July 29, 2003

D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

**MIRANT CORPORATION, ET AL.
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