

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

FILED  
TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

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In re )	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> , )	Case No. 03-46591(DML)11
)	Jointly Administered
Debtors. )	
_____ )	

**ORDER ON MOTION OF HAMON RESEARCH-COTTRELL, INC. FOR ENTRY OF AN ORDER COMPELLING DEBTOR MIRANT MID-ATLANTIC, LLC TO ASSUME OR REJECT EXECUTORY CONTRACT PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE**

On the 22<sup>nd</sup> day of August, 2003, came of for hearing the Motion of Hamon Research-Cottrell, Inc. ("HRC") For Entry of an Order Compelling Debtor Mirant Mid-Atlantic, LLC ("MIRMA") to Assume or Reject Executory Contract Pursuant to Section 365 of the Bankruptcy Code (the "Motion"). Appearances were made by counsel for MIRMA, counsel for HRC, counsel for the Official Committee of Unsecured Creditors of Mirant Corporation (the "Corp. Committee"), counsel for the Official Committee of Unsecured Creditors of Mirant Americas Generation LLC (the "MAG Committee"), and counsel for certain pass through certificate holders. MIRMA and HRC announced to the Court that they had reached an agreement in regards to the relief requested in the Motion, and such agreement was read into the record. Counsel for the MAG Committee and the pass through certificate holders did not oppose the agreement proposed by MIRMA and HRC. Counsel for the Corp. Committee raised questions on the appropriateness of the use of adequate protection payments in resolution of the Motion. These objections were overruled by the Court. Based on the agreement read into the record, the statements and arguments of counsel, and the Court's review of the Motion and research on Maryland construction lien law, the Court finds that the settlement is in the best interests of the Debtors, their estates and their creditors because it protects MIRMA and its creditors from potential liens being placed on MIRMA's property, and balances the Debtors' need to have a reasonable time to assume or reject executory contracts while protecting the interests of the contract counter-party.

Based on the foregoing, it is therefore

**ORDERED as follows:**

1. MIRMA will have until November 28, 2003 to determine whether to assume or reject the contract numbered SV15856-02 between it and HRC dated August 21, 2002 (the "Contract") for the construction of a ten compartment bargehouse at the Dickerson Generating Station (the "Dickerson Project").
2. On or before September 19, 2003, MIRMA will (i) make an adequate protection payment to HRC (in the form more specifically set forth in paragraph 4, below) in the amount of \$626,148 (the "Adequate Protection Payment"), plus (ii) pay to HRC (in the form more specifically set forth in paragraph 4, below) the amount of \$206,995, representing a 2.5% reduction in the retainage of 10% of the total Contract price (the "Retainage") to be held by MIRMA pursuant to the Contract (the "First Retainage Reduction").
3. On or before September 5, 2003, HRC will provide MIRMA with a list of subcontractors on the Dickerson Project to be paid with the \$833,143 fund created by the sum of the Adequate Protection Payment and the First Retainage Reduction. HRC will insure that all subcontractors are appropriately identified so that they can be paid.
4. On or before September 19, 2003, MIRMA will make checks payable jointly to HRC and each subcontractor on the Dickerson Project in the appropriate amount from the fund of \$833,143 created by the sum of the Adequate Protection Payment and the First Retainage Reduction.
5. On or before October 31, 2003, MIRMA will pay to HRC an additional \$206,995, representing an additional 2.5 % reduction in the Retainage (the "Second Retainage Reduction"), which funds will be utilized to pay subcontractors on the Dickerson Project in the form of joint checks in the same manner as set forth in paragraph 4, above. HRC will insure that all subcontractors are appropriately identified to MIRMA sufficiently prior to October 31, 2003, so that joint checks can be timely issued.
6. The remaining 5% of the Retainage will be held until May 2004, in accordance with the terms of the Contract.
7. HRC will invoice MIRMA for post-petition work weekly, and MIRMA will pay post-petition invoices that are appropriate and have been approved by MIRMA weekly in advance. HRC will submit a current statement of monies owed to subcontractors on the Dickerson Project with each post-petition invoice. Payment will be made in the form of two party checks in the event monies are owed to a subcontractor. MIRMA will pay appropriate and approved invoices under \$100,000 by wire transfer within 72 hours of receipt, and will pay appropriate and approved invoices in excess of \$100,000 not later than 10 days after receipt. MIRMA reserves the right to audit and verify HRC's statements and invoices.
8. HRC agrees that, provided MIRMA is in compliance with this Order and its obligations under the Contract, HRC will comply with its obligations under the Contract, including its obligation to correct deficiencies, until the earlier of: (i) November 28, 2003, or (ii) acceptance of the Work, as that term is defined in the Contract, by MIRMA. MIRMA and HRC agree that HRC will have no obligation to correct deficiencies discovered during the testing period after November 28, 2003, unless the Contract is assumed pursuant to Section 365 of the Bankruptcy Code on or before November 28, 2003. Notwithstanding the foregoing, HRC will not be obligated to provide the contractual warranty or do any warranty work until such time as the Contract is assumed. Deficiencies identified by MIRMA prior to acceptance of the Work by MIRMA are not considered warranty items for the purposes of this Order. HRC's parent corporation guaranty and its obligations thereunder remain unaffected by this Order up to November 28, 2003, after which the continued enforceability of the guaranty will be determined by MIRMA's acceptance or rejection of the Contract pursuant to Section 365 of the Bankruptcy Code.

9. If MIRMA assumes the Contract pursuant to Section 365 of the Bankruptcy Code, the pre-petition cure amount due HRC as a result of assumption will be reduced by the amount of the Adequate Protection Payment.

10. If MIRMA rejects the Contract pursuant to Section 365 of the Bankruptcy Code, HRC's rejection damages claim will be reduced by (i) the amount of the Adequate Protection Payment, (ii) the "First Retainage Reduction," and (iii) the Second Retainage Reduction.

11. In accordance with the terms of the Contract, HRC will use reasonable efforts to insure that all subcontractors on the Dickerson Project are paid timely, and that any liens filed on or before November 28, 2003 are removed. In the event a subcontractor remains unpaid and files a lien against the Dickerson Project on or before November 28, 2003, which has not been removed on or before November 28, 2003, the Court may consider extending the deadline set forth herein for assumption or rejection of the Contract and take any other action it deems appropriate to resolve any outstanding lien issues.

SIGNED THIS 8 DAY OF SEPTEMBER, 2003.

  
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D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

**Submitted by:**  
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