

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

In re

MIRANT CORPORATION, et al.,  
  
Debtors.

Chapter 11 Case

Case No. 03-46590 (DML)  
Jointly Administered

**RESPONSE OF THE PEOPLE OF THE STATE OF CALIFORNIA EX REL. BILL  
LOCKYER, ATTORNEY GENERAL, TO THE MOTION OF THE DEBTORS  
PURSUANT TO SECTION 362(d) TO MODIFY THE AUTOMATIC STAY SOLELY TO  
ALLOW CERTAIN APPELLATE PROCEEDINGS TO PROCEED**

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The People of the State of California *ex rel.* Bill Lockyer, Attorney General (“AG”), hereby submits this Response to the Motion of the Debtors Pursuant to Section 362(d) to Modify the Automatic Stay Solely to Allow Certain Appellate Proceedings to Proceed (“Motion”), which was filed with the court on Aug. 1, 2003.<sup>1</sup> A hearing on the motion has been scheduled for Friday, August 8 at 9 a.m.

The AG is the plaintiff in what the Debtors call the “double charging” action, Motion at 4-5, and what the Debtors call the “unfiled rate” action. *Id.* at 5-6. The AG brought those actions in his capacity as California’s chief law enforcement officer. Cal. Const. art. V §13. The actions seek to enforce the State’s police and regulatory powers to protect consumers from unfair business practices. Cal. Bus. & Prof. Code §§17200, 17204.

The AG believes that appellate proceedings in the Ninth Circuit Court of Appeals, as well as any subsequent proceedings, in the “double charging” and “unfiled rate” actions may go forward, notwithstanding the bankruptcy. The AG does not believe, however, that relief from the automatic stay is required, because the automatic stay does not apply.

Both cases are law enforcement actions designed to protect the public and not private parties. *See, e.g., People v. Pacific Land Research Co.*, 20 Cal.3d 10, 17, 569 P.2d 125, 141 Cal. Rptr. 20 (1977). As such, they are police and regulatory proceedings within the meaning of 11 U.S.C. §362(b)(4) (2000). *See, e.g., In re Universal Life Church, Inc.*, 128 F.3d 1294, 1297-99 (9<sup>th</sup> Cir. 1997), *as amended* (“police or regulatory power” in §362(b)(4) refers to the enforcement of laws “affecting health, welfare, morals and safety”); *In re First Alliance Mortgage Co.*, 263 B.R. 99, 108 (B.A.P. 9<sup>th</sup> Cir. 2001) (consumer protection actions are a valid exercise of police

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<sup>1</sup> In filing this pleading, the AG does not waive the State’s sovereign immunity under the Eleventh Amendment.

and regulatory power for purposes of §362(b)(4)). Accordingly, the automatic stay, 11 U.S.C. §362(a) (2000), does not apply to either action.

The court need not reach the issue of whether the stay applies, however, because the AG is not opposed to the appeals, or to any subsequent proceedings, going forward.

Dated: August 7, 2003

Respectfully submitted,

By:     /s/ Paul Stein    

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**CERTIFICATE OF SERVICE**

**DECLARATION OF SERVICE BY FIRST CLASS MAIL**

Case Name:           **In Re Mirant Corporation, et al**

No.: 03-46590

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 7, 2003, I served the attached **RESPONSE OF THE PEOPLE OF THE STATE OF CALIFORNIA EX REL. BILL LOCKYER, ATTORNEY GENERAL, TO THE MOTION OF THE DEBTORS PURSUANT TO SECTION 362(d) TO MODIFY THE AUTOMATIC STAY SOLELY TO ALLOW CERTAIN APPELLATE PROCEEDINGS TO PROCEED**

by placing a true copy thereof enclosed in a sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, addressed as follows:

LIMITED SERVICE LIST TO  
CASE NO. 03-46590 (updated Aug. 1,  
2003)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 7, 2003, at San Francisco, California.

Carel E. Turner

*/s/ Carel Turner*

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Typed Name

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Signature