

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

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION
EMERGENCY
TAWANA
THE DATE OF THE ORDER IS
ON THE COURT'S RECORD

In re:)	
)	Chapter 11
MIRANT CORPORATION, <u>et al.</u>)	Case No. 03-46590-DML-11
)	Jointly Administered
Debtors.)	
)	
)	

**ORDER PURSUANT TO 11 U.S.C. §§ 327(a) AND 328 AND FED. R. BANKR. P. 2014
AUTHORIZING THE EXTENSION OF THE EMPLOYMENT AND RETENTION OF
McKINSEY & COMPANY, INC. UNITED STATES AS MANAGEMENT
CONSULTANT TO THE DEBTORS AND DEBTORS IN POSSESSION**

Upon consideration of the Application to Extend Engagement of McKinsey & Company, Inc. United States as Management Consultant and the Supplemental Application to Extend Engagement of McKinsey & Company, Inc. United States as Management Consultant (together the "Extension Application"), filed by Mirant Corporation and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, seeking an order authorizing the Debtors to direct McKinsey & Company, Inc. United States ("McKinsey") to complete Phase II of the engagement as described in the Consulting Services Agreement dated October 24, 2003 between McKinsey and the Debtors (the "CSA"), the Letter of Proposal dated September 29, 2003 and executed on October 24, 2003 (the "LOP"), the Amended Letter of Proposal dated November 17, 2003 and executed on November 25, 2003 (together, the "Engagement Letter") and the Affidavit of Kenneth J. Ostrowski (the "Ostrowski Affidavit"), which were attached to the initial application to employ McKinsey; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY FOUND THAT:

A. This Court has jurisdiction over these cases and over the Extension Application pursuant to 28 U.S.C. §§ 157 and 1334, and venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtors filed an application to employ McKinsey (the “Initial Application”) during the beginning stages of these cases. The Debtors retained McKinsey to provide expertise in connection with improving efficiencies within certain of the Debtors’ plants. McKinsey proposed to complete this process in two “Phases.” During Phase I, McKinsey would focus on identifying and prioritizing opportunities at the plant level while building a fact-base and project infrastructure. Also during Phase I, McKinsey would develop a “rollout plan” to implement changes at the plant level.

C. During Phase II, or the “rollout,” McKinsey would focus on conducting “deep dives” at each plant to implement the proposed improved efficiencies. During a deep dive, McKinsey would assemble data with respect to spending activity, develop cash flow and EBIT improvement proposals, evaluate and prioritize selected ideas and create action plans to capture identified opportunities. McKinsey divided Phase II into a series of “Waves” to ensure organization focus and appropriate resource commitment. During Wave I of Phase II, McKinsey would focus on implementing improvements to three plants: Mirant Chalk Point, LLC, Mirant Lovett, LLC, and Mirant Canal, LLC (the “Wave I Plants”). The team would also focus on improving the effectiveness of the capital budgeting and management process.

D. In Wave II of Phase II, McKinsey would conduct “deep dives” on two to three additional plants: Morgantown, Dickerson and Potomac River (the “Wave II Plants”).

E. McKinsey completed Phase I on or about November 7, 2003. Shortly thereafter, the Court approved McKinsey's employment retroactive to September 29, 2003, pursuant to an order entered on December 3, 2003 (the "Employment Order"). Pursuant to the Employment Order, McKinsey was authorized to complete only Phase I and Wave I of Phase II, and the Debtors were required to obtain further Court approval to extend McKinsey's engagement beyond (1) February 28, 2004 or (2) Wave I of Phase II.

F. The Debtors filed and served the Extension Application and notice has been given in accordance with the statements made in the Extension Application and the associated certificate of service, and no other or further notice is necessary.

G. McKinsey and each of its members, officers, directors and employees do not represent an interest adverse to the Debtors or to the Debtors' estates such that would disqualify McKinsey from representation of the Debtors in these chapter 11 cases.

H. McKinsey and each of its members, officers, directors and employees continue to be a "disinterested person" as such term is defined in section 101(14) of the Bankruptcy Code, and as required by section 327(a) of the Bankruptcy Code.

I. The extension of McKinsey's retention as the Debtors' management consultant, on the terms set forth in the Engagement Letter (as modified by this Order), is in the best interests of the Debtors and their estates, creditors and interest holders, and the Court finds that it is appropriate for the Debtors to direct McKinsey to complete Phase II.

J. The fee of \$2.925 million, inclusive of expenses, for Wave II of Phase II as specified in the Extension Application, constitutes a "reasonable term and condition of employment" pursuant to section 328(a) of the Bankruptcy Code.

K. This Court's Order Restricting Pursuit of Certain Persons, dated August 5, 2003 (as the same has subsequently been extended or amended, including by the Court's September 29, 2003 Order Extending Order Restricting Pursuit of Certain Persons, the "Protected Persons Order"), which is made applicable to McKinsey by the terms of this Order, provides reasonable protections to McKinsey that accomplish the legitimate purposes that otherwise would have been accomplished through indemnification provisions in the Application.

L. In agreeing to act as the Debtors' management consultant on the terms set forth herein, McKinsey is relying on the protections afforded by the Protected Persons Order. In the absence of those protections, McKinsey would have required the approval of indemnification provisions as part of the Application as a condition to McKinsey's agreement to provide services to the Debtors.

IT IS THEREFORE ORDERED THAT:

1. The Extension Application and the Debtors' continued employment of McKinsey on the terms and conditions set forth in the Application, the Engagement Letter and the Extension Application, is approved, provided, however:

(a) McKinsey and its affiliates, members, managers, directors, officers and employees hereby are deemed to be "Protected Professionals" who are entitled to the protections set forth in the Protected Persons Order.

(b) If the Protected Persons Order is terminated, violated, expires or otherwise does not provide the protections it is expected to provide, McKinsey has the right to seek indemnification from this Court for any and all work provided to the Debtors pursuant to the Engagement Letter and this Order; and

(c) In the event that the Engagement Letter is terminated by the Debtors without cause, or by McKinsey with cause, McKinsey shall have the right to seek additional compensation, in addition to its monthly fees, based on the time spent by McKinsey in its performance of services for the Debtors and the reasonable value of those services, upon application to and as determined by the Court.

2. The fees payable to McKinsey pursuant to the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code.

3. Notwithstanding the foregoing, McKinsey will file applications for allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in §§ 330 and 331 of the Bankruptcy Code, any applicable Bankruptcy Rules, the applicable local bankruptcy rules, any orders of this Court, and any procedures as may be fixed by order of this Court; provided, however, that (a) the approval of McKinsey's fees and expenses will be subject to the review standards set forth above and (b) McKinsey shall not be required to maintain time records for services rendered and shall not be required to provide or conform to any schedule of hourly rates.

4. The total fees and expenses incurred by McKinsey pursuant to this Order and paid by the Debtors will be allocated as follows:

(a) Mirant Corporation: \$728,000; and

(b) The balance of the fees and expenses shall be shared ratably by

Mirant Americas Generation LLC, Morgantown, Mirant Dickerson Development, LLC and Mirant Potomac River, LLC.

5. Nothing in this Order shall affect the rights of the official committees to object to the allocations described in paragraph 4 of this Order. All such rights are expressly reserved.

6. McKinsey is required to avoid duplication of efforts with other professionals, and the official committees' right to object to any such duplication is hereby reserved.

Dated: March 4, 2004



HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE