

FILED

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

FINAL ORDER PURSUANT TO 11 U.S.C. §§ 328(a) AND 1103(a) AND FED. R. BANKR. P. 2014 AUTHORIZING THE EMPLOYMENT AND RETENTION OF THE BLACKSTONE GROUP L.P. AS FINANCIAL ADVISORS TO DEBTOR AND DEBTOR IN POSSESSION

Upon consideration of the Application dated July 17, 2003 (the "Application"), filed by Mirant Corporation and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, seeking an order authorizing the Debtors' retention of The Blackstone Group L.P. ("Blackstone") as financial advisors; and upon the engagement letter dated as of July 14, 2003 between Blackstone and the Debtors (the "Engagement Letter") and the Affidavit of Timothy R. Coleman (the "Coleman Affidavit"), which were attached to the Application; and capitalized terms used and not otherwise defined herein having the meanings set forth in the Application and the Coleman Affidavit; 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 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. Notice of the Application has been given in accordance with the statements made in the Application and the associated certificate of service, and no other or further notice is necessary.

C. Blackstone and each of its members, officers, directors and employees represent no interest adverse to the Debtors or to the Debtors' estates such that would disqualify Blackstone from representation of the Debtors in these chapter 11 cases.

D. Blackstone and each of its members, officers, directors and employees is a "disinterested person" as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and as required by section 327(a) of the Bankruptcy Code.

E. The retention of Blackstone as the Debtors' financial advisors, 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.

E. The Monthly Fee of \$225,000 per month specified on page 3 of the Engagement Letter constitutes a "reasonable term and condition of employment" pursuant to section 328(a) of the Bankruptcy Code.

F. 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 Blackstone by the terms of this Order, provides reasonable protections to Blackstone that accomplish the legitimate purposes that otherwise would be accomplished through the Indemnification Provisions that are incorporated in the

Engagement Letter (the “Indemnification Provisions”), and make it unnecessary for this Court to consider or approve the Indemnification Provisions.

G. In agreeing to act as the Debtors’ financial advisors on the terms set forth herein, Blackstone is relying on the protections afforded by the Protected Persons Order. In the absence of those protections, Blackstone would have required the approval of the Indemnification Provisions as a condition to Blackstone’s agreement to provide services to the Debtors.

IT IS THEREFORE ORDERED THAT:

1. The Debtors’ employment and retention of Blackstone as their financial advisors to perform the services described in the Application, effective as of July 14, 2003 and on the terms and conditions set forth in the Application and the Engagement Letter, is approved, provided, however:

(a) The Indemnification Provisions are not approved and shall not be effective, for the reasons stated above (without prejudice to Blackstone’s rights to renew its request for the Court’s approval of the Indemnification Provisions (for the period from and after July 14, 2003) if the Protected Persons Order is terminated, ~~is violated~~ expires or otherwise does not provide the protections it is expected to provide);



(b) Subsection (c) of the last paragraph beginning on page 7 of the Engagement Letter is hereby modified so as to replace the words “in the event that the Restructuring is completed at any time prior to the expiration of twelve full months following the termination of this Agreement” with the words “in the event that the Restructuring is completed at any time prior to the expiration of two full months, or

such later time as is found reasonable by the Court, following the termination of this Agreement”; and

(c) In the event that the Engagement Letter is terminated by the Debtors without cause, or by Blackstone with cause, and without the payment of a Restructuring Fee pursuant to the Engagement Letter, Blackstone shall have the right to seek additional compensation, in addition to its Monthly Fees, based on the time spent by Blackstone 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 Blackstone 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, except that the Court may deny approval of the Restructuring Fee payable under the Engagement Letter, to the extent that such fee is unreasonable when compared to the fees paid to, and results obtained by, other comparable investment banking and financial advisory firms in other Chapter 11 cases involving comparable services.


3. Notwithstanding the foregoing, Blackstone 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 the (a) approval of Blackstone’s fees and expenses will be subject to the review standards set forth above and (b) Blackstone 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.

5. Blackstone 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.

6. The retention of Blackstone shall be subject to review for continuation at the Court's discretion.

7. To the extent that the Engagement Letter is inconsistent with the Application, the terms of the Engagement Letter shall govern, and to the extent that this Order is inconsistent with any prior order or the Engagement Letter, the terms of this Order shall govern.

Dated: ^{December} ~~October~~ 8, 2003



HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE