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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**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

**SUPPLEMENTAL APPLICATION FOR ENTRY OF AN ORDER
PURSUANT TO 11 U.S.C. § 327(e) EXPANDING SCOPE OF RETENTION AND
EMPLOYMENT OF MCDERMOTT WILL & EMERY AS SPECIAL
COUNSEL FOR THE DEBTORS EFFECTIVE AS OF THE PETITION DATE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, file this Application for Entry of an Order Pursuant to 11 U.S.C. § 327(e) Expanding Scope of Retention and Employment of McDermott Will & Emery as Special Counsel for the Debtors effective as of the Petition Date (the “Supplemental Application”), and in support of this Supplemental Application, respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. § 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.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), certain of the Debtors filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended.¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. commenced chapter 11 cases under the Bankruptcy Code (collectively, the "New Debtors"). The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the Debtors' motion for an order requesting that the Debtors' bankruptcy estates be jointly administered. A motion for joint administration of the cases of the New Debtors with the Debtors' cases was filed with this Court on August 20, 2003 and an order was entered on September 8, 2003. This Court also entered an order on September 8, 2003 which provides that certain orders entered in the chapter 11 cases of Mirant Corporation, *et al.* are applicable to the New Debtors' cases and the New Debtors.

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd. and Mirant Canada Energy Marketing Investments, Inc. (collectively, the "Canadian Debtors") to commence plenary insolvency proceedings (the "Canadian Proceedings") in the Court of Queen's Bench of Alberta Judicial District of Calgary (the "Canadian Court") pursuant to the Companies' Creditors Arrangement Act (the "CCAA"). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

4. Unsecured Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of two official unsecured creditors' committees; one for Mirant and the other for Mirant Americas Generation, LLC. The appointment lists of members of both official unsecured creditors' committees were filed in their respective chapter 11 cases on July 25, 2003.

FACTUAL BACKGROUND

5. Mirant and its direct and indirect subsidiaries comprise a competitive energy concern that generates and sells electricity in North America, the Philippines and the Caribbean. Through its direct and indirect subsidiaries, Mirant produces, sells and delivers reliable energy products and services to utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers and large industrial customers. Mirant's core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls more than 21,800 megawatts of electric generating capacity around the world, of which more than 18,000 megawatts is located in the United States. In 2002, Mirant produced 73 million megawatt-hours of electricity, sold 312 million megawatt-hours of electricity and sold or marketed an aggregate average of 21 billion cubic feet per day of natural gas.

6. Mirant employs in excess of 7,000 employees worldwide, of which approximately 1,100 employees are based at Mirant's corporate headquarters in Atlanta and approximately 5,900 employees are based at operating facilities. In 2002, Mirant recorded \$542 million loss in earnings before interest, taxes and depreciation ("EBITDA") on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

Retention of McDermott, Will & Emery

7. On August 8, 2003, the Debtors filed with this Court their Application (the “Initial Application”) for Entry of an Order Authorizing them to Retain McDermott, Will & Emery (“MWE”) as special counsel effective as of the Petition Date to continue to advise and represent them in connection with Commodities Market Advice (as that term is defined in the Initial Application).

8. In support of the Initial Application, Paul J. Pantano, a partner of MWE, submitted an affidavit detailing the terms and conditions of the work MWE would be performing for the Debtors post-petition, as well as describing MWE’s connections with the Debtors, their non-debtor affiliates, as well as the Debtors’ professionals, officers and directors, significant equity holders, secured lenders, bondholders and trustees, top 50 unsecured creditors (on a consolidated basis) and other significant parties in interest (the “Pantano Affidavit”).

9. On September 10, 2003, this Court entered an interim order authorizing the Initial Application (the “Interim Order”). Pursuant to the Interim Order, the Debtors were authorized to retain MWE, on an interim basis, to represent them in connection with Commodities Market Advice. Pursuant to its terms, the Interim Order became a final order on October 7, 2003 because no party in interest objected to the retention of MWE.

10. Prior to the Petition Date, the Debtors were parties to a number of both state and federal regulatory matters with respect to the Debtors’ businesses in the State of California and the West-Wide Region (the “California Regulatory Matters”), as to which the Debtors require the representation of competent counsel to the extent they are not otherwise permanently stayed or enjoined. Prior to the Petition Date, the Debtors were represented by the law firm of Troutman Sanders LLP. However, the Debtors were unable to secure the services of

Troutman Sanders for the purpose of continuing to represent them in the California Regulatory Matters because of a conflict of interest.

11. As a result, the Debtors have requested that MWE represent it in connection with the California Regulatory Matters, to the extent necessary, which can be summarized as follows:

- California Refund Case pending before both the Federal Energy Regulatory Commission (“FERC”) and the Ninth Circuit Court of Appeals;
- Various investigations being conducted by FERC involving the Debtors’ California businesses and operations;
- Pacific Northwest Refund case pending before FERC;
- Annual filings and other proceedings in connection with the Debtors’ Reliability Must Run Agreements in California;
- Certain filings with and submissions to FERC to change tariffs and procedures in connection with the California ISO;
- Complaint filed by the California Attorney General, which is on appeal in the Ninth Circuit Court of Appeals, with respect to the Debtors’ market based rate authority;
- Any appeals related to these California Regulatory Matters set forth above; and
- other possible California or Pacific Northwest or West-wide regulatory matters which may arise in the future.

12. While the Debtors have already sought and obtained this Court’s permission to retain the law firm of Latham & Watkins LLP to represent it in connection with various matters pending before FERC, the Debtors cannot retain the services of Latham & Watkins in connection with the California Regulatory Matters because such law firm possesses a conflict of interest as to the California Regulatory Matters.

13. The Debtors have selected MWE as their special counsel to represent them in connection with the specified California Regulatory Matters because of the firm’s extensive

experience with and knowledge of the Debtors' businesses and financial affairs, as well as the firm's recognized national reputation and expertise in this area.

14. It is necessary that the Debtors employ MWE to render the foregoing professional services. MWE has stated its desire and willingness to act in these cases and render the necessary professional services as special counsel for the Debtors in connection with the California Regulatory Matters. To the best of Debtors' knowledge, MWE and its partners and associates do not have any connection with or any interest adverse to the Debtors, their creditors, or any other party in interest, or their respective attorneys and accountants, except as may be set forth in the supplemental declaration of Paul J. Pantano, Jr., a partner of MWE annexed hereto as Exhibit "A" (the "Pantano Supplemental Declaration").

15. Pursuant to section 328(a) of the Bankruptcy Code, the Debtors may retain MWE on any reasonable terms and conditions. The Debtors submit that the most reasonable terms and conditions are those charged by MW&E to the Debtors and other clients on a daily basis in a competitive market for legal services. Therefore, the Debtors and MWE have agreed that MWE shall be paid its customary hourly rates for services rendered that are in effect from time to time, as set forth in the Pantano Supplemental Declaration, and shall be reimbursed according to MWE's customary reimbursement policies.

16. Other than as described herein, the terms of MWE's representation of the Debtors shall remain as set forth in the Application.

17. The Debtors have been advised that all of the partners in, counsel to and associates of MWE who will be performing services for the Debtors in connection with the California Regulatory Matters are members in good standing of the courts in which they are admitted to practice. Any of the MWE attorneys who are not already admitted to practice before

this Court, and whose appearance before this Court is necessary and appropriate, will seek admission pro hac vice.

18. To the best of the Debtors' knowledge, information and belief, MWE neither holds nor represents an interest adverse to the Debtors or to their estates with respect to the California Regulatory Matters. The Debtors submit that the employment of MWE would be in the best interests of the Debtors, their estates and creditors. The Pantano Supplemental Declaration, executed on behalf of MWE in accordance with the provisions of section 327 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2014, Local Bankruptcy Rule 2016(b) and U.S. Trustee Guidelines, is incorporated herein by reference. The Debtors' knowledge, information and belief regarding the matters set forth in this Supplemental Application are based, and made in reliance, upon said declaration.

19. The Debtors understand that MWE hereafter intends to apply to the Court for allowances of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code (or as otherwise allowed by order of this Court), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the Local Bankruptcy Rules for the Northern District of Texas (the "Local Rules") for all services performed and expenses incurred after the Petition Date in connection with the California Regulatory Matters.

NOTICE

20. Notice of this Supplemental Application has been given to the Office of the United States Trustee for the Northern District of Texas and all parties on the Limited Service List. The Debtors submit that no other or further notice need be given.

21. No previous request for relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) expanding the scope of the retention of McDermott, Will & Emery as special counsel for the Debtors for the purpose of allowing MWE to represent the Debtors in connection with the California Regulatory Matters, and (ii) granting the Debtors such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 24th day of October, 2003.

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By /s/ Meredyth A. Purdy
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Judith Elkin
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Meredyth A. Purdy
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-and-

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ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned certifies that she has authorized BSI as service agent to serve a true and correct copy of the foregoing upon all persons on the Limited Service List via first class United States mail on the 24th day of October, 2003 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Meredyth A. Purdy

EXHIBIT A

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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**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

**DECLARATION UNDER PENALTY OF PERJURY OF PAUL J. PANTANO, JR., IN
SUPPORT OF SUPPLEMENTAL APPLICATION FOR ENTRY OF AN ORDER
PURSUANT TO 11 U.S.C. § 327(e) EXPANDING SCOPE OF
RETENTION AND EMPLOYMENT
OF MCDERMOTT WILL & EMERY AS SPECIAL COUNSEL
FOR THE DEBTORS EFFECTIVE AS OF THE PETITION DATE**

I, Paul J. Pantano, Jr., do hereby declare as follows:

1. I am a partner of the firm of McDermott, Will & Emery ("MW&E"), and head of MW&E's Energy and Derivatives Markets Practice Group. I am admitted to practice before the United States District Court for the District of Columbia and other federal courts of appeals and district courts. I am a member in good standing of the Bar of the District of Columbia. Unless otherwise noted, I have personal knowledge of the facts stated herein. To the extent that any information disclosed herein requires amendment or modification upon MW&E's

completion of further analysis or as additional creditor information becomes available to it, a supplemental affidavit will be submitted to the Court reflecting same.

2. I make this declaration in support of the Supplemental Application of Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, for Entry of an Order Pursuant to 11 U.S.C. § 327(e) Expanding Scope of Retention and Employment of MW&E as Special Counsel for the Debtors effective as of the Petition Date (the “Supplemental Application”).

3. I also submit this declaration as the statement required pursuant to sections 328(a), 329 and 504 of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the “Bankruptcy Code”) and Rules 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

4. On August 8, 2003, the Debtors filed with this Court their Application (the “Initial Application”) for Entry of an Order Authorizing them to Retain MW&E as special counsel effective as of the Petition Date to continue to advise and represent them in connection with Commodities Market Advice (as that term is defined in the Initial Application).

5. In support of the Initial Application, I submitted a declaration detailing the terms and conditions of the work MW&E would be performing for the Debtors post-petition, as well as describing MW&E’s connections with the Debtors, their non-debtor affiliates, the Debtors’ professionals, officers and directors, significant equity holders, secured lenders, bondholders and trustees, top 50 unsecured creditors (on a consolidated basis) and other significant parties in interest (the “Pantano Declaration”). I hereby incorporate, as if fully set forth herein, the Pantano Declaration.

6. On September 10, 2003, this Court entered an Interim Order authorizing the Initial Application. Pursuant to the Interim Order, the Debtors were authorized to retain MW&E, on an interim basis, to represent them in connection with Commodities Market Advice.

7. By the Supplemental Application, the Debtors have requested that MW&E represent it in connection with the California Regulatory Matters (as that term is defined in the Supplemental Application), which are summarized as follows:

- California Refund Case pending before both the Federal Energy Regulatory Commission ("FERC") and the Ninth Circuit Court of Appeals;
- Various investigations being conducted by FERC involving the Debtors' California businesses and operations;
- Pacific Northwest Refund case pending before FERC;
- Annual filings and other proceedings in connection with the Debtors' Reliability Must Run Agreements in California;
- Certain filings with and submissions to FERC to change tariffs and procedures in connection with the California ISO;
- Complaint filed by the California Attorney General, which is on appeal in the Ninth Circuit Court of Appeals, with respect to the Debtors' market based rate authority;
- Any appeals related to these California Regulatory Matters set forth above; and
- other possible California or Pacific Northwest or west-wide regulatory matters that may arise in the future.

8. I have made or caused to be made diligent inquiry to determine whether the proposed expanded scope of MW&E's representation of the Debtors would create or implicate any connection with parties in interest in this case, would result in MW&E holding or representing any interest adverse to the Debtors' bankruptcy estate with respect to the California Regulatory Matters, or would otherwise subject MW&E to any disqualification which would prevent it from continuing to serve as special counsel to the Debtors in this case. Based on the

results of that inquiry, I am informed and believe that MW&E has no such connections, other than as previously disclosed in the Pantano Declaration.

9. In the Pantano Declaration, I stated that MW&E's current hourly rates for attorneys and paraprofessionals for services that MW&E will provide to the Debtors range from \$140.00 to \$600.00 per hour. I also noted that these rates are subject to period change in the ordinary course of business. Subsequent to the filing of the Pantano Declaration, MW&E has set new rates for services that it renders. As of October 1, 2003, the hourly rates for attorneys and paraprofessionals for services that MW&E will provide to the Debtors will range from \$140.00 to \$695.00.

10. Other than as set forth herein, the terms and conditions of MW&E's representation of the Debtors shall continue to be as set forth in the Initial Application.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Paul J. Pantano, Jr.
A partner of the Firm

Executed this 25th day of September, 2003

**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)11
Debtors.)	Jointly Administered
)	

**INTERIM ORDER PURSUANT TO 11 U.S.C. § 327(e) EXPANDING SCOPE OF THE
EMPLOYMENT AND RETENTION OF MCDERMOTT WILL & EMERY AS SPECIAL
COUNSEL FOR THE DEBTORS EFFECTIVE AS OF THE PETITION DATE**

Came on for consideration the Supplemental Application for Entry of an Order pursuant to 11 U.S.C. § 327(e) Expanding Scope of Employment and Retention of McDermott Will & Emery (“MWE”) as Special Counsel for the Debtors (the “Supplemental Application”), of Mirant Corporation and its affiliated debtors (collectively, the “Debtors”). The Court finds that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. The Court further finds that this is a core proceeding pursuant to 28 U.S.C. § 157. After reviewing the Declaration of Paul J. Pantano, Jr., a partner of MWE, in support of the Supplemental Application, a copy of which is annexed as an exhibit to the Application (the “Pantano Declaration”), and the Affidavit of John Ragan in Support of First Day Motions and Applications sworn to on the 14th day of July, 2003, and the other motions, pleadings, and papers filed in these Chapter 11 cases, together with the representations on the record, the Court finds that, on an interim basis, (i) the proposed employment of MWE as special counsel to the Debtors is in the best interest of the Debtors and their respective estates, and (ii) MWE and its partners, counsel and associates do not hold or

represent an interest adverse to the Debtors or their estates in the matters upon which they are to be engaged such that would disqualify MWE from the representation of the Debtors as special counsel. The Court further finds that the Supplemental Application should be GRANTED on an interim basis subject to the terms set forth below. IT IS THEREFORE

ORDERED that the Supplemental Application is granted on an interim basis (the “Interim Order”); and it is further

ORDERED that the expanded retention of MWE as special counsel to the Debtors and Debtors-in-Possession is hereby GRANTED on an interim basis pursuant to 11 U.S.C. § 327(e) for the purposes set forth in the Application and Pantano Declaration, effective as of July 14, 2003 (the “Petition Date”); and it is further

ORDERED that, within three (3) business days of the entry of this Interim Order, counsel for the Debtors shall serve the Interim Order upon all parties entitled to receive notice of the Application; and it is further

ORDERED that MWE shall be compensated in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code and such Bankruptcy Rules as may then be applicable, from time to time, and such other procedures as may be fixed by order of this Court; and it is further

ORDERED that this Interim Order shall be effective from July 14, 2003 through and including the date of the final hearing on the Application; and it is further

ORDERED that to the extent of any conflict between the terms and conditions of the Supplemental Application and this Interim Order, the terms and conditions of this Interim Order shall govern; and it is further

ORDERED that this Interim Order shall become a Final Order on the twenty-seventh (27th) day after entry of this Interim Order without further notice or hearing unless an objection to the Interim Order is timely filed with the Court and served on counsel for the Debtors on or before twenty-six (26) days after entry of the Interim Order.

DATED: _____

HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

Upon Submission, Please Return to:

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INTERIM ORDER PURSUANT TO 11 U.S.C. § 327(e) EXPANDING
SCOPE OF THE EMPLOYMENT AND RETENTION OF MCDERMOTT
WILL & EMERY AS SPECIAL COUNSEL FOR THE DEBTOR
EFFECTIVE AS OF THE PETITION DATE
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