

**BROWN RUDNICK BERLACK ISRAELS LLP**  
 Seven Times Square  
 New York, New York 10036  
 (212) 209-4800  
 Edward S. Weisfelner, Esq.  
 -and-  
 CityPlace I, 185 Asylum Street  
 Hartford, Connecticut 06103-3402  
 (860) 509-6500  
 Howard L. Siegel, Esq.  
 -and-  
 One Financial Center  
 Boston, Massachusetts 02111  
 (617) 856-8200  
 Jeffrey L. Jonas, Esq.

**HOHMANN, TAUBE & SUMMERS, L.L.P.**  
 100 Congress Avenue, Suite 1800  
 Austin, Texas 78701  
 Telephone: (512) 472-5997  
 Facsimile: (512) 472-5248  
 Eric J. Taube, Esq.  
 Mark C. Taylor, Esq.

**ATTORNEYS FOR OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS**  
  
**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE NORTHERN DISTRICT OF TEXAS**  
**FORT WORTH DIVISION**

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 :  
 In re: : Chapter 11  
 : Case No. 03-46590 (DML)  
 MIRANT CORPORATION, et al., :  
 :  
 : (Jointly Administered)  
 :  
 Debtors. :  
 :  
 -----X

**SUMMARY FOR THE FIRST AND FINAL APPLICATION OF BROWN RUDNICK  
 BERLACK ISRAELS LLP, ATTORNEYS FOR THE OFFICIAL COMMITTEE  
 OF EQUITY SECURITY HOLDERS, FOR ALLOWANCE OF COMPENSATION  
 FOR SERVICES RENDERED FROM SEPTEMBER 17, 2003 THROUGH  
 JANUARY 3, 2006, AND FOR REIMBURSEMENT OF EXPENSES ADVANCED  
AND REIMBURSEMENT OF HOLDBACKS**

**Name of Applicant:** Brown Rudnick Berlack Israels LLP  
**Role in Case:** Attorneys for the Official Committee of Equity Security Holders  
**Retainer Paid :** None

	<u>Fees</u>	<u>Expenses</u>	<u>Total</u>
<b>Amounts Previously Requested in Monthly Fee</b>	\$12,024,281.25	\$3,094,336.37	\$15,118,617.62

**Statements:**

<b>Amounts Previously Paid Pursuant to Monthly Fee Procedures:</b>	\$12,024,281.25	\$3,094,336.37	\$15,118,617.62
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<b>Amounts Remaining to be Paid (includes estimate for additional fees and expenses):</b>	\$103,849.75	\$15,846.12	\$119,695.87
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In re: : Chapter 11  
: Case No. 03-46590 (DML)  
MIRANT CORPORATION, et al., :  
: (Jointly Administered)  
Debtors :  
-----X

**FIRST AND FINAL APPLICATION OF BROWN RUDNICK BERLACK ISRAELS LLP,  
ATTORNEYS FOR THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS,  
FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED FROM  
SEPTEMBER 17, 2003 THROUGH JANUARY 3, 2006, AND FOR REIMBURSEMENT  
OF EXPENSES ADVANCED AND REIMBURSEMENT OF HOLDBACKS**

TO THE HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE:

Brown Rudnick Berlack Israels LLP (“Brown Rudnick”), attorneys for the Official Committee of Equity Security Holders (the “Committee”) appointed in the Chapter 11 cases of Mirant Corporation, et al., debtors and debtors in possession (collectively, the “Debtors”), submits this application (the “Application”), pursuant to sections 330(a) and 331 of Title 11 of

the United States Code (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for final allowance of compensation for professional services rendered from September 17, 2003 through January 3, 2006<sup>1</sup> (the “Fee Application Period”) and for reimbursement of related expenses. This Application also requests that this Court authorize and direct the Debtors to pay Brown Rudnick’s outstanding fee holdbacks, if any, during the entire case. In support thereof, Brown Rudnick respectfully represents:

### **Summary of Application**

1. Brown Rudnick seeks allowance of final compensation for professional services rendered to the Committee during the Fee Application Period in the aggregate amount of \$12,128,131.00 and for reimbursement of expenses incurred and recorded in connection with the rendition of such services in the aggregate amount of \$3,110,182.49. The amounts included in the Fee Application Period include an estimate to cover time and expenses that Brown Rudnick will incur in connection with the hearing on approval of the Application. Of course, Brown Rudnick will not seek to recover more than its actual time and expenses and will limit its final fee application related fees as directed by the Court.

2. During the Fee Application Period, Brown Rudnick attorneys and paraprofessionals expended a total of 31,099.90 hours for which compensation is requested. A schedule setting forth the number of hours expended by each of the partners, associates, and paraprofessionals of Brown Rudnick who rendered services to the Committee, their respective hourly rates, and the year of bar admission for each Brown Rudnick attorney is attached hereto as **Exhibit “A”**. A schedule setting forth the total number of hours expended by the attorneys and paraprofessionals of Brown Rudnick by project category, and the aggregate fees associated with each project category, is attached hereto as

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<sup>1</sup> The Application also includes items billed subsequent to January 3, 2006 relating to the preparation of Brown Rudnick’s final fee applications.

**Exhibit “B”**. Detailed descriptions of the expenses incurred during the Fee Application Period for which Brown Rudnick is seeking reimbursement are attached hereto as **Exhibit “C”**.

3. On or about August 1, 2003, the Court entered its Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Chapter 11 Professionals and Committee Members (the “Initial Fee Procedures Order”). Thereafter, on or about August 27, 2003, the Court entered its Memorandum Order Regarding Compensation of Professionals (the “Fee Procedures Memorandum”), providing for the formation of a Fee Review Committee (“FRC”) to be chaired by Dean Nancy B. Rapoport of the University of Houston School of Law. In support of the Fee Procedures Memorandum, this Court entered its Order Regarding Fee Review Committee Procedures and Standards on November 6, 2003 (the “FRC Procedures Order”). On or about January 2004, the Court entered its Memorandum Order Consolidating Certain Professional Fee Orders (the “Consolidated Fee Procedures Order”), consolidating and amending in some respects the prior fee orders. In preparing this Application, Brown Rudnick has complied with the Consolidated Fee Procedures Order and the Guidelines for Compensation and Expense Reimbursement of Professionals for the United States Bankruptcy Court, Northern District of Texas, effective January 1, 2001 (together, the “Guidelines”). A certification regarding compliance with the Guidelines is annexed hereto as **Attachment 1**.

### **Jurisdiction and Venue**

4. The Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Application 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.

### **Background**

5. On January 14, 2003 and various dates thereafter (collectively, the “Petition Date”), Mirant Corporation and 82 of its direct and indirect subsidiaries (collectively, the “Debtors”) filed

voluntary Chapter 11 petitions. The Debtors Chapter 11 cases are being jointly administered. The Debtors' Amended and Restated Second Amended Joint Chapter 11 Plan of Reorganization was confirmed on December 9, 2005 and the effective date of the Plan was January 3, 2006 (the "Effective Date").

6. On September 18, 2003, the United States Trustee formed the Committee, pursuant to Section 1102(a) of the Bankruptcy Code, to represent the interests of the Debtors' equity security holders. On October 10, 2003, this Court approved the Committee's retention of Brown Rudnick effective as of September 17, 2003. Brown Rudnick has extensive experience in representing statutory committees in Chapter 11 cases, as part of its prominent legal practice in financial restructurings and bankruptcy reorganizations.

7. Brown Rudnick represented and advised the Committee in connection with all aspects of these cases, including, without limitation, advising the Committee on all issues that implicated, or could implicate, the interests of equity holders, negotiating and litigating on behalf of the Committee, and assisting and enabling the Committee to perform all of its statutory duties pursuant to section 1103 of the Bankruptcy Code.

8. This is Brown Rudnick's first and final application for allowance of compensation for services rendered and for reimbursement of expenses.

9. Throughout the pendency of these cases, in accordance with the Consolidated Fee Procedures Order, Brown Rudnick has submitted to the FRC detailed monthly fee statements of its fees and expenses, as well as quarterly fee and expense summaries.

10. All services performed by Brown Rudnick's professionals were recorded in time increments of one tenth (.10) of an hour. All services performed by Brown Rudnick's paralegals and professional support staff were professional in nature and, if not done by the paraprofessionals, would have been performed by attorneys.

11. Brown Rudnick is cognizant of the fact that compensation will be paid to it only for legal work and the dollar value of a particular task is not enhanced simply because a lawyer performed the task. Therefore, considerable care was taken by Brown Rudnick to use paraprofessionals and staff members to perform purely ministerial tasks as opposed to using lawyers to perform such tasks.

12. As provided in the procedural order entered on February 13, 2006, Brown Rudnick has limited its fees and expenses in connection with the preparation of this Application and its Application for Bonus Fee Enhancement to a total of \$25,000 for each application. In addition, as directed by the Court at the February 1, 2006 hearing, Brown Rudnick has deducted the amount already billed and paid, \$7,125.50, relating to its preparation of the Peter J. Solomon & Company Fee Motion from the total fees requested.

13. As detailed in the Monthly Fee Statements, Brown Rudnick is requesting approval of the aggregate amount of \$15,238,313.49 representing \$12,128,131.00 in fees (for 31,099.90 hours of services rendered) and reimbursement of out-of-pocket expenses in the amount of \$3,110,182.49. Of such aggregate amount requested, \$15,118,617.62 for fees and expenses have been previously paid to Brown Rudnick pursuant to the Consolidated Fee Procedures Order. Copies of the Monthly Fee Statements and Quarterly Summaries were previously submitted to the members of the FRC and are incorporated herein by reference. The Monthly Fee Statements describe the specific legal services performed by Brown Rudnick for each billing matter, including: (a) the date the services were rendered; (b) by whom the services were rendered; (c) the nature of the services rendered; (d) the time required for the performance of such services; and (e) the fee associated for the performance of each service rendered. A summary of the Monthly Fee Statements is set forth below (which reflects the period through this Fee Application Period):

**SUMMARY OF MONTHLY FEE STATEMENTS**

<b>Monthly Statement</b>	<b>Total Fees</b>	<b>Fees Paid</b>	<b>Total Expenses</b>	<b>Expenses Paid</b>
9/17/03 – 9/30/03	\$176,166.50	\$176,166.50	\$2,008.43	\$2,008.43
10/1/03 – 10/31/03	\$422,973.25	\$422,973.25	\$26,315.31	\$26,315.31
11/1/03 – 11/30/03	\$182,084.25	\$182,084.25	\$13,616.04	\$13,616.04
12/1/03 – 12/31/03	\$186,889.50	\$186,889.50	\$7,466.04	\$7,466.04
1/1/04 – 1/31/04	\$208,417.00	\$208,417.00	\$13,276.59	\$13,276.59
2/1/04 – 2/29/04	\$100,431.00	\$100,431.00	\$4,278.30	\$4,278.30
3/1/04 – 3/31/04	\$256,540.00	\$256,540.00	\$10,406.37	\$10,406.37
4/1/04 – 4/30/04	\$250,544.75	\$250,544.75	\$13,627.29	\$13,627.29
5/1/04 – 5/31/04	\$120,441.00	\$120,441.00	\$5,255.17	\$5,255.17
6/1/04 – 6/30/04	\$209,924.00	\$209,924.00	\$9,862.51	\$9,862.51
7/1/04 – 7/31/04*	\$291,601.00	\$291,601.00	\$24,056.32	\$24,056.32
8/1/04 – 8/31/04*	\$217,936.50	\$217,936.50	\$13,032.20	\$13,032.20
9/1/04 – 9/30/04	\$298,501.25	\$298,501.25	\$21,373.70	\$21,373.70
10/1/04 – 10/31/04	\$279,923.00	\$279,923.00	\$21,043.90	\$21,043.90
11/1/04 – 11/30/04	\$377,373.75	\$377,373.75	\$26,091.08	\$26,091.08
12/1/04 – 12/31/04	\$352,081.25	\$352,081.25	\$24,440.53	\$24,440.53
1/1/05 – 1/31/05+	\$466,753.50	\$466,753.50	\$38,191.52	\$38,191.52
2/1/05 – 2/28/05	\$492,106.00	\$492,106.00	\$32,982.25	\$32,982.25
3/1/05 – 3/31/05	\$1,804,321.50	\$1,804,321.50	\$1,125,921.58	\$1,125,921.58
4/1/05 – 4/30/05	\$1,521,235.50	\$1,521,235.50	\$672,018.02	\$672,018.02
5/1/05 – 5/31/05	\$941,860.50	\$941,860.50	\$372,530.68	\$372,530.68
6/1/05 – 6/30/05	\$899,135.75	\$899,135.75	\$119,447.89	\$119,447.89
7/1/05 – 7/31/05	\$289,604.75	\$289,604.75	\$147,391.06	\$147,391.06
8/1/05 – 8/31/05	\$422,983.75	\$422,983.75	\$103,282.44	\$103,282.44
9/1/05 – 9/30/05	\$472,227.50	\$472,227.50	\$24,264.85	\$24,264.85
10/1/05 – 10/31/05	\$274,911.50	\$274,911.50	\$39,373.51	\$39,373.51
11/1/05 – 11/30/05	\$305,153.25	\$305,153.25	\$142,527.14	\$142,527.14
12/1/05 – 12/31/05	\$187,639.50	\$187,639.50	\$49,692.86	\$49,692.86
1/1/06 – 1/31/06 <sup>#</sup>	\$40,293.50	\$0.00	\$15,846.12	\$0.00
2/1/06 – 2/28/06 <sup>#</sup>	\$34,274.50	\$0.00	\$0.00	\$0.00

\* These fee amounts were corrected in the Fourth Quarterly Fee Summary (the amounts first requested in the July and August 2004 Fee Statements were lower by \$329 and \$77.50, respectively).

+ The fee amount was corrected in the Sixth Quarterly Fee Summary (the amount first requested in the January 2005 Fee Summary was overstated by \$3,900).

# The invoices attributable to fees and expenses for this period have been submitted to the Debtor and the Fee Review Committee and include only those amounts incurred through January 3, 2006, except as related to the preparation of Brown Rudnick's final fee applications.



**Services Rendered by Brown Rudnick During the Fee Application Period**

14. Brown Rudnick has recorded time charges in these cases separately for each matter as to which it has given attention during the Fee Application Period. For purposes of this Application, the services rendered have been segregated into twenty (20) categories, as follows:

- a. General Administrative Matters
- b. Asset Sales
- c. Brown Rudnick Retention
- d. Brown Rudnick Fee Applications
- e. Other Professionals Retention and Fees
- f. Plan of Reorganization
- g. Estate Actions
- h. Shareholder Inquiries
- i. Committee Meetings and Communications
- j. Other Litigation
- k. Executory Contracts
- l. Equipment Lessors
- m. Valuation Issues
- n. DIP Financing
- o. Other Motion Practice
- p. Travel Time
- q. Claim Resolution
- r. Debtor Meetings/Calls
- s. Examiner Issues
- t. Shareholder Meeting Issues

15. Attached hereto as **Exhibit "D"** is a narrative description of the services performed in each project category and a schedule setting forth the total number of hours expended by the attorneys and paraprofessionals of Brown Rudnick by project category and the aggregate fees associated with each project category referenced above in paragraph 14.

### **Disbursements**

16. Brown Rudnick has disbursed \$3,110,182.49 as expenses incurred and recorded in providing professional services during the Fee Application Period. The out-of-pocket expenses incurred during the Fee Application Period are detailed on the Monthly Fee Statements submitted to the FRC. Expenses for court costs, outside copy costs, computerized legal research, long distance telephone charges and courier services are billed at actual cost.

17. In these proceedings, Brown Rudnick charged \$.20 per page for internal duplicating, \$1.25 per page for outgoing domestic and international facsimile transmissions. Brown Rudnick does not charge for incoming facsimile transmissions. The use of email has been significant in these cases and has greatly reduced the cost of facsimile transmissions. The amount of the standard photocopying charge is intended to allow Brown Rudnick to cover the related expenses of its photocopying service.

18. Copy and travel expenses in this case were significant due to the extensive discovery and length of trial in connection with the valuation hearing.

19. Due to the location of the members of the Committee and their respective professionals, the need for frequent Committee meetings and the general needs of these cases, frequent long distance telephone calls have been required. On several occasions, overnight delivery of documents and other materials was required as a result of urgent needs necessitating the use of such express services.

20. Brown Rudnick respectfully submits that the actual expenses incurred in providing professional services for which reimbursement is sought in this Application were necessary, reasonable, and justified under the circumstances to serve the needs of the Committee in fulfilling its statutory obligations.

**The Requested Compensation Should Be Allowed**

21. Section 331 of the Bankruptcy Code provides for interim compensation of professionals and incorporates the substantive standards of section 330 to govern a court's award of such compensation. 11 U.S.C. § 330 provides that a court may award a professional employed by the Committee under section 1103 of the Bankruptcy Code "reasonable compensation for actual, necessary services rendered . . . and reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1).

22. Section 330 also sets forth the criteria for the award of such compensation and reimbursement:

In determining the amount of reasonable compensation to be awarded, the court should consider the nature, extent, and the value of such services, taking into account all relevant factors, including –

- (A) the time spent on such services;
- (B) the fees charged for such services;
- (C) whether the services were necessary to the administration of or beneficial at the time at which the service was rendered toward the completion of a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

23. Pursuant to the decisions of the United States Court of Appeals for the Fifth Circuit in *In re Lawler*, 807 F. 2d 1207 (5<sup>th</sup> Cir. 1987), *Cooper Liquor, Inc. v. Adolph Coors Co.*, 864 F. 2d 1087 (5<sup>th</sup> Cir. 1982), *In re First Colonial Corp. of America*, 544 F. 2d 1291 (5<sup>th</sup> Cir.) cert. denied 97 S. Ct. 1696 (1977), and *Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714 (5<sup>th</sup> Cir. 1974), Brown Rudnick requests the Court to consider the factors set forth above and in the above-referenced cases when determining the reasonableness of Brown Rudnick's requested compensation for its services rendered during these cases.

The factors include: (i) time and labor required; (ii) novelty and difficulty of issues; (iii) the skill required to perform the legal services properly; (iv) preclusion from other employment; (v) customary fees; (vi) fixed or contingent fees; (vii) time limitations imposed by client or other circumstances; (viii) results achieved; (ix) experience, reputation and ability; (x) the undesirability of the case; (xi) the nature and length of professional relationship with client, and (xii) awards in similar cases. Brown Rudnick submits that its position in connection with each of these factors is encompassed in the detailed narratives set forth in **Exhibit "D"** attached hereto. To the extent that the Court requires additional information from Brown Rudnick concerning these factors, Brown Rudnick will provide it.

24. As set forth in greater detail below, Brown Rudnick respectfully submits that it has satisfied the requirements of section 330 of the Bankruptcy Code. The services for which it seeks compensation in this Application were necessary for and beneficial to the Committee, the Debtors' creditors, and the Debtors' estates. Brown Rudnick's request for compensation is reflective of a reasonable and appropriate amount of time expended in performing such services commensurate with the complexity, importance and nature of the problem, issue, or task involved. These services were performed without unnecessary duplication of effort by professionals employed by Brown Rudnick.

The compensation sought by Brown Rudnick is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under the Bankruptcy Code. Indeed, Brown Rudnick's monthly fees are comparable with other similarly qualified legal advisors appearing in these and other Chapter 11 cases. For all of the foregoing reasons, Brown Rudnick respectfully requests that the Court grant this Application.

#### **Statements of Brown Rudnick**

25. No agreement or understanding prohibited by section 504 of the Bankruptcy Code exists between Brown Rudnick and any other person for a sharing of compensation received or to be received for services rendered in or in connection with these Chapter 11 cases, nor shall Brown Rudnick share or agree to share the compensation paid or allowed from the Debtors' estates for such services with any other person in contravention of section 504 of the Bankruptcy Code. No agreement or understanding prohibited by 18 U.S.C. § 155 has been made by Brown Rudnick.

26. Pursuant to Bankruptcy Rule 2016, Brown Rudnick states that no payments have heretofore been made or promised to Brown Rudnick for services rendered or to be rendered in any capacity in connection with these Chapter 11 cases, with the exception of the payments made in connection with the September 2003 through December 2005 monthly fee statements.

#### **Reservation of Rights**

27. Brown Rudnick hereby reserves its right to request additional compensation for professional services rendered on behalf of the Committee after the Fee Application Period with respect to fee applications filed by other parties, and reimbursement of expenses incurred in performing such services.

WHEREFORE, Brown Rudnick respectfully requests (i) final allowance of compensation for professional services rendered from September 17, 2003 through January 3, 2006 in the amount of \$12,128,131.00, (ii) final allowance for reimbursement of related expenses in the amount of \$3,110,182.49, and (iii) such other and further relief as is just.

Dated: February 28, 2006  
Austin, Texas

Respectfully submitted,

By: Eric J. Taube  
Eric J. Taube, Esq.  
State Bar No. 12174628  
Mark C. Taylor, Esq.  
State Bar No. 19713225  
**HOHMANN, TAUBE & SUMMERS, L.L.P.**  
100 Congress Avenue, Suite 1800  
Austin, Texas 78701  
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Facsimile: (512) 472-5248

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Jeffrey L. Jonas, Esq.

Attorneys for the Official Committee of Equity  
Security Holders

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon all persons on the Official Limited Service List dated February 16, 2006 via U.S. First Class Mail on this 28<sup>th</sup> day of February, 2006 and upon the party listed below as indicated:

Dean Rapoport, Trustee  
Via e-mail: [nrapoport@uh.edu](mailto:nrapoport@uh.edu)

/s/ Eric J. Taube

Eric J. Taube