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Special Counsel for the Debtors and Debtors-In-Possession

**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
	*	Jointly Administered
Debtors.	*	
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**SUMMARY FOR THE FIRST AND FINAL APPLICATION OF DLA PIPER RUDNICK GRAY
CARY US LLP, SPECIAL LITIGATION COUNSEL FOR THE DEBTORS AND DEBTORS-IN-
POSSESSION, FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF
EXPENSES ADVANCED AND REIMBURSEMENT OF HOLDBACKS**

**SUMMARY SHEET FOR THE “APPLICATION PERIOD”
(July 14, 2003 – January 3, 2006)**

NAME OF APPLICANT: DLA Piper Rudnick Gray Cary US LLP
ROLE OF APPLICANT: Special Counsel for Debtors and Debtors-in-Possession

Non-Ordinary Course Fees Previously Requested in Monthly Fee Statements: \$507,860.23
Non-Ordinary Course Expenses Previously Requested in Monthly Fee Statements: \$8,688.25

Ordinary Course Fees Previously Requested in Monthly Fee Statements: \$1,411,063.81
Ordinary Course Expenses Previously Requested in Monthly Fee Statements: \$14,388.39

Fees Previously Paid Pursuant to Monthly Fee Procedures: \$1,888,879.79
Expenses Previously Paid Pursuant to Monthly Fee Procedures: \$23,049.94

Total Fees Requested: \$ 1,918,924.04
Total Expenses Requested: \$ 23,076.64
Total: \$ 1,942,003.68

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**FIRST AND FINAL APPLICATION OF DLA PIPER RUDNICK GRAY CARY US LLP,
SPECIAL LITIGATION COUNSEL FOR THE DEBTORS AND DEBTORS-IN-POSSESSION,
FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES
ADVANCED AND REIMBURSEMENT OF HOLDBACKS**

Pursuant to 11 U.S.C. § 330 and Federal Rule of Bankruptcy Procedure 2016, DLA Piper Rudnick Gray Cary US LLP (“DLA Piper” or the “Applicant”), Special Counsel for Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors and debtors-in-possession, hereby submits this First and Final Application for Allowance of Compensation and Reimbursement of Expenses Advanced and Reimbursement of Holdbacks (the “Application”). This Application requests final approval of fees in the amount of \$1,918,924.04 and expenses in the amount \$23,076.64 for the entire case, beginning July 14, 2003 through the Effective Date of the Plan, January 3, 2006 (the “Application Period”). This

Application also requests that this Court authorize and direct the Debtors to pay the Applicant's outstanding fee holdbacks, if any, during the entire case. In support hereof, DLA Piper states:

I. INTRODUCTION AND CASE BACKGROUND

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 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.

3. This Application is made pursuant to section 330 of the Bankruptcy Code (11 U.S.C. § 101, *et seq.*) (the "Bankruptcy Code").

4. The Cases. On July 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 petitions with this Court under Chapter 11 of the Bankruptcy Code.

5. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors' chapter 11 cases.

6. The Committees. Three (3) official committees (collectively, the "Committees") have been appointed by the Office of the United States Trustee for the Northern District of Texas ("UST") in these administratively consolidated cases.

7. The Examiner. On April 7, 2004, this Court authorized the UST to appoint an examiner in these cases to analyze certain potential causes of action and act as a referee with respect to certain disputes that arise among the Debtors, the Committees, or other parties in interest. The UST appointed William K. Snyder as the examiner in these cases.

8. The Plan and Disclosure Statement. On December 9, 2005, the Court entered its Finding of Fact and Conclusions of Law in Support of the Plan (the "Findings and

Conclusions”). In an order dated December 9, 2005 (the “Confirmation Order”), the Bankruptcy Court confirmed the Debtors’ Amended and Restated Second Amended Joint Chapter 11 Plan or Reorganization for Mirant Corporation and its Affiliated Debtors Dated December 9, 2005 (attached as Exhibit 1 to the Confirmation Order, the “Plan”) with respect to all of the Debtors (collectively, the “New Mirant Entities”), except Mirant Bowline, LLC, Mirant Lovett, LLC, Mirant New York, Inc., Mirant NY-Gen, LLC and Hudson Valley Gas Corporation (collectively, the “New York Debtors”).

9. On or about October 15, 2004 (the “Application Date”), the Debtors filed their Application for Entry of an Order Pursuant to Section 327(e) of the Bankruptcy Code (1) Authorizing the Employment and Retention of Piper Rudnick LLP as Special Counsel to the Debtors and (2) Authorizing the Payment of Certain Amounts to Piper Rudnick LLP for Services Rendered [Ct. Dkt. No. 5849], along with the Affidavit of Deborah Jennings [Ct. Dkt. No. 5851] in support thereof. On November 15, 2004, the Court entered its Order Pursuant to Section 327(e) of the Bankruptcy Code (1) Authorizing Employment of Piper Rudnick LLP as Special Counsel to the Debtors and (2) Authorizing the Payment of Certain Amounts to Piper Rudnick LLP for Services Rendered [Ct. Dkt. No. 6513] (the “Retention Order”).

10. Additionally, on or about June 3, 2005, the Debtors filed their Application for Entry of an Order Pursuant to 11 U.S.C. § 327(e) Expanding the Scope of Employment and Retention of Piper Rudnick LLP as Special Counsel to the Debtors. On June 7, 2005, the Court entered its Interim Order Granting Application Pursuant to 11 U.S.C. § 327(e) Expanding the Scope of Employment and Retention of Piper Rudnick LLP as Special Counsel to the Debtors [Ct. Dkt. No. 10116] (the “Expanded Retention Order”). DLA Piper is the successor by merger to Piper Rudnick LLP.

11. Prior to the Application Date, the Applicant was employed by the Debtors as a non-ordinary course professional. Pursuant to the Retention Order, the Debtors were authorized to pay the Applicant the fees and expenses billed while Applicant was a non-ordinary course professional. On the Summary Sheet filed with this Application, the Applicant has identified the fees and expenses billed while Applicant was a non-ordinary course professional, as well as those billed while Applicant was an ordinary course professional.

12. 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 (the "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 20, 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

II. SUMMARY OF COMPENSATION AND EXPENSES SOUGHT

13. In accordance with the terms of the Consolidated Fee Procedures Order, the Applicant has submitted to the FRC detailed monthly statements of its fees and expenses, as well as quarterly fee and expense summaries, throughout the pendency of these cases.

14. This is the Applicant's first and final application for allowance of compensation and reimbursement of expenses.

15. As detailed in the Monthly Fee Statements, the Applicant is requesting approval of the aggregate amount of \$1,942,003.68 representing \$1,918,924.04 in fees (for 4,945.35 hours of services rendered) and reimbursement of out-of-pocket expenses in the amount of \$23,076.64. Of such aggregate amounts requested, \$1,911,929.73 is for fees and expenses that have previously been paid to Applicant pursuant to the Consolidated Fee Procedures Order. Copies of the Monthly Fee Statements 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 the Applicant 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.

16. All services performed by the Applicant's paralegals and professional support staff were professional in nature and, if not done by the paraprofessionals, would have been performed by attorneys.

17. Attached hereto as EXHIBIT 1 and incorporated herein by reference is a summary of the total fees billed and hours devoted during the Application Period by each of the Applicants professionals, along with their total hours and total fees billed.

18. Applicant is cognizant of the fact that compensation will be paid to lawyers 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 the Applicant to use

paraprofessionals and staff members to perform purely ministerial tasks as opposed to using lawyers to perform such tasks.

19. Applicant worked to restrict the number of lawyers involved in this case so as to (a) maximize familiarity with the subject matter and avoid waste or duplicate efforts; (b) employ special expertise in a given field of law when necessary to do the best job possible with the least amount of effort; and (c) assign the performance of all tasks to the least senior lawyer capable of performing it consistent with sound legal representation and supervision. At numerous times during the pendency of these cases, a small amount of time was spent on the case with persons with expertise relevant to a specific issue in the case.

III. SUMMARY OF SERVICES RENDERED

20. During the period covered by this application, DLA Piper partner, Deborah Jennings, has served as Mirant's relationship partner assisting the company in finding the right lawyers to address its needs. Various DLA Piper partners and associates have provided services, as further explained below, in the following general areas:

(a) "Filthy Five" Litigation

At the time the Debtors petition for bankruptcy protection, DLA Piper was representing debtor Mirant Canal LLC in litigation against the Massachusetts Department of Environmental Protection ("MDEP") over the Commonwealth's so-called "Filthy Five" regulation. Those regulations imposed strict limits on emissions of nitrogen oxides and sulfur dioxide on the Commonwealth's six largest fossil fuel-fired power plants, including Mirant Canal's 1100-MW Canal Station facility, located in Sandwich, Massachusetts. MDEP also had ordered Mirant Canal to meet those emissions limits a full two years before four of the affected facilities were required to meet the same emissions limits. The regulations and MDEP's

requested compliance schedule threatened to make continued operation of Canal Station uneconomical, and thereby impaired the value of Canal Station to the Debtors' bankruptcy estate.

DLA Piper conducted and supervised the Filthy Five Litigation from July 2003 through its conclusion in the first quarter of 2005. DLA Piper partners E. Randolph Tucker and Michael Vhay supervised the litigation, which proceeded in two different forums. The first suit in the Superior Court for Suffolk County, Massachusetts challenging the legality of the Filthy Five regulations themselves. DLA Piper successfully opposed a motion by an environmental organization to intervene in the Superior Court action, and successfully pursued discovery efforts against MDEP.

The second part of the Filthy Five Litigation involved debtor Mirant Canal's appeal to the MDEP's Office of Administrative Appeals (the "OAA Litigation") of the compliance schedule that MDEP had imposed on Mirant Canal. As part of the OAA Litigation, DLA Piper (i) issued and responded to numerous document and other discovery requests; (ii) successfully opposed a motion for sanctions brought by interveners in the OAA Litigation; (iii) appeared at several administrative conferences; (iv) prepared substantial written, direct testimony from one of the Debtors' managers and their engineering consultant; (v) reviewed direct testimony submitted by the Debtors' opponents; and (vi) outlined rebuttal testimony on behalf of the Debtors. The drafting of the Debtors' testimony in the OAA Litigation was legally and technically complex, as neither MDEP nor the courts previously had construed the Filthy Five regulations, and the Debtors' appeal raised a number of novel issues. DLA Piper partner Michael Vhay supervised the OAA Litigation with assistance from associates Bruce Barnett and Sergio Campos.

DLA Piper also was instrumental in advising the Debtors in their negotiation of a settlement of the Filthy Five Litigation. DLA Partners E. Randolph Tucker and Michael Vhay were the principal advisors to the Debtors in these negotiations, with research and other support from associates Bruce Barnett and Sergio Campos. The negotiations took nearly eighteen months, and were conducted in a difficult political and technical environment. Chief among the complications was the participation of Cape Clean Air, a citizens group opposed to the continued operation of Canal Station. Cape Clean Air had intervened in the OAA Litigation prior to the time the Debtors had petitioned for bankruptcy protection.

Cape Clean Air's intervention in the OAA Litigation substantially prolonged the Debtors' negotiations with MDEP. The parties first attempted three-way negotiations. Those talks collapsed after several months of effort. The Debtors then negotiated solely with MDEP, with which the Debtors eventually reached an agreement in principle (after several more weeks of effort). The Debtors and MDEP then resumed negotiations with Cape Clean Air, telling the organization that if it failed to come to agreement, the Debtors and MDEP would pursue approval of the settlement over Cape Clean Air's objections. The parties eventually reached a settlement, one that was announced with great fanfare at a press conference in December 2004 by Massachusetts Governor Mitt Romney and other state officials at Canal Station. The settlement was hailed as a "win-win" outcome by all parties. (Further discussion of the results achieved by DLA Piper in the Filthy Five Litigation appear in the paragraphs below.)

Following the approval and ratification of the Filthy Five Settlement, DLA Piper monitored compliance with the settlement agreement by all parties. The settlement also imposed two requirements on the Debtors that required continuing legal advice from DLA Piper. First, the settlement required the Debtors to obtain local permits to operate a "temporary" aqueous

ammonia-supply system on a permanent basis, in order to permit the Debtors to operate pollution-control devices at Canal Station more frequently. During the fourth quarter of 2004 and the first quarter of 2005, DLA Piper assisted the Debtors in drafting permit applications and devising a strategy for obtaining local approval of the ammonia system. DLA Piper partner Michael Vhay has provided the majority of legal advice to the Debtors on these matters.

The Filthy Five Settlement also required the Debtors to apply for state and local permits for, and to install, new pollution-control equipment on one of Canal Station's two generating units. During the fourth quarter of 2004 and the first two quarters of 2005, DLA Piper partner Michael Vhay assisted the Debtors in the drafting of both permit applications, and advised them on their strategy for obtaining agency approvals. Mr. Vhay also assisted the Debtors in responding to MDEP requests for legal and technical application information.

(b) MDEP Opacity Enforcement Action

In August 2003, debtor Mirant Canal LLC received a Notice of Proposed Enforcement Action from MDEP that claimed that Canal Station had emitted smoke three times during July 2003 in violation of MDEP's regulations concerning visible emissions (so-called "opacity" regulations). MDEP also claimed that these emissions violated a MDEP permit covering Canal Station. MDEP asked the Debtors to submit a report on the alleged violations, their cause, and a proposed solution.

The Debtors and their consultants determined that the alleged violations might not have been violations, but instead might have been the result of inaccurate "opacity readings" by MDEP personnel. DLA Piper thus advised the Debtors on how to respond to MDEP's Notice and assisted the Debtors in drafting the requested report. DLA Piper partner Michael Vhay was the principal advisor to the Debtors on these efforts. Mr. Vhay later represented the Debtors in

meeting with MDEP concerning the Notice. DLA Piper helped convince MDEP initially to postpone enforcement action until after the Debtors and MDEP had resolved the Filthy Five Litigation (see above). After that litigation was settled in the first quarter of 2005, DLA Piper obtained MDEP's agreement to let the Debtors engage a nationally recognized expert in measuring opacity, and to have that expert attend a settlement conference between the Debtors and MDEP. That conference occurred in June 2005.

Following the June 2005 conference, DLA Piper advised the Debtors on several parallel efforts to respond to MDEP's concerns. DLA Piper first researched the regulatory background for MDEP's opacity regulations, and analyzed whether those regulations were susceptible to challenge under either federal or state law. DLA Piper partner Michael Vhay supervised this research, which was conducted primarily by associate Jessie Manchester. Mr. Vhay and Ms. Manchester also assessed amendments proposed by MDEP to its opacity regulations that would have exempted smaller generation facilities from the same requirements MDEP was attempting to apply to Canal Station. Finally, Mr. Vhay advised the Debtors in continuing negotiations with MDEP over an administrative consent order settling the parties' disputes, and assessing whether ISO-New England (the operator of New England's high-voltage electric transmission system) would allow the Debtors to take some of the remedial measures requested by MDEP. The latest version of the proposed consent order would resolve not only the three alleged opacity violations cited in MDEP's Notice of Proposed Enforcement Action, but any alleged violation occurring prior to the date of the consent order. The parties expect a final consent order to be executed in March 2006.

(c) Bankruptcy Advice and Litigation

After the Debtors petitioned for bankruptcy protection, two of their utility customers, Boston Edison Company and Commonwealth Electric Company (both owned by NStar) attempted to setoff power-purchase payments owed to Debtors against pre-petition amounts that the Debtors allegedly owed to NStar. During the second and third quarters of 2004, DLA Piper E. Randolph Tucker supervised research of NStar's claims, and later persuaded NStar's bankruptcy attorneys that NStar's setoff attempts lacked legal basis. DLA Piper efforts yielded over \$650,000 to the Debtors' estate.

In the third and fourth quarters of 2003, DLA Piper partner Michael Vhay and associate Bruce Barnett provided advice to the Debtors on ISO-New England's rules for terminating operations at generation plants (like the Debtors' facilities in Massachusetts) that are interconnected with the NEPOOL regional transmission system. In the third quarter of 2004, DLA Piper assisted the Debtors in reviewing Canal Station's air-emissions permits and its NPDES permit. The purpose of the latter assignment was to assess (a) whether these permits were transferable; (b) if so, whether transfer required government approval; and (c) if approvals were required, what the Debtors needed to do to obtain them. Both of these assignments helped the Debtors establish the value and marketability of their Massachusetts generation assets. DLA Piper partner Michael Vhay supervised this research, which associates Bruce Barnett and Traci Feit conducted.

In the Third quarter of 2005, DLA Piper negotiated and filed a stipulation for a stay in *Wholley v. Mirant Canal, LLC*, an action filed in the Superior Court for Plymouth County, Massachusetts, that concerned injuries allegedly arising out of the operation of the Debtors' Canal Station Facility. DLA Piper partner E. Randolph Tucker supervised these efforts.

(d) General Hospital Corporation Litigation

In the second quarter of 2004, one of the Debtors' steam customers, the General Hospital Corporation ("GHC"), served the first of several demands and subpoenas on the Debtors to provide sensitive commercial information pertaining to the Debtor's Kendall Station generating plant. GHC claimed that it needed the information to prosecute claims in arbitration against NStar Steam Corporation, GHC's former steam supplier, which had some of the information but which was restricted by the terms of an agreement with Debtors not to disclose it. While the information might have had relevance to GHC's arbitration against NStar Steam, it also was likely to assist GHC in ongoing negotiations with the Debtors over a new steam-supply agreement, to the disadvantage of the Debtors and their estate.

DLA Piper partner E. Randolph Tucker (with assistance from associate Traci Feit) advised the Debtors that GHC's demands and subpoenas were improper. In the interests of compromise, DLA Piper assisted the Debtors in making good-faith attempts to substitute less-sensitive information for the data GHC sought. GHC was dissatisfied with the substitute information, however, and in the fourth quarter of 2004, GHC succeeded in obtaining an order from an arbitrator directing GHC and NStar Steam to disclose Debtors' confidential information to each other.

Faced with this threat of disclosure, during the first quarter 2005, DLA Piper prepared complaints for injunctive relief that sought to block both GHC and NStar Steam from disclosing any of the Debtors' confidential information. DLA Piper partners E. Randolph Tucker and Michael Vhay supervised these efforts. The threatened injunction convinced GHC and NStar Steam not to disclose the Debtors' confidential information unilaterally. Several weeks later, however, GHC served another subpoena on the Debtors for the same information.

The Debtors resisted the subpoena, and GHC filed a petition in Superior Court for Suffolk County, Massachusetts in the second quarter of 2005 that sought a court order directing the Debtors to produce the requested information. The parties suspended that litigation in exchange for the Debtors' agreement to provide some of what GHC was seeking. DLA Piper partner Michael Vhay defended the Debtors in the Suffolk County litigation and advised them in connection with an eventual settlement of the proceeding, which became effective in the third quarter of 2005.

(e) Operational Support in Massachusetts

DLA Piper provided support to the Debtors' Massachusetts operations through the course of their bankruptcy proceeding. Those efforts were:

Emergency Dredging Permits. In the first and second quarters of 2004, DLA Piper partner Michael Vhay helped the Debtors obtain expedited approvals from a number of federal, state and local agencies for emergency dredging adjacent to the Debtors' Canal Station. Canal Station is fueled primarily by oil that is shipped to the facility by tanker. In early 2004, sand had filled a portion of the shipping channel that leads to Canal Station's tanker terminal. Government authorities had threatened to stop large tankers from using the channel unless the Debtors dredged it. The Debtors had to move quickly to obtain permits and complete the dredging, since a variety of fishery, marine mammal and wildlife regulations sharply restricted the periods in which the Debtors could permissibly dredge. With DLA Piper's assistance, the Debtors obtained all of the required permits and completed the dredging without disruption to Canal Station's oil supply.

Litigation Support. In the third quarter of 2005, DLA Piper associate Matthew Iverson represented the Debtors in responding to a subpoena for documents relating to Canal Station.

(f) Certificates of Convenience and Necessity

DLA Piper partner Deborah Jennings (with assistance from associates William DuBois and Jonathan May) represented Mirant Mid-Atlantic, LLC in pursuit of two Certificates of Public Convenience and Necessity (“CPCN”) from the Maryland Public Service Commission. The first sought authorization of the installation of a feedwater heater so as to enable the generating station to improve efficiency. The second sought a CPCN authorization to construct a coal barge unloading facility at the Morgantown Generating Station. The barge unloading facility authorization required an adjudicatory proceeding in which the railroad sought to intervene and halt the project. Mirant prevailed and a CPCN was issued authorizing the project. The barge unloading facility will allow a much broader array of fuel options, including international coal. This fuel optionality should result in substantial savings on fuel costs and a cost-effective means of reducing emissions of sulfur dioxide, which will be required by recently promulgated federal environmental regulations.

(g) Clean Air Act Enforcement Matter Relating to Potomac River Plant

DLA Piper partner Deborah Jennings (with assistance from associates James Elliot, Dorothy Guy, William DuBois and Jonathan May) has represented Mirant Mid-Atlantic LLC and Mirant Potomac River, LLC in a major Clean Air Act enforcement proceeding, including negotiation of a comprehensive consent decree involving all of the Mirant plants in the Mid-Atlantic Region. The consent decree has been lodged, but not yet approved, and the past year has been spent negotiating Amendments to the Consent Decree, which will supersede the

lodged one. This matter has required on-going negotiations with USEPA, the Maryland Department of the Environment and the Virginia Department of Environmental Quality (“VDEQ”) in settlement of allegations of violation of Clean Air Act requirements at the Potomac River Plant. In the federal district court that has been reviewing the consent decree, the City of Alexandria, VA sought to intervene and received limited rights to do so. Most recently, Alexandria sought to add to the case a Clean Air Act citizen suit claim, which DLA Piper successfully opposed on behalf of Mirant Mid-Atlantic, LLC and Mirant Potomac River, LLC. The Owner Lessor parties in the Bankruptcy proceeding also sought to intervene, which the Mirant entities opposed. That motion has been stayed.

The resolution of the Potomac River Plant’s Clean Air Act violations with a Consent Decree covering all of Mirant’s generating stations in the Mid-Atlantic region provides the company with the opportunity to create a comprehensive business plan for installing necessary improvements in emission controls, while at the same time reducing its exposure to plant-by-plant enforcement proceedings.

(h) Clean Air Act Administrative Proceeding with Virginia Department of Environmental Quality and USEPA Relating to Potomac River Plant.

DLA Piper partner Deborah Jennings (with assistance from associates James Elliot, Dorothy Guy and William DuBois) has been advising Mirant Potomac River, LLC with respect to notices of violation and the negotiation and implementation of a September, 2004 Administrative Consent Order (“ACO”) with the VDEQ. Mirant Potomac River, LLC, in accordance with its obligations under the aforesaid ACO, filed a computer modeling analysis indicating that the Potomac River Plant caused or contributed to modeled violations of the National Ambient Air Quality Standards (“NAAQS”). This report resulted in the temporary shut down of the plant, followed by resumed limited operations as solutions to the modeled NAAQS

exceedances have been explored. The representation has included meetings with various interested agencies, including VDEQ, USEPA and the United States Department of Energy (“DOE”). With the entry of these agencies, DLA Piper Counsel, Steve Shimberg, who recently left a high ranking position at USEPA, joined the DLA Piper team. DLA Piper partner, John Mietus, a specialist in aviation matters, has been assisting Mirant in its efforts at the Federal Aviation Administration to obtain approval to increase the stack heights at the Potomac River plant as one means of mitigating the modeled NAAQS exceedances. Interactions with these agencies have included preparation of reports and plans for continued operations. DOE became involved because the plant is a “must run” facility essential to the delivery of reliable electric supply to the Washington, DC area. DLA Piper has given advice regarding follow-up studies and techniques to solve the problem. Most recently, USEPA has commenced an administrative proceeding on a parallel track relating to this NAAQS issue.

DLA Piper continues to represent Mirant Mid-Atlantic, LLC and Mirant Potomac River, LLC in negotiations with VDEQ, USEPA and DOE in an effort to maximize plant operations while instituting measures to assure that the plant does not cause or contribute to a NAAQS exceedance. These discussions are on-going and promising.

(i) Environmental Audit

DLA Piper partners Deborah Jennings and Roger Truitt (with assistance from William DuBois and Jonathan May) have assisted Mirant Corporation with a comprehensive environmental review of existing facilities and compilation of information pertaining to this review. These environmental audits are essential to assuring that the company is alerted to and in a position to manage any environmental issues that arise. By staying on top of and managing environmental issues, the company minimizes enforcement risk.

(j) Environmental Compliance

DLA Piper partners Deborah Jennings and Roger Truitt, as well as Counsel Steve Shimberg, also regularly advise Mirant Mid-Atlantic, LLC with respect to environmental compliance at the operating plants and other environmental issues. Issues often arise with respect to every environmental medium (air, water, oil storage, etc.) and DLA Piper's 25 lawyer national environmental group is a ready resource for answering these questions. DLA Piper also assists Mirant Mid-Atlantic, LLC in developing plans and strategies or future compliance with recent promulgated regulations.

(k) Multi-pollutant Initiatives

DLA Piper partner Deborah Jennings (assisted by associates William DuBois and Jonathan May) works with Mirant Mid-Atlantic, LLC and affiliated entities with respect to understanding and participating in the development of new environmental regulatory and legislative initiatives. Currently in Maryland, there is a draft regulation in the pipeline that could result in additional requirements related to reductions of nitrogen oxides, sulfur dioxide and mercury. DLA Piper partner Deborah Jennings advises and assists Mirant with respect to the filing of comments and evaluation of issues arising from this regulatory initiative. Simultaneously, the Maryland General Assembly is considering statutory changes to require additional reductions of the same pollutants plus greenhouse gases (principally carbon dioxide). DLA Piper advises Mirant with respect to the implications of these initiatives and possible amendments. Through these efforts, DLA Piper assists Mirant in influencing the outcome of these initiatives and positioning itself for legal challenges, if necessary.

(l) Discovery Issues in Pepco Litigation

DLA Piper partner Benjamin Boyd (with assistance of associates Cathy Hinger and Charley Sung) represented Mirant in connection with its response to several subpoenas and notices of deposition in the case captioned *Potomac Electric Power Company v. Support Terminal Services, Inc., et al.*, in the United States District Court for the District of Maryland. Our representation involved the coordination of several searches of hard files in Mirant's possession for responsive information, the establishment of a protocol for the search and production of electronic information, preparation of witnesses for informal interviews by the parties to the law suits in lieu of formal depositions, extensive negotiation with the parties regarding the scope of production required by the various subpoenas, and briefing before the Court regarding the scope of production and privilege claims. We understand that the case has now settled on confidential terms.

(m) General Representation

In the Application period, DLA Piper has assisted Mirant Mid-Atlantic, LLC with a variety of smaller matters. DLA Piper partner Deborah Jennings (assisted by associate William DuBois) has responded to a 60-day notice of violation under the Clean Air Act citizen suit provisions filed by several environmental groups and assisted Mirant in preparing comments on its Title V permit, addressing the same issues. DLA Piper partner Guy Flynn assisted Mirant with legal opinions relating to Debtor In Possession financing and DLA Piper partners Jack Machen and Ed Levin, assisted by Counsel Jane Wilson, have advised and represented Mirant in real estate transactions and provided advice and counsel on Maryland real estate law.

IV. FACTORS TO BE CONSIDERED BY THE COURT

20. Pursuant to the decisions of the United States Court of Appeals for the Fifth Circuit in *In re Lawler*, 807 F.2d 1207 (5th Cir. 1987), *Cooper Liquor, Inc. v. Adolph Coors Co.*, 684 F.2d 1087 (5th Cir. 1982), *In re First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir.) cert. denied 97 S. Ct. 1696 (1977), and *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), the Applicant requests the Court to consider the factors set forth below when determining the reasonableness of the Applicant's requested compensation for its services rendered during these cases.

TIME AND LABOR EXPENDED

21. The Applicant's partners, associates, paralegals and professional support staff expended a total of 4,905.35 hours in representing the Debtors during the entire Application Period. The Applicant's records of time expended in the rendition of professional services for the Debtors, as well as for all its other clients, consist of daily time entries by each individual attorney, paralegal and professional support staff that are ultimately placed in computer records. The Applicant believes that the detail of its Monthly Fee Statements as submitted to the FRC on a monthly basis show that its request for compensation is reasonable. All of the services specified in the Monthly Fee Statements were necessary for the Debtors to perform their statutory duties and fulfill their fiduciary obligations.

22. All of the Applicant's professionals that rendered services in these proceedings made a deliberate effort to avoid unnecessary duplication of work and time expended. In certain instances, however, conferences and/or collaboration was necessary among the Applicant's professionals.

23. Where more routine tasks were involved, the Applicant used the talents of its paralegals and professional support staff to reduce the total fees in this case, without sacrifice to the quality of the services rendered.

NOVELTY AND DIFFICULTY OF QUESTIONS RAISED

24. The services rendered by DLA Piper were necessary in order to preserve and maximize the bankruptcy estate's assets. For example, had the Debtors not continued the Filthy Five Litigation, the Debtors' Canal Station would have been required to comply with Massachusetts' strict air emissions requirements under 310 CMR 7.29 for two years before the Debtors' competitors. Premature compliance likely would have forced the Debtors to switch to substantially costlier fuels at Canal Station, which in turn would have resulted in substantial impairment of the value of the station's assets (if not their obsolescence in the competitive New England wholesale-electricity market). The Debtors also faced the risk that had a single existing emissions-control device at the station failed during the two-year period in which Canal Station would have been under § 7.29, the station likely would not have been able to operate in compliance with the regulation. The settlement obtained by DLA Piper of the Filthy Five Litigation permitted Canal Station to remain competitive in the New England market, and gave the Debtors sufficient time to install back-up emissions-control devices.

The Clean Air Act Enforcement matter quickly grew into a more comprehensive review of the Mirant Mid-Atlantic, LLC fleet of plants. The consent decree that emerged is a reasonable compromise with Virginia, Maryland and the US Environmental Protection Agency that will govern the system-wide environmental compliance through 2010. DLA Piper's representation guided the company through these proceedings and negotiation.

With respect to the Potomac River administrative proceeding that revealed modeled violations of the National Ambient Air Quality Standards caused or contributed to by the plant, DLA Piper's representation has guided the company in working through issues that threatened continued operation of the plant. These proceedings have been high-profile and high stakes. Bringing them to a successful conclusion will be an important achievement for the company.

LEVEL OF SKILL REQUIRED

25. Certain of the issues in this case required a specialized knowledge of environmental and commercial law, and litigation. DLA Piper has a great depth of expertise in environmental law and its expertise in the Clean Air Act, particularly, that has been very valuable to Mirant in navigating these proceedings.

OPPORTUNITY COSTS

26. Although DLA Piper did not specifically decline any new engagements because of time devoted to this case, the expeditious resolution of problems as they arose in this case necessitated a restructuring of priorities and sometimes limited the amount of time available for work on other cases.

CUSTOMARY FEE FOR LIKE WORK

27. DLA Piper's fees were computed at the standard hourly rates charged by DLA Piper to creditor, debtors and trustee clients. The hourly rates vary by attorney depending on experience, expertise and subject matter, and are well within the customary hourly rates in this geographic area for services in similar cases. At the request of the Debtors, beginning in June 2005, DLA Piper agreed to reduce its hourly rates by ten percent (10%) across the board.

EXPECTATIONS AT OUTSET OF CASE

28. DLA Piper undertook to represent the Debtors in these cases with the expectation that it would be paid in full for services rendered and fully reimbursed for actual and necessary expenses incurred. DLA Piper did not undertake this case on a contingency basis, nor did DLA Piper undertake this case with the expectation that it would be paid only a percentage of its fees and expenses.

TIME LIMITATIONS

29. These cases required prompt action by the Debtors and DLA Piper. The Clean Air Act Enforcement action relating to the Potomac River Plant and the administrative proceeding relating to the Potomac River plant's modeled emission impacts have both required prompt action. The Filthy Five Litigation was underway at the time the Debtors filed for bankruptcy protection, and was not subject to the automatic stay. The Debtors faced discovery and other deadlines in both of the Filthy Five cases that had to be met, lest the Debtors be held to have waived their challenges to MDEP's 7.29 regulations and MDEP's schedule for having the Debtors' Canal Station comply with those regulations. Resolution to these issues has required substantial time, but there was no option to responding promptly to these matters. All time limitations and deadlines imposed in these cases have been met by DLA Piper.

RESULTS ACHIEVED

30. DLA Piper achieved significant results for the Debtors in the matters for which DLA Piper was engaged. As a result of the Filthy Five Litigation, DLA Piper secured for the Debtors the ability to operate Canal Station economically, and saved the Debtors from having to absorb substantial compliance costs two years prematurely (if not close the station altogether). DLA Piper's representation of the Debtors in connection with MDEP's opacity enforcement

action likely will result in an agreement that gives Canal Station continued compliance certainty, thereby enhancing the value of the Debtors' Canal Station assets. DLA Piper's work in expediting approvals of dredging permits for Canal Station in 2004 allowed the Debtors to avoid severe restrictions on their ability to ship oil to Canal Station. Those restrictions would have increased the Station's fuel-transportation costs substantially, and would have exposed the Debtors to greater risk of liability from oil spills. DLA Piper's representation of the Debtors against General Hospital Corporation allowed the Debtors to protect commercially sensitive information relating to Debtors' Kendall Station facility, and thereby enhanced the Debtors' ability to negotiate a favorable steam-supply contract with General Hospital.

While the Clean Air Act consent decree is still in the final stages of negotiating an Amended Consent Decree, the anticipated agreement with USEPA, VDEQ and the Maryland Department of the Environment will allow Mirant Mid-Atlantic, LLC to achieve a resolution that will serve as a plan for all of the Mid-Atlantic plants. This will enable the installation of necessary pollution controls in accordance with a business plan, as opposed to installations on a piecemeal basis in reaction to multiple proceedings.

Similarly, although the administrative proceedings with USEPA and VDEQ are on-going, DLA Piper has assisted Mirant Potomac River, LLC in responding to many agency demands and formulating a plan to resume operations at the plant. DLA Piper's expertise in this area has been highly valuable to the company in pursuing creative approaches to allowing resumption of operations, while not causing or contributing to violations of the NAAQS.

The CPCN authorizing the construction of a barge unloading facility at the Morgantown plant will be very valuable to the company because it allows the importation of a much broader range of coals for use both at the Morgantown and the Chalk Point generating

stations. This fuel diversity opportunity will result in savings on fuel costs, provide a competitive means of transporting coal, thereby improve Mirant's negotiating position on costs, and will allow the use of lower sulfur coal as a means of reducing sulfur dioxide emissions.

EXPERIENCE, REPUTATION AND ABILITY OF COUNSEL

31. DLA Piper's attorneys are highly experienced and qualified in the areas of environmental and commercial law, and litigation.

UNDESIRABILITY OF CASE

32. Representation of the Debtors in this case has not been undesirable.

NATURE AND LENGTH OF PROFESSIONAL RELATIONSHIP

33. There is no relationship between DLA Piper and the Debtors other than the professional attorney client relationship.

FEE AWARDS IN SIMILAR CASES

34. The compensation sought by DLA Piper in this case is reasonable and consistent with the fee awards in similar bankruptcy cases in this geographic area.

V. CONCLUSION

35. These highlights and narrative entries on the Applicant's Monthly Fee Statements show the beneficial services rendered by the Applicant for the Debtors for which final approval and payment of fees and expenses as requested herein is appropriate.

WHEREFORE, PREMISES CONSIDERED, DLA Piper requests that this Court:

(a) Grant final approval of all fees and expenses in the aggregate amount of \$1,942,003.68, representing \$1,918,924.04 in fees (for 4,945.35 hours of services rendered) and reimbursement of out-of-pocket expenses in the amount of \$23,076.64 for the entire Application Period;

(b) Approve and direct the Debtors to pay to the Applicant the sum of \$30,073.95 which represents the remaining unpaid fees and expenses for the entire Application Period; and

(c) Grant such other and further relief as is just and appropriate under the circumstances.

Respectfully submitted this 24th day of February, 2006,

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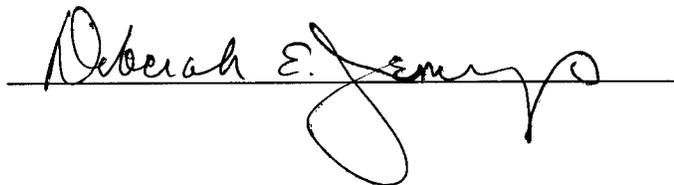
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Special Counsel for the Debtors and Debtors-In-Possession

CERTIFICATION OF CERTIFYING PROFESSIONAL

The undersigned hereby certifies that she has been designated by DLA Piper Rudnick Gray Cary US LLP as the Certifying Professional with respect to the Application, and that (a) she has read the Application; (b) to the best of the certifying professional's knowledge, information and belief, formed after reasonable inquiry, the compensation and expense reimbursement sought is in conformity with the Guidelines for Compensation and Expense Reimbursement of Professionals for the United States Bankruptcy Court, Northern District of Texas, effective January 1, 2001; and (c) the compensation and expense reimbursement requested are billed at rates in accordance with practices no less favorable than those customarily employed by DLA Piper and generally accepted by DLA Piper's other clients.

The Certifying professional certifies under penalty that the information contained in the Application and the foregoing statements are true and correct to the best of her knowledge.



CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing document upon all persons on the Limited Service List and all parties on the attached FRC Service List via first class mail, postage prepaid on the 25th day of February, 2006 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Ian T. Peck

FEE REVIEW COMMITTEE SERVICE LIST

(members not on Limited Service List)

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