

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

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

SEVENTH INTERIM REPORT OF
WILLIAM K. SNYDER, COURT-APPOINTED EXAMINER

Date Submitted: August 10, 2005

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I. INTRODUCTION

The Examiner's Sixth Interim Report criticized the Debtors' professionals for failing to provide data requested by the Examiner in connection with various ongoing investigations. Since that time, the Debtors have provided the Examiner with a substantial quantity of data to further his investigation of the total estimated claims against the Debtors. During the two months since the filing of the Sixth Interim Report, the Examiner's efforts have been focused upon the completion of the hearing to determine the total enterprise valuation of the Debtors (the "**Valuation Hearing**"), and his ongoing investigation of the Debtor's estimation of the total claims — the "claims hurdle" — that must be satisfied before residual value may be distributed to shareholders and the holders of 6.25% Junior Subordinated Convertible Debentures due 2030.¹ In addition, the Examiner has identified certain issues relating to the compensation of professionals; however, the various orders defining the Examiner's role and powers in these cases prevent him taking any affirmative steps to resolve them. Those issues are recognized and discussed in this interim report, and in the absence of further direction from the Court, have been turned over to the Fee Review Committee for resolution.

II. BACKGROUND

A. Prior Reports

Section II.A. of the Examiner's Sixth Interim Report, which provides a summary of the Examiner's previously-submitted interim reports, is incorporated herein by reference.²

The Examiner's first five interim reports were submitted under seal to the Court. As discussed in the Sixth Interim Report, the Examiner has identified for the Debtors those sections of his prior interim reports which may still contain confidential information. If the Debtors concur with the Examiner's evaluation of the residual confidentiality of the content of his interim reports, the Examiner will request authority from the Court, as appropriate, to file publicly those prior reports with appropriate redactions. In the event the Debtors and the Examiner cannot agree on the publication of the Examiner's prior interim reports, the Examiner will present the issue to the Court for resolution.

B. The Cases

Section II.B. of the Examiner's Sixth Interim Report, which provides background information on the commencement of the Cases and the membership of the statutory committees, is incorporated herein by reference and supplemented as follows:

In mid-July 2005, the Examiner learned that Citibank, N.A. had resigned its position as member and co-chair of the Mirant Committee. On July 21, 2005, the U.S. Trustee recognized

¹ The holders of subordinated debt include Phoenix Partners LP, Phoenix Partners II LP and Phaeton International (BVI) Ltd (the "**Phoenix Entities**"), who were active participants in the Valuation Hearing.

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Sixth Interim Report.

this fact by reconstituting the Mirant Committee to comprise the six remaining members — Citibank, N.A., Hypovereins Bank, Appaloosa Management LP, Deutsche Bank, Wachovia Securities, HSBC Bank USA and Law Debenture Trust Company of New York. Hypovereins Bank and Appaloosa Management LP have been selected as co-chairs of the Mirant Committee.

C. The Role of the Examiner

Section II.C. of the Examiner's Sixth Interim Report, which summarizes the Examiner's powers and obligations and the orders defining the Examiner's role in these Cases, is incorporated herein by reference.

D. Examiner's Staffing and Budget

The fees earned and expenses incurred by the Examiner and his professionals have continued to accrue at a rate within the \$900,000.00 quarterly budget imposed by the Court pursuant to the Expanded Examiner Order.

E. Disclaimer

This Sixth Interim Report has been prepared based on the Examiner's own investigations. In addition to data gathered by the Examiner and his professionals, this report is based upon pleadings filed in these and other cases and other written and oral information, data and communications supplied to the Examiner by various parties-in-interest, including (i) Mirant Corporation, its numerous subsidiaries and affiliates and their respective officers, directors, employees, professionals, agents and advisors; (ii) the Committees and their respective professionals, agents and advisors; and (iii) various individual creditors of Mirant and their professionals, agents, and advisors.

The Examiner has attempted to provide information obtained from reliable sources; however, the Examiner has not independently verified all of the information and the data referenced in this report and the same are enclosed for reference purposes only. The Examiner makes no representations or warranties as to the accuracy or completeness of such information and data and shall have no liability for any representations (express or implied) contained herein, for any omissions from this report or for any other written or oral communications transmitted by or to the Examiner in the course of the preparation of this report. The Examiner and his professionals are "Protected Persons" and "Protected Professionals" as those terms are used in the Court's *Order Restricting Pursuit of Certain Persons*, entered on August 5 and September 29, 2003.

The information contained herein has been prepared to assist the Court and the constituencies in making their own evaluations of the circumstances described herein and does not purport to contain all of the information that an interested party may need or desire to review in conducting its own evaluation.

This report includes certain statements, estimates and projections provided by the Company's management and professionals with respect to the Company's forecasted future performance. Such statements, estimates and projections reflect various assumptions by the Company concerning forecasted results, which have been included solely for illustrative

purposes. No representations are made as to the accuracy of such statements, estimates, or projections or with respect to any other materials herein. This report contains conclusions based on information available to the Examiner as of 9:00 am CDT August 8, 2005.

III. DISCUSSION OF ISSUES

A. Plan of Reorganization/Valuation

1. Recalculation of Enterprise Value

The Valuation Hearing concluded June 27, 2005, and the Court issued a letter ruling on June 30 comprising a series of instructions to “recalculate” the Debtors’ enterprise value using the Debtors’ 2005 Business Plan and The Blackstone Group’s May 2, 2005 valuation report as starting points (the “**Valuation Ruling**”). The Court directed Tim Coleman of The Blackstone Group (“**Blackstone**”), and Curt Morgan of Mirant Corporation to effect the modifications directed in the Valuation Ruling under the supervision of the Examiner.³ At the start of that process, the VIC outlined a timetable estimating when the process would be complete, and solicited input from the constituencies who actively participated in the Valuation Hearing, including the Debtors, the Committees, the Phoenix Entities and Matt Wilson (counsel to a group of shareholders).

The VIC presented a letter to the Court on July 19, 2005 requesting clarification of certain of the Court’s instructions, and to obtain the Court’s approval of the proposed means to implement the Court’s instructions.⁴ Accompanying the July 19 letter were copies of the VIC’s proposed timetable and the feedback received from the Committees, the Phoenix Entities and Mr. Wilson. On July 26, 2005, the Court provided additional guidance to permit the VIC to commence the process of implementing the Court’s rulings and calculating the Debtor’s enterprise value based on the Court-directed methodology.⁵

With the receipt by the VIC of these additional modifications, the Debtors — under the supervision of the VIC — have begun the process of implementing the Court’s rulings and running the necessary financial models. As reported in the timetable presented to the Court on July 19, 2005, the VIC does not expect to be able to report its findings (*i.e.*, the enterprise value of Mirant as formulated by the Valuation Ruling, as modified) before September 21, 2005.

2. Claims

In the Sixth Interim Report, the Examiner detailed the difficulties he has faced in trying to obtain certain information concerning the total claims expected to be allowed and satisfied in connection with the Debtors’ reorganization. In apparent response to the Sixth Interim Report, the Court convened an in-chambers status conference on June 15, 2005 and directed the Debtors

³ In their capacities as agents of the Court to carry out the instructions of the Valuation Ruling, Messrs. Coleman and Morgan, together with the Examiner in his related supervisory role, are known as the Valuation Implementation Committee (“**VIC**”).

⁴ The July 19 letter was filed on the Court’s docket on August 3, 2005 [Docket# 10814].

⁵ The July 26 letter was filed on the Court’s docket on July 26, 2005 [Docket# 10723].

to cooperate fully with the Examiner and his professionals and provide the information requested. Six weeks later, during hearings on the motions of Wells Fargo Bank, N.A. and the MAG Committee to compel the production of certain documents from the Debtors relating to the Disclosure Statement, the Examiner's counsel advised the Court that the Examiner still had not received the requested information. The next day, following a meeting between the Examiner's counsel and Robin Phelan, co-counsel to the Debtors, the Examiner began to receive data relating to third party claims asserted against the Debtors.

The Examiner had continued to request this information for a number of reasons: (i) originally, to evaluate the sufficiency of the disclosure provided in the Debtors' Disclosure Statement as relates to the treatment creditors could expect to receive in a liquidation scenario; (ii) later, in an effort to narrow the scope of the Valuation Hearing by defining the claims hurdle that the Equity Committee and the Phoenix Entities must surmount in order to be declared in the money; and (iii) most recently, to determine whether the Equity Committee and subordinated debt holders will actually be "in the money" if the enterprise valuation provided by the Valuation Ruling surpasses the Court's benchmark of \$11 billion.⁶

Since July 28, 2005, the Examiner has continued to receive additional information through Mr. Phelan, who is now coordinating the flow of information from the Debtors to the Examiner. Mr. Phelan has continued to be very responsive to the Examiner, and the information provided by the Debtors has been helpful to the Examiner, even though the data produced was not fully responsive to his original requests and was partly outdated. On the afternoon of August 9, 2005, the Debtors provided the Examiner's counsel with what appears to be the data originally requested by the Examiner in March 2005 — a claim-by-claim breakdown (on a Debtor-by-Debtor basis) of the claim totals currently estimated by the Debtors. The Examiner has not yet had the opportunity to review this data; however, the data has provided the Examiner with sufficient information to focus the direction of his inquiry on specific aspects of the claims total, including (i) the rates at which post-petition interest was calculated by the Debtors, and (ii) the basis for certain adjustments made by the Debtors to the claim amounts listed in the Amended Disclosure Statement.

Based on a December 31, 2005 emergence date,⁷ the Debtors currently estimate total claims against the Mirant estates of \$6,571,657,603.00 (including \$709,796,920 of post-petition interest) and claims against the MAG estates of \$3,683,619,481.00 (including \$607,844,424 of post-petition interest). Including \$1,062,957,804 in foreign debt held by non-debtor affiliates of the Debtors, the Debtors' professionals estimate total claims against the Debtors to be \$11,333,184,888 as of December 31, 2005.⁸

⁶ If actual claims exceed \$11 billion, shareholders and subordinated debt holders could be declared "in the money" for the purpose of determining their entitlement to participate in the Cases going forward, but still not be entitled to receive any distribution on account of their equity interests.

⁷ In the absence of a settlement obviating the need to complete the recalculation of the Debtors' enterprise value based on the Court's rulings, the VIC has indicated that December 31, 2005 is a reasonable goal for the Debtors' emergence from bankruptcy.

⁸ Given the fluid nature of claims analysis, these figures may be subject to further change and refinement by the Debtors. The Examiner expects that the Debtors will continue to provide him with regular, timely updates of such changes without further request.

The Debtors have also provided the Examiner with a schedule of remaining unresolved claims and the amount currently reserved by the Debtors, in the aggregate, for such claims; however, the Examiner has learned from the Debtors that there are additional disputed or otherwise unresolved claims not included in that reserve amount. In addition, the Examiner has been unable to reconcile certain changes to the Debtors' litigation reserve. The Examiner anticipates meeting with the Debtors' professionals in the near future to gain additional insight into the preparation of this schedule and the Debtors' perception of the potential impact of unresolved claims on the overall claims analysis.

Finally, the Debtors have identified for the Examiner thirteen Mirant-level subsidiaries that may be solvent on a balance sheet basis.⁹ This information was requested by the Examiner further to the concern voiced by the Examiner in the Fifth Interim Report that the Disclosure Statement in its current form does not adequately inform creditors of the impact of a liquidation on their potential recovery. The Debtors' analysis confirms that creditors of at least those thirteen subsidiaries could (theoretically) be paid in full under a liquidation scenario, which will be a significant piece of information for voting creditors in the event the plan of reorganization ultimately promoted by the Debtors proposes a lesser treatment for those same creditors.¹⁰

3. Plan Negotiations

For several months now, it has been clear to the Examiner and others that a general understanding and acceptance of the claims hurdle is a key prerequisite to any meaningful attempts to reach a consensus on valuation (and by extension, a plan of reorganization). While the constituencies continue to work to gain transparency on the total estimated claims, the Debtors and the Committees have taken the opportunity to engage in various discussions to determine whether a consensual resolution may be reached that would (i) resolve the valuation issue prior to the completion of the VIC's work and (ii) pave the way for a consensual plan of reorganization. The Examiner was asked to take a more active role in the process by participating in such discussions and helping to communicate offers and counteroffers among the Debtors and the three Committees. To that end, during the week of August 1, 2005, the Examiner and his advisors met with principals and financial advisors from each of the Debtors, the Committees, Phoenix and the Ad Hoc Committee. The Examiner expects to coordinate further meetings in the coming weeks while the parties await the results of the VIC's efforts.

B. Professionals' Fees

In decretal paragraph 2 of the Expanded Examiner Order, the Examiner is charged to "identify any issue of fact or law in these cases resolution of which may be necessary or useful to advancement of the reorganization of these Debtors."¹¹ The order further empowers the Examiner to take steps consistent with his duty to remain neutral to resolve such issues, *except*

⁹ The Debtors have directed the Examiner to maintain the identity of the thirteen subsidiaries as confidential information; however, the Examiner notes that the Debtors estimate that third party claims against these subsidiaries total less than \$10 million.

¹⁰ Of course, in the event the VIC's recalculation reveals that the Debtors' enterprise value is sufficient to pay all general unsecured creditors in full, the question of whether certain creditors might do better in a liquidation may well be a moot point.

¹¹ Expanded Examiner Order, at 8.

for issues involving the compensation of professionals. Over the course of the last few months, certain issues have come to the Examiner's attention. The Examiner has ensured that each of these issues was brought to the attention of the U.S. Trustee and Dean Nancy Rapoport, chair of the Fee Review Committee, and is informed that the Fee Review Committee is taking appropriate steps to resolve the issues.

1. Discussion

The Fee Review Committee's June 2005 Monthly Report reflects the submission of over \$278 million in fees and expenses from the various professionals. By constituency, this sum is broken down as follows:¹²

Total Fees and Expenses	Debtors	Mirant	Equity	MAGI	Monthly Totals
July 2003	\$4,710,275	\$51,033	\$0	\$57,487	\$4,818,795
August 2003	\$6,377,874	\$518,427	\$0	\$850,644	\$7,746,945
September 2003	\$7,946,904	\$1,781,519	\$253,304	\$961,124	\$10,942,851
October 2003	\$7,801,083	\$2,336,493	\$628,101	\$1,239,618	\$12,005,294
November 2003	\$7,142,256	\$1,334,937	\$388,182	\$843,074	\$9,708,448
December 2003	\$7,300,096	\$1,394,012	\$377,553	\$726,747	\$9,798,409
January 2004	\$8,375,393	\$1,851,528	\$353,873	\$739,791	\$11,320,585
February 2004	\$9,571,438	\$1,121,550	\$245,879	\$887,823	\$11,826,691
March 2004	\$10,281,838	\$1,340,732	\$402,172	\$910,634	\$12,935,377
April 2004	\$8,553,613	\$1,560,031	\$452,620	\$1,001,973	\$11,568,236
May 2004	\$8,153,131	\$1,565,765	\$291,356	\$1,094,163	\$11,104,416
June 2004	\$7,569,553	\$2,491,673	\$384,106	\$1,511,932	\$11,957,264
July 2004	\$7,157,775	\$2,231,315	\$472,116	\$1,874,004	\$11,735,210
August 2004	\$7,113,236	\$2,432,584	\$397,557	\$1,986,498	\$11,929,875
September 2004	\$7,160,346	\$2,027,620	\$488,535	\$1,720,820	\$11,397,319
October 2004	\$9,357,882	\$2,176,592	\$491,802	\$1,906,804	\$13,933,081
November 2004	\$9,943,627	\$2,257,936	\$588,667	\$1,596,892	\$14,387,122
December 2004	\$8,758,021	\$1,737,863	\$571,235	\$1,254,680	\$12,321,798
January 2005	\$9,483,147	\$2,837,859	\$690,107	\$1,187,822	\$14,198,934
February 2005	\$8,384,239	\$2,764,185	\$704,945	\$1,245,557	\$13,098,925
March 2005	\$10,689,987	\$3,642,982	\$3,154,713	\$1,264,780	\$18,752,462
April 2005	\$9,319,578	\$3,269,725	\$2,379,505	\$1,196,278	\$16,165,086
May 2005	\$8,202,939	\$3,222,718	\$1,485,469	\$914,024	\$13,825,149
June 2005	\$1,017,776	\$0	\$6,638	\$0	\$1,024,414
TOTALS	\$190,372,006	\$45,949,079	\$15,208,434	\$26,973,169	\$278,502,687

According to the June 2005 Monthly Report, these figures are believed to be final through May 2005. For the three months ending May 2005, fees and expenses have accrued at approximately \$16.25 million per month — representing a significant increase in fees over the last few months. In part, the up-tick in the monthly burn rate is attributable to the Valuation Hearing, which ultimately consumed twenty-seven trial days during April, May and June 2005 and was concluded June 27, 2005. Given that the Valuation Hearing continued through most of June, the Examiner believes that the current burn rate provides an accurate predictor of the total fees and expenses that will be reported for June 2005.

¹² These figures are derived from the Mirant Fee Review Committee's March 2005 Monthly Report.

2. Unmonitored Professional Fees

During the Valuation Hearing, the Examiner was informed that the Court had instructed the Fee Review Committee to look into the fees that had been paid to NERA (one of the Debtors' experts employed in connection with their objection to the claims of Kern River Gas Transmission Company). The Court's concern apparently stemmed from the discovery that the expert witness provided by NERA had allegedly been paid several hundred thousand dollars.

A review of the Fee Review Committee's monthly reports quickly confirmed that NERA's fees had been neither subjected to the Fee Review Committee for approval nor even disclosed to the Fee Review Committee. At that point, the Examiner became concerned that there might be other experts or professionals whose fees were not being monitored by the Fee Review Committee, such as certain of the experts retained to testify at the Valuation Hearing (e.g., Israel Shaked, Kenneth Slater and Levitan & Associates) whose employment had not otherwise been approved by the Court.¹³

In response to his inquiries, the Examiner was advised by the Debtors that they, with the consent of the U.S. Trustee and the Committees, had entered into a stipulation that removed certain professionals, including testifying and consulting expert witnesses, from the previously-approved list of "ordinary course professionals" and authorized the Debtors and the Committees to retain and compensate these "non-core professionals" in the ordinary course of business without further court order. The stipulation, entitled *Stipulation Regarding Payment of Expert Witnesses and Non-Core Professionals in the Ordinary Course of Business*, was entered October 15, 2003 (the "**October 15 Stipulation**"). Although the stipulation directs the Debtors and the Committees to provide copies of their respective experts' invoices to one another, it does not direct them to provide copies to the Fee Review Committee.

While the October 15 Stipulation answered the Examiner's question as to why the fees of certain expert witnesses employed in the Cases had not been disclosed to the Fee Review Committee, it raised a new question in light of the Fee Review Committee's express obligation to "monitor[] compensation and performance of professionals not subject to court review under section 330 of the Code."¹⁴ Obviously, the Fee Review Committee cannot review invoices that are not submitted to it, and cannot monitor the performance of professionals whose involvement in the case is not disclosed to the Fee Review Committee. At this point, the Examiner directed his professionals to take a closer look at the issue as it became apparent that the Examiner's own interim reports to the Court (and not just the Fee Review Committee's monthly reports) were likely *underreporting* the total fees and expenses actually invoiced by the various estate-paid professionals (ordinary course or otherwise).

The Examiner's next step was to request additional information from the Debtors to ascertain what Mirant's records indicate as having been paid to bankruptcy-related professionals. On June 24, 2005, the Examiner received a summary table purporting to show all amounts paid to "bankruptcy advisors" from January 2005 through April 2005. This summary table confirmed

¹³ As opposed to certain other expert witnesses, whose fees were already subject to monitoring by the Court or the Fee Review Committee (e.g., The Blackstone Group, Houlihan Lokey, Miller Buckfire).

¹⁴ *Memorandum Order Regarding Compensation of Professionals*, entered August 27, 2003.

the existence of several entities compensated by the Debtors' estates but not included in the Fee Review Committee's monthly reports. In response to a further request, the Debtors provided the Examiner with a month-by-month breakdown of amounts paid to "bankruptcy advisors from June 2004 to May 2005.

After comparing the data provided by the Debtors to the data contained in the Fee Review Committee's monthly reports, the Examiner has identified a total of thirteen bankruptcy advisors whose fees are not currently being monitored by the Fee Review Committee. Those advisors' total fees for the period from June 2004 to May 2005 total approximately \$10.2 million. Included in those fees are approximately \$1.75 million paid to NERA (versus the few hundred thousand dollars believed by the Court to have been paid),¹⁵ \$2 million for "tax consulting" and an additional \$3.075 million for "restructuring-related tax consulting." The Examiner does not know how these tax services compare to those currently being performed by the Debtors' court-approved tax advisors. Neither has the Examiner obtained information indicating what additional fees and expenses, if any, were paid to these or similar advisors during the eleven-month period from July 2003 to May 2004.

Based on the information currently available, the Examiner now estimates that the actual, bankruptcy-related fees and expenses incurred by professionals through June 30, 2005 exceeds \$300,000,000.

Estimated Fees and Expenses through June 2005	
Total fees and expenses through May 31, 2005 (as reported by Fee Review Committee)	\$278,502,687
Projected fees and expenses for June 2005	\$16,247,566
Recently-discovered fees and expenses not included in FRC reports	<u>at least \$10,196,129</u>
Total fees and expenses through June 30, 2005	\$304,946,382

This estimate is derived from the data provided by the Fee Review Committee (as projected based on the current "burn rate") and augmented by the additional fees and expenses described above that were not accounted for in the Fee Review Committee's monthly reports. The Examiner has advised Dean Nancy Rapoport, chair of the Fee Review Committee, of his findings, and the Fee Review Committee has requested clarification from the Court of its duty, if any, to monitor such compensation.

¹⁵ From another source, the Examiner was advised that NERA has actually been paid approximately \$2.6 million for their services in this case.

Dated: August 10, 2005
Dallas, Texas

Respectfully submitted,

WILLIAM K. SNYDER, EXAMINER

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