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

In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, etc. et al.,	)	Case No. 03-46590 (DML)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Hon. D. Michael Lynn
MIRANT CORPORATION, et cetera et al.[1] and THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MIRANT CORPORATION, etc.,	)	Adversary No.05-04099
	)	
Plaintiffs,	)	
	)	**AMENDED COMPLAINT**
v.	)	
	)	
THE SOUTHERN COMPANY,	)	
	)	
Defendant.	)	
	)	

Mirant Corporation ("Mirant"), as a debtor in possession in the above-captioned chapter 11 case, joined by its affiliates hereinafter described, as their respective interests may appear, on its own behalf and for the use and benefit of all debtors and affiliates that may be substantially consolidated therewith, and the Official Committee of Unsecured Creditors of Mirant Corporation, et al. (the "Mirant Corp Committee," and together with Mirant and its affiliates hereinafter described, "Plaintiffs") sue Defendant, The Southern Company ("Southern"), and allege as follows:

JURISDICTION AND VENUE

1. This is an action to avoid and recover fraudulent transfers under 11 U.S.C. §§ 544 and 550 and applicable state law, to recharacterize certain debt as equity, to

[1] Mirant Corporation is joined by its affiliates hereinafter described, as their respective interests may appear.

declare subsidiaries to be the alter ego of a parent corporation and the parent corporation responsible for the debts of the subsidiaries, to hold the parent corporation liable for inducing or aiding and abetting the subsidiaries' breach of their fiduciary duties to creditors while in the zone of insolvency, and to adjudicate the subsidiaries' objections to the parent's proofs of claim and/or to equitably subordinate the parent's proofs of claim to the claims of all other creditors.

2. This is a core proceeding pursuant to 28 U.S.C. § 157.

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PARTIES

5. Plaintiff Mirant is a Delaware corporation with its principal place of business in Georgia and has operations and facilities in the United States, Latin America, Caribbean, the Asia Pacific region, and Europe.

6. Plaintiff Mirant is joined by its affiliates hereinafter described, as their respective interests may appear, to the extent the claims hereinafter asserted, or the relief hereinafter sought, is their respective property. Plaintiff Mirant's affiliates are Mirant Americas Energy Marketing, LP, a Delaware limited partnership; Mirant Americas, Inc., a Delaware corporation; Mint Farm Generation, LLC, a Delaware limited liability company; Mirant Americas Development Capital, LLC, a Delaware limited liability company; Mirant Americas Development, Inc., a Georgia corporation; Mirant Americas Energy Marketing Investments, Inc., a Georgia corporation; Mirant Americas Gas Marketing I, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing II, LLC, a Delaware limited liability company; Mirant Americas Gas

Marketing III, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing IV, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing V, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing VI, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing VII, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing VIII, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing IX, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing X, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing XI, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing XII, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing XIII, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing XIV, LLC, a Delaware limited liability company; Mirant Americas Gas Marketing XV, LLC, a Delaware limited liability company; Mirant Americas Procurement, Inc., a Delaware corporation; Mirant Americas Production Company, a Delaware corporation; Mirant Americas Retail Energy Marketing, LP, a Delaware limited partnership; Mirant Capital Management, LLC, a Delaware limited liability company; Mirant Capital, Inc., a Delaware corporation; Mirant Chalk Point Development, LLC, a Delaware limited liability company; Mirant Danville, LLC, a Delaware limited liability company; Mirant Dickerson Development, LLC, a Delaware limited liability company; Mirant Fund 2001, LLC, a Delaware limited liability company; Mirant Gastonia, LLC, a Delaware limited liability company; Mirant Intellectual Asset Management and Marketing, LLC, a Delaware limited liability company; Mirant Las Vegas, LLC, a Delaware limited liability company; Mirant Michigan Investments, Inc., a Delaware

corporation; Mirant Mid-Atlantic Services, LLC, a Delaware limited liability company; Mirant Peaker, LLC, a Delaware limited liability company; Mirant Portage County, LLC, a Delaware limited liability company; Mirant Potomac River, LLC, a Delaware limited liability company; Mirant Services, LLC, a Delaware limited liability company; Mirant Sugar Creek Holdings, Inc., a Delaware corporation; Mirant Sugar Creek Ventures, Inc., a Delaware corporation; Mirant Sugar Creek, LLC, a Indiana limited liability company; Mirant Wichita Falls Investments, Inc., a Delaware corporation; Mirant Wichita Falls Management, Inc., a Delaware corporation; Mirant Wichita Falls, LP, a Delaware limited partnership; Mirant Wyandotte, LLC, a Delaware limited liability company; Mirant Zeeland, LLC, a Delaware limited liability company; Shady Hills Power Company, L.L.C., a Delaware limited liability company; West Georgia Generating Company, L.L.C., a Delaware limited liability company; Mirant EcoElectrica Investments I, Ltd., a British Virgin Islands Ltd.; Puerto Rico Power Investments, Ltd., a British Virgin Islands Ltd.; Mirant Wrightsville Investments, Inc., a Delaware corporation; Mirant Wrightsville Management, Inc., a Delaware corporation; Wrightsville Power Facility, L.L.C, a Delaware limited liability company; Wrightsville Development Funding, L.L.C., a Delaware limited liability company; Mirant Americas Energy Capital, LP, a Delaware limited partnership; Mirant Americas Energy Capital Assets, LLC, a Delaware limited liability company; Mirant Americas Generation, LLC, a Delaware limited liability company; Mirant Mid-Atlantic, LLC, a Delaware limited liability company; Hudson Valley Gas Corporation, a New York Corporation; Mirant Bowline, LLC, a Delaware limited liability company; Mirant California Investments, Inc., a Delaware corporation; Mirant California, LLC, a Delaware limited liability company; Mirant Canal, LLC, a

Delaware limited liability company; Mirant Central Texas, LP, a Delaware limited partnership; Mirant Chalk Point, LLC, a Delaware limited liability company; Mirant D.C. O&M, LLC, a Delaware limited liability company; Mirant Delta, LLC, a Delaware limited liability company; Mirant Kendall, LLC, a Delaware limited liability company; Mirant Lovett, LLC, a Delaware limited liability company; Mirant MD Ash Management, LLC, a Delaware limited liability company; Mirant New England, Inc., a Delaware corporation; Mirant New York, Inc., a Delaware corporation; Mirant NY-Gen, LLC, a Delaware limited liability company; Mirant Parker, LLC, a Delaware limited liability company; Mirant Piney Point, LLC, a Delaware limited liability company; Mirant Potrero, LLC, a Delaware limited liability company; Mirant Special Procurement, Inc., a Delaware corporation; Mirant Texas Investments, Inc., a Delaware corporation; Mirant Texas Management, Inc., a Delaware corporation; Mirant Texas, LP, a Delaware limited partnership; and MLW Development, LLC, a Delaware limited liability company.

7. Plaintiff Mirant Corp Committee is the statutory committee of the unsecured creditors of Mirant appointed by the United States Trustee pursuant to section 1102 of title 11 of the United States Code (the "Bankruptcy Code").

8. Defendant Southern is a Delaware corporation with its principal place of business in Georgia.

BACKGROUND

9. Mirant and various of its affiliates (collectively, the "Debtors") commenced their jointly administered cases under chapter 11 of the Bankruptcy Code on July 14, 2003 (the "Petition Date" or the "Filing") and various dates thereafter.

10. Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. Mirant is an energy company that develops, constructs, owns and operates power plants and distribution systems, and sells and trades in electricity, gas and other energy-related commodity products.

12. Prior to October 2000, Mirant, formerly known as SEI Holdings, Inc. and later Southern Energy, Inc., was a wholly owned subsidiary of Southern.

13. Mirant was incorporated on April 20, 1993 to increase and develop Southern's non-regulated business (the "Non-Regulated Business"). At that time, Mirant became one of several Southern subsidiaries involved in the Non-Regulated Business.

14. Between 1993 and 1996, Southern caused Mirant to make a number of investments in energy facilities (the "Early Investments").

15. Southern generally advanced to Mirant the funds necessary to make the Early Investments (the "Advances"). Mirant's Early Investments were often times subsequently project financed to the extent they could be, the proceeds of which were generally paid back to Southern to reduce the Advances. Any difference between the project financing and the purchase price for these Early Investments was ultimately treated as equity contributions by Southern to Mirant. To the extent Advances by Southern to Mirant for the Early Investments were initially characterized by Southern for accounting purposes as intercompany debt, the Advances were subsequently recharacterized as equity at the end of each year.

16. This process resulted in an elimination of any Advances as intercompany debt owed by Mirant to Southern each year through the end of 1996.

17. By the end of 1996, Southern had transferred the majority of its non-regulated subsidiaries to Mirant, while keeping for itself those non-regulated subsidiaries that operated within those states where Southern conducted its regulated business.

18. In late 1995, Southern caused Mirant to form a subsidiary, Southern Energy Trading and Marketing, Inc. ("SETM"), as an energy trading and marketing company.

19. SETM was created in part to develop in house expertise on the market trends for the future pricing of electricity and the coal, oil and gas used to generate it, and to provide a vehicle for the marketing of energy produced by Mirant's facilities as well as a source of fuel for those facilities.

20. SETM later joint ventured with Vastar Resources, Inc. ("Vastar") and created Southern Company Energy Marketing ("SCEM") to increase its trading expertise and grow the natural gas side of the energy trading business. The joint venture was formed for the stated purpose of marketing and managing risk of all energy and energy-linked commodities, including electricity, natural gas, oil, coal and emissions credits in North America.

21. During the years of 1997, 1998 and 1999, Southern caused Mirant to make or commit to make, directly or through subsidiaries, acquisitions totaling more than $6 billion (the "Recent Acquisitions").

22. Mirant, directly or through subsidiaries, was unable to obtain significant amounts of project financing for the Recent Acquisitions because it grossly overpaid for most of the Recent Acquisitions.

23. The valuation models prepared by Mirant's business development group to justify the purchase price for many of the Recent Acquisitions were based upon future energy prices significantly higher than what industry experts were predicting.

24. Mirant's trading and marketing group, SCEM, consistently warned the management of Mirant and its subsidiaries that SCEM could not forward price the future output of the Recent Acquisitions at the price levels the business development group used to justify the purchase prices to be paid for many of the Recent Acquisitions.

25. Both Southern and Mirant disregarded the warnings of Mirant's own trading and energy marketing experts and went forward with the Recent Acquisitions recommended by members of its business development group who were compensated based on the purchase price of the Recent Acquisitions.

26. A significant portion of the purchase price for the Recent Acquisitions was allocated to goodwill. Mirant's own consolidated balance sheet showed total goodwill increased in 1997 by approximately $1.6 billion.

27. Because Mirant and its subsidiaries grossly overpaid for the Recent Acquisitions, and therefore, could not obtain significant levels of project financing for those Recent Acquisitions, Southern's Advances to Mirant, as reflected on Southern's books, grew to over $926 million by the end of 1998.

28. As early as 1997, Southern became concerned that it had invested and would have to invest more in Mirant by the year 2000 than had been projected.

29. In 1997, Southern hired Stern Stewart & Co. ("Stern Stewart") to prepare an economic value added acquisition analysis of Mirant's projects, as well as an analysis of Southern's potential financial strategy for financing Mirant's growth.

30. Stern Stewart reported that Mirant was undercapitalized by $893 million and that Mirant's then debt-to-capital ratio was much higher than the targeted ratio of 57%.

31. Stern Stewart warned that Southern's "future ability to fund [Mirant's] growth [was] limited" because its "core operations [were] facing deregulation" and recommended that several of Mirant's projects be abandoned.

32. Stern Stewart also recommended that Southern consider a partial public offering, either on the primary or secondary market, of 19.9% of Mirant's stock (the "IPO"), which could potentially raise over $500 million, and could be followed by a complete spin-off of Mirant to Southern's shareholders (the "Spin-Off").

33. By early 1998, Southern was under pressure from its regulators to divest itself of Mirant because Southern's investment in Mirant adversely affected Southern's credit rating, increasing Southern's interest expense and thereby its cost to generate electricity for regulated customers.

34. Southern retained its long time outside counsel, Troutman Sanders, LLP ("Troutman"), to assist it in executing the IPO and Spin-Off recommended by Stern Stewart.

35. Southern kept the IPO and Spin-Off plans secret from Mirant's senior management until late December 1999.

36. In preparation for execution of the IPO and Spin-Off, Southern released to the public in 1998 and 1999 earnings reports for Mirant (the "Earnings Reports"), which did not report interest with respect to Southern's Advances to Mirant.

37. In order to lead existing and potential creditors to believe the Advances were properly characterized as equity and would be treated as such as Southern had done in the past, Southern included a footnote in the Earnings Reports that its Advances to Mirant were treated as equity for the purpose of the "Earnings Reports".

38. Additionally, in Mirant's January 1999 Information Memorandum, which was prepared to assist interested commercial banks in making their evaluation of Mirant's credit facilities, Mirant disclosed that the Advances would be converted to equity as needed to meet target debt levels.

39. After leading existing and potential creditors to believe it intended to treat the Advances as equity in Mirant, in July 1999, Southern caused Mirant to privately borrow $700 million, $289.5 million of which was used to reduce the Advances by $192.5 million, and contrary to its publicly released Earnings Reports, to pay what Southern characterized as interest on the Advances of $97 million.

40. A few months earlier, Southern's Board had approved the repurchase of up to 50 million shares of the common stock over the following two years through open market or privately negotiated purchases, which program when completed would cost Southern $1.25 billion.

41. In October 1999, Southern caused Mirant's subsidiary, Mirant Americas Generation, LLC ("MAG," then known as Southern Energy North America Generating, Inc. "SENAG"), to borrow $1.45 billion which was used by Mirant in part to reduce the remaining Advances of $734.5 million, and contrary to its publicly released Earnings Reports, to pay what Southern characterized as interest of $10.3 million.

42. The amount returned by Mirant to Southern on or after July 26, 1999 with respect to the Advances (the "1999 Advance Return") totaled $1,034,800,000.

43. Southern also caused Mirant to pay a dividend to Southern in December 1999 in the amount of $165 million (the "1999 Dividend"). Mirant received no value in exchange for the 1999 Dividend.

44. After receiving the 1999 Advance Return and the 1999 Dividend, Southern informed Mirant's senior management of the plans for the IPO and Spin-Off and prohibited Mirant and its subsidiaries from using any legal counsel other than Troutman, for all transactions relating to the IPO and Spin-Off. Troutman had been primary outside counsel for Mirant and its subsidiaries for years, but Troutman had already been advising Southern on the IPO and Spin-Off for many months.

45. On April 17, 2000, Southern announced that it approved an IPO of up to 19.9% of Mirant and that it was planning, subject to market conditions, to Spin-Off to holders of its common stock the remaining ownership of Mirant within 12 months of the IPO.

46. On the same date Southern announced the intended Spin-Off, the agencies rating Mirant's credit placed the ratings of Mirant, MAG and SCEM on review (the "Rating Review") for possible downgrade, stating that the Rating Review reflected the negative credit implications for Mirant, MAG and SCEM after the Spin-Off and the fact that Mirant, MAG and SCEM would no longer have financial and technical benefits from Southern subsequent to the Spin-Off.

47. Both Southern and Mirant were fully aware that an investment grade rating for SCEM was critical to the trading and marketing business, and that without such rating, SCEM would have to post 100% cash collateral to back its trades.

48. Both Southern and Mirant were also fully aware that in the year 2000, SCEM was a major contributor of free cash flow, and that Mirant's business plans were dependant on continued major free cash flow contributions from SCEM.

49. Despite the negative implications of the Rating Review, Southern caused Mirant to borrow $450 million and $53 million to pay cash dividends of $450 million and $53 million to Southern in May and July of 2000 (the "2000 Dividends"). Mirant received no value in exchange for the 2000 Dividends.

50. In preparation for the planned Spin-Off, Troutman advised Southern that in order to achieve favorable tax free treatment for the benefit of Southern, it would be necessary for Mirant to satisfy the so-called active trade or business test.

51. In order to assure that Mirant could satisfy the active trade or business test, Southern caused Mirant to acquire through MAG certain generating businesses from Potomac Electric Power Company (the "PEPCO Acquisition").

52. Mirant through MAG grossly overpaid for the PEPCO Acquisition, booking over $1.5 billion in goodwill and assuming out of market contracts with a long-term liability in excess of $2.3 billion.

53. The PEPCO Acquisition and the substantial liabilities incurred in connection therewith were done for the benefit of Southern.

54. In connection with the IPO and Spin-Off, Mirant entered into a number of separation agreements with Southern, including: (i) a Master Separation and Distribution

Agreement; (ii) a Transitional Services Agreement; (iii) an Indemnification and Insurance Matters Agreement; (iv) a Technology and Intellectual Property Ownership and License Agreement; (v) a Confidential Disclosure Agreement; (vi) an Employee Matters Agreement; (vii) a Tax Indemnification Agreement; and (viii) a Registration Rights Agreement (collectively, the "Separation Agreements").

55. The Separation Agreements obligated Mirant and various of its subsidiaries to commercially unreasonable separation obligations (the "Separation Obligations") that were made without arm's-length negotiation and without payment to Mirant of reasonably equivalent value including but not limited to:

(a) The obligation to indemnify Southern for the consequence of a potential determination by the Internal Revenue Service that the Spin-Off was not tax free;

(b) The obligation to transfer for no consideration, Mirant's interest in various valuable subsidiaries as hereinafter described;

(c) Purported releases of claims against Southern for its conduct prior to the Spin-Off; and

(d) Broad generalized indemnifications.

56. In furtherance of a plan to transfer Mirant subsidiaries to Southern for no consideration, Southern caused Mirant to make a dividend to Southern of one share of Series B Preferred Stock valued at $234.5 million (the "Series B Dividend"). Mirant received no value in exchange for the Series B Preferred Stock Dividend.

57. On September 26, 2000, Mirant launched the IPO, selling 66.7 million shares of common stock (19.7 percent of Mirant's issued and outstanding stock) at a price of $22 per share.

58. The IPO was completed on October 2, 2000 and generated net proceeds of $1.38 billion.

59. In March 2001, immediately prior to the intended Spin-Off, Southern caused Mirant to redeem Southern's one share of Series B Preferred Stock (the "Series B Redemption") in exchange for Mirant's interest in Southern Energy Holdco, Inc. ("New Holdco"), a Delaware holding company to which Mirant previously contributed its interest in SE Financing Capital Corporation ("SE Finance") and Southern Company Capital Funding, Inc. ("Capital Funding").

60. Mirant's interest in New Holdco was valued for book purposes at approximately $247.9 million at or around the time of the redemption.

61. Mirant had no valid obligation to redeem the Series B Preferred Stock and received no value for the transfer of its interest in New Holdco.

62. On April 2, 2001, Mirant announced that the Spin-Off of Mirant's shares was complete, with Southern shareholders receiving approximately 0.397614 shares of Mirant for each share of Southern common stock held as of the record date.

63. Immediately following the Spin-Off, Mirant began having liquidity problems.

64. On December 19, 2001, Moody's downgraded to below investment grade: Mirant; MAG; and Mirant Americas Energy Marketing, LP ("MAEM," then known as SCEM).

65. Moody's stated that it lowered Mirant's rating "to reflect expectations for moderating cash flows in light of the heavy debt burden" and that MAEM's and MAG's lower ratings reflected Mirant's ratings.

66. Upon the advice of Mirant's new auditors, Mirant restated its financial statements for the year 2000 through 2001 with significant reduction in earnings and equity position.

67. As of the Petition Date and this date, there is insufficient value in Mirant to satisfy the claims against it. Unsecured creditors, including trade, employees and bondholders, remain unpaid as a result of the transactions complained of herein. Many of these creditors hold claims that arose prior to the Spin-Off transaction.

68. On December 15, 2003, Southern filed Proofs of Claim Nos. 6296, 6297, 6298, 6299, 6300, 6301, 6302, 6306, 6315, 6316, 6317, 6318, 6319, 6325, 6326, 6327, 6328, 6329, 6330, 6331, 6332, 6333, 6334, 6335, 6336, 6337, 6338, 6339, 6340, 6341, 6342, 6343, 6349, 6350, 6351, 6352, 6353, 6354, 6355, 6356, 6357, 6358, 6359, 6360, 6361, 6362, 6363, 6364, 6365, 6366, 6386, 6387, 6388, 6391, 6392, 6393, 6394, 6395, 6396, 6397, 6398, 6399, 6400, 6401, 6402, 6403, 6404, 6405, 6455, 6456, 6457, 6458, 6459, 6460, 6461, 6462, 6463, 6464, 6465, 6466, 6467 and 6468 ("Original Southern Claims").

69. In addition, on December 15, 2003, Southern filed Proofs of Claim Nos. 6303 relating to a guaranty with Algonquin Gas Transmission Company (the "Algonquin Guaranty") and 6308 ("Algonquin Credit Support Fees Claim") against Mirant Canal, LLC ("Mirant Canal") relating to credit support fees for the Algonquin Guaranty for the time period from April 2001 through July 2003 (collectively the "Algonquin Claims").

70. In addition, on December 15, 2003, Southern filed Proofs of Claim Nos. 6310, 6311, 6312, 6313, 6314, 6320, 6321, 6322, 6323, 6324, 6344, 6345, 6346, 6347, 6348, 6367, 6368, 6369, 6370, 6371, 6372, 6373, 6374, 6375, 6376, 6377, 6378, 6379, 6380, 6381, 6382, 6383, 6384, 6385, 6389, 6390, 6406, 6407, 6408, 6409, 6410, 6411, 6412, 6413, 6414, 6415, 6416, 6417, 6418, 6419, 6420, 6421, 6422, 6423, 6424, 6425, 6426, 6427, 6428, 6429, 6430, 6431, 6432, 6433, 6434, 6435, 6436, 6437, 6438, 6439, 6440, 6441, 6442, 6443, 6444, 6445, 6446, 6447, 6448, 6449, 6450, 6451, 6452, 6453 and 6454 ("Mobile Energy Claims").

71. On October 17, 2004, the Debtors filed their Consolidated Omnibus Objections to the Original Southern Claims and the Mobile Energy Claims.

72. On November 30, 2004, Southern filed its first amended proofs of claim, by Proofs of Claim Nos. 8124, 8125, 8126, 8127, 8128, 8129, 8130, 8131, 8132, 8133, 8134, 8135, 8136, 8137, 8138, 8139, 8140, 8141, 8142, 8143, 8144, 8145, 8146, 8147, 8148, 8149, 8150, 8151, 8152, 8153, 8154, 8155, 8156, 8157, 8158, 8159, 8160, 8161, 8162, 8163, 8164, 8165, 8166, 8167, 8168, 8169, 8170, 8171, 8172, 8173, 8174, 8175, 8176, 8177, 8178, 8179, 8180, 8181, 8182, 8183, 8184, 8185, 8186, 8187, 8188, 8189, 8190, 8191, 8192, 8193, 8194, 8195, 8196, 8197, 8198, 8199, 8200, 8201, 8202, 8203, 8204 and 8205 (collectively, the "First Amended Southern Claims") against each of the Debtors. In the First Amended Southern Claims, Southern asserts, among other things, claims for indemnification for certain attorneys' fees and credit support fees.

73. On December 15, 2004, the Debtors filed their Amended and Restated Consolidated Omnibus Objection to the First Amended Southern Claims and the Algonquin Claims.

74. On February 28, 2005, Southern filed its second amended claims, by Proofs of Claim Nos. 8253, 8254, 8255, 8256, 8257, 8258, 8259, 8260, 8261, 8262, 8263, 8264, 8265, 8266, 8267, 8268, 8269, 8270, 8271, 8272, 8273, 8274, 8275, 8276, 8277, 8278, 8279, 8280, 8281, 8282, 8283, 8284, 8285, 8286, 8287, 8288, 8289, 8290, 8291, 8292, 8293, 8294, 8295, 8296, 8297, 8298, 8299, 8300, 8301, 8302, 8303, 8304, 8305, 8306, 8307, 8308, 8309, 8310, 8311, 8312, 8313, 8314, 8315, 8316, 8317, 8318, 8319, 8320, 8321, 8322, 8323, 8324, 8325, 8326, 8327, 8328, 8329, 8330, 8331, 8332, 8333 and 8334 (collectively, the "Second Amended Southern Claims," and together with the Original Southern Claims, the Algonquin Claims, and the First Amended Southern Claims, the "Southern Separation Agreements Claims") against each of the Debtors.

75. On May 12, 2005, the Debtors filed their Second Amended and Restated Omnibus Objections to the Second Amended Southern Claims.

76. On December 15, 2003, Southern filed its original proof of claim, by Proof of Claim No. 6307 (the "Original Guaranties Claim") covering six guaranty agreements issued by Southern and guaranteeing obligations of MAEM to each of the following: Avista Energy, Inc. ("Avista"); Abitibi-Consolidated, Inc. ("Abitibi"); Entergy Power Marketing Corporation ("Entergy"); Koch Energy Trading, Inc. ("Koch"); Enron Power Marketing, Inc. ("EPMI"); and Engage Energy US, L.P. ("Engage"). The six guaranty agreements are identified individually as follows:

Abitibi Guaranty: Guaranty dated April 27, 1999, by Southern to Abitibi.

Entergy Guaranty: Guaranty dated February 10, 1998, by Southern to Entergy.

Koch Guaranty: Guaranty dated April 18, 1997, by Southern to Koch, as amended.

Engage Guaranty: Guaranty dated May 11, 1998, by Southern to Engage.

EPMI Guaranty: Guaranty dated April 1, 1997, by Southern to EPMI and Enron Capital & Trade Resources Corp., as amended.

Avista Guaranty: Guaranty dated April 27, 1999, by Southern to Avista.

77. On November 30, 2004, Southern filed its first amended proof of claim, by Proof of Claim No. 8123 (the "First Amended Guaranties Claim," and together with the Original Guaranties Claim, the "Guaranties Claim").

78. On December 15, 2004, MAEM filed its Amended and Restated Objection to the Guaranties Claim.

79. At the time of the Filing, Debtors had unsecured creditors with filed and scheduled claims in excess of $242,372,030,697 (the "Creditors"). To date, a substantial number of the claims have been objected to on a variety of bases. The Debtors estimate that the actual amount of the asserted claims is approximately $10.2 billion.

80. At the time of the Filing, the largest portion of Creditors in both number of Creditors and value of claims had their domicile or extended their credit to Mirant or its subsidiaries from the State of New York and/or extended their credit pursuant to documents controlled by New York law (the "N.Y. Creditors").

81. The N.Y. Creditors had unsecured claims in excess of $500,000,000 that arise under written loan agreements, as amended from time to time, governed by the laws of New York.

82. The N.Y. Creditors extended credit to Debtors prior to the 1999 Advance Return and were unpaid Creditors of Debtors at all times from that date through and including the Filing Date.

83. Mirant, as debtor in possession, for the benefit of its substantially consolidated chapter 11 estate, and Plaintiffs, as their interests may appear, pursuant to

the provisions of section 544(b) of the Bankruptcy Code, hereby elect to enforce the rights of the N.Y. Creditors and other Creditors to avoid all conveyances and transfers that were fraudulent as to the rights of the N.Y. Creditors and other Creditors under the laws of the State of New York and any other applicable law, pursuant to each and every of the counts hereinafter alleged.

COUNT I – AVOIDANCE OF FRAUDULENT CONVEYANCES, FRAUDULENT TRANSFERS AND/OR ILLEGAL DIVIDENDS

84. Plaintiffs hereby reallege each and every allegation contained in paragraphs 1 through 83, inclusive.

85. Mirant did not receive fair consideration, or fair or reasonably equivalent value for the Series B Redemption, the Series B Dividend, the Separation Obligations, the 2000 Dividends, the 1999 Dividend and all other transfers made and obligations incurred to or for the benefit of Southern complained of herein (all such transfers and obligations except the 1999 Advance Return collectively referred to herein as the "Transfers").

86. Southern caused Mirant to engage in each of the Transfers with the actual intent to hinder, delay or defraud Creditors or future creditors of Mirant.

87. Alternatively, at the time of each of the Transfers,

(a) Mirant was, or was thereby rendered insolvent; or

(b) Southern and Mirant intended that Mirant would incur, or believed or reasonably should have believed that Mirant would incur, debts beyond its ability to pay as they became due; or

(c) Mirant was engaged or was about to engage in a business or transaction for which the remaining capital in its hands after each of the Transfers was unreasonably small and was engaged or was about to engage in a business or transaction

for which its remaining assets were unreasonably small in relation to the business or transaction.

88. Alternatively, all Transfers complained of herein were dividends made at a time when (i) Mirant's total assets did not exceed its total liabilities and (ii) the assets of Mirant remaining after the Transfer were not sufficient to pay all debts of Mirant as required by Delaware law.

WHEREFORE, Plaintiffs pray for the entry of an order declaring each of the Transfers to be a conveyance and/or transfer in fraud of the rights of Creditors under section 544(b) of the Bankruptcy Code and applicable state law and/or an unlawful dividend under 8 Del. C. §170 and awarding judgment against Southern and in favor of Plaintiffs for compensatory and punitive damages, together with pre- and post-judgment interest, costs and attorneys' fees.

COUNT II – RECHARACTERIZATION OF THE ADVANCES AS EQUITY AND AVOIDANCE OF MIRANT'S REPAYMENT OF THE ADVANCES AND ACCRUED INTEREST

89. Plaintiffs hereby reallege each and every allegation contained in paragraphs 1 through 83, inclusive.

90. The Advances were intended by Southern and Mirant to be an equity investment by Southern in Mirant.

91. To the extent the Advances have been characterized by Southern as debt, the Advances should be recharacterized from debt to equity because:

(a) On information and belief, no certificates were issued evidencing the alleged indebtedness;

(b) There was a complete absence of a fixed maturity date for the Advances;

(c) There was no designation or plan for the source of repayment of the Advances;

(d) On information and belief, there was no document or other agreement enabling Southern to enforce repayment of the Advances and any interest accrued thereon;

(e) Southern participated in the management of Mirant and in particular participated in the management decisions relative to the use of the Advances;

(f) The Advances were treated separately from amounts due regular corporate creditors of Mirant and were frequently reported on earnings reports as if they were equity;

(g) Southern and Mirant intended the Advances to be an equity investment by Southern in Mirant;

(h) Mirant, MAG and/or their subsidiaries were thinly or inadequately capitalized at the time of the Advances;

(i) There were no post-IPO Advances that would differentiate the identity of interest between creditor and stockholder;

(j) Although interest was accrued on the books of Southern, there was no agreement regarding the interest rate, no understanding for the source of payment of interest, and interest was not expensed in any public earnings reports on the theory that the Advances were equity and were to be treated as equity;

(k) Mirant and/or its subsidiaries were unable to obtain loans for the Recent Acquisitions on a project finance basis and were therefore required to look to Southern for the Advances;

(l) The Advances were almost always used to finance the acquisition of capital assets; and

(m) Mirant did not repay the Advances at the end of 1997 or the end of 1998 as had been done in prior years and did not seek a postponement of the repayment of the Advances.

92. To the extent the Advances are recharacterized as equity, Southern caused Mirant, MAG and/or their subsidiaries to make the 1999 Advance Return with the actual intent to hinder, delay and defraud their Creditors and future creditors.

93. Alternatively, to the extent the Advances are recharacterized as equity, Mirant, MAG and/or their subsidiaries did not receive fair consideration and did not receive fair or reasonably equivalent value for the 1999 Advance Return.

94. At the time of the 1999 Advance Return,

(a) Mirant, MAG and/or their subsidiaries were, or were thereby rendered insolvent; or

(b) Southern and Mirant intended that Mirant, MAG and/or their subsidiaries would incur, or believed or reasonably should have believed that Mirant, MAG and/or their subsidiaries would incur, debts beyond its ability to pay as they became due; or

(c) Mirant, MAG and/or their subsidiaries were engaged or were about to engage in a business or transaction for which the remaining capital in their hands after the repayment of the Advances was unreasonably small and were engaged or were about to engage in a business or a transaction for which their remaining assets were unreasonably small in relation to the business or transaction.

WHEREFORE, Plaintiffs pray for the entry of an order declaring the Advances to be recharacterized as equity, declaring the 1999 Advance Return to be a conveyance or transfer in fraud of the rights of Creditors under section 544(b) of the Bankruptcy Code and applicable state law and/or an unlawful dividend under 8 Del. C. §170, and entering judgment against Southern and in favor of Plaintiffs in the amount of $1,034,800,000, together with punitive damages pre- and post-judgment interest, costs and attorneys' fees.

COUNT III – MIRANT AS THE ALTER EGO OF SOUTHERN

95. Plaintiffs hereby reallege each and every allegation contained in paragraphs 1 through 83, inclusive.

96. Mirant, MAG and their respective subsidiaries (the "Mirant Entities"), together with Southern, operated as a single economic entity in that:

(a) The Mirant Entities were never adequately capitalized to undertake any of their various business purposes;

(b) The Mirant Entities were insolvent at the times of the Transfers described in Count I, and at the time of the 1999 Advance Return;

(c) The Mirant Entities' accounting, finance and legal functions were performed by Southern;

(d) The Mirant Entities' business records were kept by Southern;

(e) The Mirant Entities' were represented by the same outside counsel as Southern;

(f) The Mirant Entities' cash needs were met by Southern through the Advances without formal documentation, repayment commitments or designation as equity;

(g) Southern siphoned off Mirant's net worth by causing the Mirant Entities to borrow money to pay dividends to Southern, and to make the 1999 Advance Return of funds that were intended to be equity investments by Southern; and

(h) Southern operated the Mirant Entities as a façade for Southern causing it to form financing subsidiaries that borrowed money to be relent to Southern, to enter into leasing transactions that provided tax benefits only to Southern and to enter into the PEPCO Acquisition solely to assure Southern of favorable tax treatment of its spin-off of Mirant.

97. Southern exercised adverse domination and control over the Mirant Entities.

98. Southern, through its adverse domination and control of the Mirant Entities, prevented them from retaining independent counsel in connection with all transactions relating to the IPO and Spin-Off and thereby deprived them of independent legal advice regarding their duties to creditors.

99. The lack of independent legal advice created a fundamental injustice or unfairness that permeated all of the activities of the Mirant Entities related to the IPO and Spin-Off in that such transactions were conducted solely for the benefit of Southern and without regard to their impact on the Mirant Entities and the Creditors.

WHEREFORE, Plaintiffs pray for the entry of an order declaring that the Mirant Entities were the alter egos of Southern, and that Southern is liable to the Creditors to the full extent of any liability of the Mirant Entities to said Creditors.

COUNT IV – BREACH OF FIDUCIARY DUTY INDUCED BY SOUTHERN

100. Plaintiffs hereby reallege each and every allegation contained in paragraphs 1 through 83, inclusive.

101. At the times of the Transfers described in Count I, and at the time of the 1999 Advance Return, Mirant, MAG and their respective subsidiaries (the "Mirant Entities") were insolvent or in the vicinity or zone of insolvency, such that Mirant owed a fiduciary duty of loyalty and good faith to the Creditors (the "Duty of Loyalty").

102. At the times of the Transfers and the 1999 Advance Return, Southern adversely dominated and controlled the Mirant Entities, their boards of directors, officers and senior management.

103. Southern caused the Mirant Entities to make the Transfers and to make the 1999 Advance Return for its own pecuniary benefit and in complete disregard of the interests of Creditors.

104. The Transfers and 1999 Advance Return were a breach of the Mirant Entities' duty of loyalty to Creditors because the consideration received by the Mirant Entities was unfair and Southern deprived the Mirant Entities of independent legal counsel to assist in the process of evaluating the Transfers and the 1999 Advance Return.

105. Southern knew or should have known that the Transfers and the 1999 Advance Return would cause the Mirant Entities to breach their duty of loyalty to Creditors.

106. Southern knew or should have known that the Transfers and the 1999 Advance Return would inevitably lead to the bankruptcy of the Mirant Entities and the unsatisfied claims of Creditors.

107. The Transfers and the 1999 Advance Return were individually and collectively the direct and proximate cause of the bankruptcy of the Mirant Entities and loss to their substantially consolidated bankruptcy estates in excess of $2 billion dollars.

WHEREFORE, Plaintiff prays for the entry of an Order declaring that Southern induced the Mirant Entities to breach their duty of loyalty to Creditors and entering judgment in favor of Plaintiffs and against Southern for the full amount of the Transfers and the 1999 Advance Return, together with pre- and post-judgment interest, costs and attorneys' fees.

COUNT V – OBJECTION TO SOUTHERN'S CLAIMS

108. Plaintiffs hereby reallege each and every allegation contained in paragraphs 1 through 83, inclusive.

109. Southern has filed the Southern Separation Agreements Claims against the Debtors and their estates, asserting total claims of more than $48 million.

110. Southern has filed the Guaranties Claim against MAEM and its estate, asserting a total claim of more than $22 million.

111. Plaintiffs hereby object to any claim by Southern against the Debtors and their estates, pursuant to section 502(d) of the Bankruptcy Code, as property that is recoverable against Southern, for the reasons set forth herein.

112. Plaintiffs further object to all amounts asserted by Southern in the Southern Separation Agreements Claims and the Guaranties Claim because no amounts are due and owing Southern.

113. Plaintiffs further object to all amounts asserted by Southern in the Southern Separation Agreements Claims and the Guaranties Claim because the agreements by which the obligations arise were fraudulent and illegal transfers and obligations and are voidable for the grounds set forth in this Complaint.

WHEREFORE, Plaintiffs pray for the entry of an order sustaining the objections to the Southern Separation Agreements Claims and the Guaranties Claim.

COUNT VI – EQUITABLE SUBORDINATION OF SOUTHERN'S CLAIMS

114. Plaintiffs hereby reallege each and every allegation contained in paragraphs 1 through 83, inclusive.

115. The initial capitalization of Mirant, MAG and their respective subsidiaries (the "Mirant Entities") and their substantially consolidated subsidiaries was inadequate, and Southern was responsible for the undercapitalization.

116. Southern's improper adverse domination and control over the structuring of the Spin-Off created a situation in which the Mirant Entities had no voice in their capital structure, the Separation Obligations, the Transfers described in Count I or the 1999 Advance Return resulting in the over-leveraging and under-capitalization of the Mirant Entities.

117. The actions of Southern complained of herein constituted inequitable misconduct that harmed Creditors and/or unfairly benefited Southern. This inequitable misconduct is attributable by law to Southern.

118. It was inequitable for Southern, given Southern's knowledge of the Mirant Entities' financial condition, to allow over $2 billion dollars in value to be upstreamed. Southern benefited by receiving well more than $2 billion in cash and benefits from the various transactions alleged herein.

119. To avoid unfairness, Southern should not be permitted to retain the cash or other proceeds from those transactions, nor should Southern be permitted to receive any distribution on any of its claims against the Debtors before payment in full is made to all non-defendant Creditors.

WHEREFORE, Plaintiffs prays for the entry of an order equitably subordinating Southern Separation Agreements Claims and the Guaranties Claims to the claims of all other Creditors.

Respectfully submitted,

HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
(214) 651-5000

By: /s/ Robin E. Phelan
Robin E. Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Ian T. Peck
State Bar No. 240013306

-and-

Thomas E Lauria
State Bar No. 11998025
Charles C. Kline
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, Florida 33131
(305) 371-2700

ATTORNEYS FOR MIRANT CORPORATION, Et. Al.

-and-

ANDREWS KURTH LLP
600 Travis, Suite 4200
Houston, Texas 75201
Telephone: (713) 220-4200
Facsimile: (713) 220-4285

By: /s/ John A. Lee
John A. Lee
State Bar No. 12125400
Robin Russell
State Bar No. 17424001

ATTORNEYS FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MIRANT CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a true and correct copy of the foregoing to Bankruptcy Services, LLC and directed them to serve all persons listed below via email, facsimile or overnight courier, on the 6th day of July, 2005:

Evelyn H. Biery
Sharon M. Beausoleil-Mayer
Fulbright & Jaworski, LLP
1301 McKinney, Suite 5100
Houston, TX 77010-3095

Richard A. Chesley
Jones Day
77 West Wacker
Chicago, IL 60601-1692

Eric J. Taube
Mark C. Taylor
Hohmann, Taube & Summers, L.L.P.
100 Congress Avenue, Suite 1600
Austin, TX 78701

Deborah D. Williamson
Thomas Rice
Cox Smith Matthews Incorporated
112 East Pecan St., Suite 1800
San Antonio, TX 78205-1505

Howard L. Siegel
Brown Rudnick Berlack Israels LLP
City Place I, 185 Asylum Street
Hartford, CT 06103-3401

Bruce R. Zirinsky
Gregory Petrick
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281

William R. Baldiga
Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, MA 02111

Jason S. Brookner
Matt Wilcox
Andrews & Kurth, L.L.P.
1717 Main Street, Suite 3700
Dallas, TX 75201

Edward S. Weisfelner
Leslie H. Scharf
Brown Rudnick Berlack Israels LLP
Seven Times Square
New York, NY 10036

Paul N. Silverstein
Andrews & Kurth, L.L.P.
450 Lexington Avenue
New York, NY 10017

Fredric Sosnick
Scott C. Shelley
Shearman & Sterling
599 Lexington Avenue
New York, NY 10022-6069

William K. Snyder
Corporate Revitalization Partners
13355 Noel Road
Suite 1825
Dallas, TX 75240

Richard M. Roberson
Michael P. Cooley
Gardere Wynne Sewell LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201

George McElreath
Office of the United States Trustee
1100 Commerce Street
Room 976
Dallas, Texas 75242

/s/ Robin E. Phelan