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COUNSEL TO CERTAIN MIRANT SHAREHOLDERS

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

IN RE:)	Chapter 11
)	
MIRANT CORPORATION, <i>et al.</i>,)	Case No. 03-46590-DML-11
)	
Debtors.)	Jointly Administered
)	
)	

**FIRST AND FINAL FEE ENHANCEMENT APPLICATION
OF FRANK SMITH, KENT KOERPER, PETER DEPAVLOFF,
BART ENGRAM, MARY LEIGHT AND L. MATT WILSON
ON BEHALF OF THE WILSON LAW FIRM, P.C.**

COME NOW, FRANK SMITH, KENT KOERPER, PETER DEPAVLOFF, BART ENGRAM, MARY LEIGHT AND L. MATT WILSON, (the “Wilson Shareholders” or the “Applicant”) by and through their undersigned counsel, The Wilson Law Firm, P.C. (“Wilson”), who hereby submit this their First and Final Fee Enhancement Application for Allowance and Payment of a Fee Enhancement (the “Bonus Application”) to The Wilson Law Firm, P.C. (“Wilson”). In support of their Bonus Application, the Applicants’ respectfully show as follows:

**FIRST AND FINAL FEE ENHANCEMENT APPLICATION OF FRANK SMITH,
KENT KOERPER, PETER DEPAVLOFF, BART ENGRAM, MARY LEIGHT AND
L. MATT WILSON ON BEHALF OF THE WILSON LAW FIRM, P.C.**

RELIEF REQUESTED

While the Applicant's First and Final Fee Application for Allowance of Compensation for Fees and Reimbursement of Expenses of The Wilson Law Firm, P.C. (the "Fee Application"), which is incorporated herein by this reference, requests final approval of hourly fees for that portion of the entire case beginning September 18, 2003 through the Effective Date of the Plan, January 3, 2006 (the "Application Period"), expenses during the Application Period, and earned contingency success fees under 11 U.S.C. § 503, this Fee Enhancement Application seeks an upward adjustment of the lodestar of Wilson's hourly fees in an amount equal to the earned contingency success fee for Wilson's efforts in these Chapter 11 cases.

This Fee Enhancement Application seeks approval of a fee enhancement in the amount of \$6.45 Million (the "Fee Enhancement") as an alternative theory of recovery to that set forth in the Fee Application, filed simultaneously herewith. Wilson does not seek double payments.

In support of both the Fee Application and Fee Enhancement Application, the Wilson Shareholders have filed their Brief in Support of their Application for Allowance of Compensation for Fees and Reimbursement of Expenses (the "Brief"). Not only does Wilson meet the standards for an award under either Application, Wilson meets the standards for an award under both.

Accordingly, the Court should approve the Fee Application, including both the lodestar hourly rates and expenses, and the earned contingency success fee, or, in addition to the approval of the lodestar hourly rates and expenses, approve this Fee Enhancement Application, finding that an upward adjustment of Wilson's lodestar hourly rates in the aggregate amount of \$6.45 Million is appropriate.

SUMMARY OF ARGUMENT

Wilson's efforts made a substantial contribution towards the final result achieved in this case, 100% + payment to all creditors, and a \$645,000,000 recovery by equity. Such a result must simply be recognized as being rare and exceptional under any standard.

In late 2004 and early 2005, Wilson and the Phoenix Partners, both former members of the Equity Committee, independently recognized the need to help the Equity Committee, for reasons which are not relevant nor necessary to detail. In order to provide a fully public and transparent forum, Wilson established a website presence open to all Mirant shareholders, providing representation open to diverse viewpoints not otherwise available to any public shareholder.

Chapter 11 Bankruptcy is designed to support consensual reorganization, which the Equity Committee failed to achieve prior to the Debtor's publication of its January 19, 2005 Initial Plan and its March 25, 2005, First Amended Plan.

Prior to the Valuation Hearings, Wilson offered to cooperate and coordinate presentations with the Equity Committee, as confirmed by the March 13 & 14 emails, attached to and incorporated into the Brief as Exhibit "A". These offers were declined.

At the Valuation Hearings, Wilson worked largely alone, cross examining witnesses last, but bringing forth important items of evidence, and building significant arguments, that ultimately were incorporated by the Court into its two Valuation Letter Rulings.

Wilson's specific contributions at the valuation hearing included the following:

(1) Providing public access, information, copies of exhibits and expert reports, and representation for all shareholders, none of whom were turned away, shut out, ignored, or otherwise

silenced;

(2) Highlighting at least eight very significant holes in the other parties' valuations, many of which were not argued by any other equity participant, thereby contributing to the impeachment of the debtor, the creditors, and their experts;

(3) Proving positive equity value via a dollar per kilowatt valuation method, which no other equity participant sought to utilize;

(4) Proving positive equity value via a share price to earning ratio method, which no other equity participant sought to utilize;

(5) Pointing out on cross examination the fallacy of the Debtor's negative \$25 million valuation of Lovett;

(6) Pointing out on cross examination the fallacy of the Debtor's positions regarding international restricted cash;

(7) Directly attacking the opposing experts' 40% tax rate assumption, providing the evidence of the Debtor's very much lower historical tax rates, IRC Section 199 deduction, and arguing that the NOL could only be properly valued under a discounted cash flow analysis by properly utilizing it, and all other tax attributes as determined by the Debtor's independent CPA's, in the business plan. These were exceptionally important items of evidence and arguments which were not identified or utilized by any other equity party until advanced and explained by Wilson. Further, these were directly reflected in the Court's Valuation Letter Rulings, which would have resulted in an enormous, \$1-billion-plus increase in the valuation calculations;

(8) Making the only *Till* motion, seeking judgment as a matter of law, which, while

ultimately denied, became a focal point for the entire *Till* debate. More importantly, Wilson's *Till* motion overhung the negotiations, only rendered moot by the term sheet agreement which placed equity clearly "in the money";

(9) Introducing evidence and argued for the lowest costs of capital, independently and as an adjunct to the *Till* arguments, also reflected in the Valuation Letter Rulings; and

(10) Arguing evidence indicating that positive equity value could be inferred from the debtors' ability to pay in full all current interest at either contract or *Till* implied rates.

The importance of these contributions is directly reflected in the Court's June 30 and July 26, 2005 Valuation Letter Rulings, which clearly reflect many of the foregoing matters in rulings which are very favorable to equity. For example, the Court's treatment of tax projections, reflective of Wilson's evidence and arguments, transformed that issue from a much small dollar dispute about how best to value the NOL into a comprehensive tax solution which would lower the effective tax rate, *even before use of the NOL*, thereby increasing the valuation by as much as 18% - at least a billion dollars and possibly much more.

Another example is the Court's ruling that the cost of equity should be calculated between 12% to 16.6%. This rate constituted a reduction entirely consistent with Wilson's arguments and evidence, while rejecting the Equity Committee's own expert, who urged higher rates for the costs of equity. This reduction in the cost of equity is very significant, because it brings down the entire WACC, substantially raising the debtor's overall valuation under the discounted cash flow method.

Similarly, the Court carried Wilson's *Till* motion, thereby maintaining it as leverage over the entire subsequent settlement negotiations.

Wilson's contributions thereby clearly helped "set the stage" for the subsequent settlement negotiations which lead to the Term Sheet Agreement, ultimately incorporated into the final Plan. While Wilson does not claim any contribution related to the actual negotiations, it is clear that his many contributions prior to that time, as reflected in the Court's Valuation Letter Rulings, and by the continued pendency of Wilson's *Till* motion, provided at least some of the leverage to reach the Term Sheet Agreement. Further, after the conclusion of the valuation hearings, Wilson participated in the VIC process, and thereafter, by continuing to advocate for higher equity recovery, raising public objections on behalf of equity interests, as to both the disclosure statement hearing and confirmation.

Accordingly, the Court should approve the Fee Application, including both the lodestar hourly rates and expenses, and the earned contingency success fee, or, in addition to the approval of the lodestar hourly rates and expenses, approve this Fee Enhancement Application, finding that an upward adjustment of Wilson's lodestar hourly rates in the aggregate amount of \$6.45 Million is appropriate.

ARGUMENT AND CITATIONS TO AUTHORITY

A. Standard For Upward Adjustment of A Fee.

"While the lodestar calculation may reflect the difficulty of the resolution of the issues involved in a case...the lodestar figure alone does not differentiate between the case taken on a full retainer and a case in which an attorney spends many hours over a period of months or years with no assurance of any pay if the suit is successful." *In re Elmendorf Board Corp.*, 57 B.R. 580, 587 (D. N.H. 1986). Granting a fee enhancement is entirely in the Court's discretion, "primarily because

the bankruptcy judge is in the best position to determine the reasonableness of a proposed fee.” *In re Farah*, 141 B.R. 920, 923 (Bankr.W.D.Tex.1992).

The Fifth Circuit has “recognized the need for an adjustment to a fee for extraordinary circumstances when the lodestar analysis simply will not fairly compensate the professional, given all the surrounding circumstances.” *In re Nucentrix Broadband Networks, Inc.*, 314 B.R. 574, 578 (Bankr. N.D.Tex. 2004). “[U]pward adjustments of the lodestar are permissible, but are reserved for those few cases which are ‘rare and exceptional’.” *Id.* citing *Transamerican Natural Gas Corp. v. Zapata P’ship, Ltd.*, 12 F.3d 480, 488 (5th Cir. 1994); *Lawler v. Teofan (In re Lawler)*, 807 F.2d 1207, 1213-14 (5th Cir. 1987).

The factors considered in whether a case is “rare and exceptional” vary among circuits. Compare *in re Manoa Finance Co., Inc.*, 853 F.2d 687 (9th Cir. 1988) (requiring an applicant “come forward with specific evidence showing why the results obtained were not reflected in either his standard hourly rate or the number of hours allowed. He must also show that the bonus is necessary to make the award commensurate with compensation for comparable nonbankruptcy services...”); with *in re Public Service Co. Of New Hampshire*, 160 B.R. 404, 420 (D. N.H. 1993) (requiring a “specific showing of exceptional activity *without which* the estate likely would not have achieved the results obtained by other specialists of like background and rates, or exceptional activity *beyond that* reasonably contemplated at the time of the original retention...”)

In this circuit, after the lodestar analysis is complete, “the Court then adjusts the lodestar upward or downward depending upon the respective weights of the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).” *Fender v. Transamerican*

Natural Gas Corp., 12 F.3d 480, 487 (5th Cir. 1994). Although the lodestar may be adjusted according to a *Johnson* factor only if that factor is not already taken into account by the lodestar, *Fender*, 12 F.3d at 487, a consistent consideration is the concept that the results obtained are out of the ordinary, unusual, or rare, and that the quality of representation was superior to that which one would reasonably expect in light of the fees claimed. *See, e.g., In re Farah*, 141 B.R. at 924-5 (analyzing prior Fifth Circuit fee enhancement authority). Stated differently, “whether the circumstances of a case are so ‘exceptional and rare’ as to warrant a fee enhancement, the ‘results obtained’ factor in the lodestar analysis is one of the more significant factors.” *In re Nucentrix Broadband Networks, Inc.*, 314 B.R. at 578; *In re Anderson*, 936 F.2d 199, 204 (5th Cir. 1991); *Rose Pass Mines, Inc. v. Howard*, 615 F.2d 1088, 1090 (5th Cir. 1980); *Wolf v. Frank*, 555 F.2d 1213, 1218 (5th Cir. 1977). Further, “[t]he lodestar may be increased based on the contingent nature of the case after evaluation of the following factors: 1) analysis of the plaintiff’s burden; 2) risks assumed in developing the case; and 3) the delay in receipt of payment for services rendered.” *In re Farah*, 141 B.R. at 926 (citing *Graves v. Barnes*, 700 F.2d 220, 222 (5th Cir. 1983)).

B. The Johnson Factors.

As more fully discussed in this Applicant’s Brief and Fee Application, Wilson’s activities and exceptional contributions satisfy each of the factors identified in the prior 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*, 488 F.2d 714. In summary, the Applicants provide the following discussion of each factor, although the “results

obtained” factor is discussed last.

(1) Time And Labor Required: As set forth in the detailed time records, the lodestar fee is \$686,473.25, as set forth in the Fee Application and more fully described in the Fee Summary and the detailed statement of its fees and expenses submitted to the Fee Review Committee. The amount of time spent, and the hourly rates of The Wilson Law Firm, P.C. lawyers, are both entirely reasonable when compared to the other parties who also prepared for and participated in the Valuation Hearing.

(2) Novelty And Difficulty Of Issues: This may well be the largest Bankruptcy case to have ever achieved a 100% + recovery for creditors and some substantial recovery for existing equity. Both the Debtor and the Creditors asserted, for over 2-1/2 years, that “equity never recovers” and “equity is not in the money” with valuations which placed equity \$2.5 to \$3.0 billion out of the money. Both the Debtor and the Creditors were operating with apparently unlimited budgets, but with closed doors, so that equity was not even afforded the opportunity to see the Debtor’s expert report prior to the creation of its own. The valuation hearing were long, with many exhibits, involving complicated issues, including fuel forecasting, capacity pricing, taxes, diverse foreign and domestic assets, complicated corporate structures, in a virtually brand new industrial sector. Many other difficulties warrant a fee increase based upon this factor.

(3) The Skill Required To Perform The Legal Services Properly: Wilson was required to cross examine experienced and seasoned professional experts witnesses, a most difficult and challenging task, in order to create a record supporting his arguments. Yet Wilson was able to present each of the points of evidence set forth in the prior section, laying the foundation for each

of the corresponding arguments, many of which clearly influenced the Court in its two Valuation Letter Rulings. Wilson's contributions in this regard reflect the highest levels of professional skill and diligence which clearly justifies a substantial fee enhancement.

(4) Preclusion From Other Employment: Wilson's commitment to the Mirant shareholders required that The Wilson Law Firm, P.C. refuse many other new clients and projects from approximately March of 2005 for the remainder of that year, and as well delayed a number of other litigation and dispute resolution projects, further justifying the fee enhancement sought herein.

(5) Customary Fees: As is demonstrated by the fee provisions described by The Wilson Law Firm, P.C. on its website, and confirmed by both the fee application of the Phoenix Parties and that submitted on behalf of the Peter J. Solomon Company, it is customary for The Wilson Law Firm, P.C., and for the attorneys and other advisors representing equity constituents to request and obtain a fee enhancements in order to induce quality legal representation of such interests. Therefore, the customary fee consideration also supports the award of the fee enhancement requested herein.

(6) Fixed Or Contingent Fees: The terms of the Wilson Shareholder's Fee engagement, and therefore the fee expectations of these attorneys, are as set forth on The Wilson Law Firm, P.C.'s website for Mirant Shareholders, which is consistent with the fee enhancement sought by this application. Because The Wilson Law Firm, P.C. undertook the substantial risk that there might be a finding of no equity, and therefore no fee award at all, its fees were and remain essentially contingent in nature, still being subject to the Court's approval process even after this tremendous recovery in favor of equity.

(7) Time Limitations Imposed By Circumstances: The Valuation Hearings, originally

scheduled for only 3 days, actually required 29 days of hearing, over nearly three months. The schedule for this case took absolute priority over every other matter, circumstances which also support and justify the fee enhancement sought.

(8) Experience, Reputation And Ability of the Attorneys: As established by both the various resumes attached to the Fee Application as Exhibit “5”, and by the various Affidavits of other counsel attached to the Fee Application as Exhibit “6”, The Wilson Law Firm, P.C., L. Matt Wilson (A-V rated) and each of its associate attorneys enjoys excellent personal and professional reputations, accepting assignments almost exclusively by professional referral, even to the point of actually being the “lawyer’s lawyer” by their representation of both large and small law firms. This factor, while somewhat nebulous in a case of this magnitude involving many of this country’s largest law firms, is satisfied in that the experience, reputation and ability of these attorneys supports the fee enhancement.

(9) The Undesirability Of These Cases: While both L. Matt Wilson and Phaeton International/Phoenix Partners were both initial members of the Equity Committee who later decided that their direct participation was necessary, the important fact worth noting is that no other law firm volunteered to provide any level of public, transparent, representation open to all Mirant shareholders. The Brown, Rudnick firm represented the Official Equity Committee, which was comprised of only four shareholders, and which essentially, and perhaps necessarily, operated without any public reporting, transparency, or open participation by any other shareholders. By comparison, The Wilson Law Firm, P.C., operated so openly that all of the various Valuation parties, and the Examiner, regularly reviewed its activities, even requesting that specified documents be posted on its public.

As a result, The Wilson Law Firm, P.C. suffered both public criticism and insult on the various public message boards and in the press, but nevertheless advanced its time and its money for expenses to provide a voice for all public shareholders, none of whom were turned away, forced off of any committee, or silenced. The lack of any similar alternative representation is compelling evidence that The Wilson Law Firm, P.C. provided service which was otherwise unavailable thereby further justifying the full fee enhancement sought by this Bonus Application.

(10) The Nature And Length Of Professional Relationship With Client: The public website based representation of all interested shareholders, responding to suggestions, comments, ideas, and criticisms, holding periodic open meetings, involving both shareholders who had committed by becoming clients, shareholders who failed to commit as clients, and anyone else who wished to participate, all represented a unique method of encouraging public participation and transparency upholding and furthering core interests of The Code. Because of the diverse nature of public shareholders, there were few prior relationships with the shareholder who ultimately signed up and agreed to be clients of The Wilson Law Firm, P.C. and there is little opportunity or likelihood for future client relations.

(11) Awards In Similar Cases: The fee enhancements sought herein will result in a total fee that is entirely commensurate with the fees already paid to many of the valuation parties and the fees sought by both the Phoenix Parties and Peter J. Solomon Company. Further, the total enhancement sought is reasonable and consistent based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases under similar circumstances.

(12) Results Achieved: As stated herein above, *supra* at § A, “[i]n determining whether the

circumstances of a case are so ‘exceptional and rare’ as to warrant a fee enhancement, the ‘results obtained’ factor in the lodestar analysis is one of the more significant factors.” *In re Nucentrix Broadband Networks, Inc.*, 314 B.R. at 578, see also *In re Farah*, 141 B.R. 920, 925 (Bankr.W.D.Tex. 1992), see also *In re Anderson*, 936 F.2d 199, 204 (5th Cir. 1991). In *Nucentrix*, the Court awarded a fee enhancement to a law firm for its rare and exceptional results in assisting debtors in selling assets for three times the original asset purchase bid of \$15,000,000, resulting in a 100% payout to unsecured creditors and a significant equity return. *In re Nucentrix Broadband Networks, Inc.*, 314 B.R. at 578. The results obtained by the efforts of The Wilson Law Firm, P.C. in this case greatly exceed those of the firm in *Nucentrix*.

First, the results achieved on behalf of the Debtor and all parties in interest can only be described as being rare and extraordinary. The consensual Plan has now paid all creditors not less than 100% of their principle plus accrued interest. The Class 3 Creditors have been paid an additional substantial premium, exactly as Wilson predicted in his objections to Confirmation; specifically, the \$27.50 February 3, 2006 closing price of new Mirant shares, times the 271,860,000 shares awarded to Class 3 creditors (300,000,000 x 90.62%), confirms that they have received a market value of \$7.4 Billion dollars, compared to their \$6.4 Billion total of principal and accrued interest. As the Court recently observed, this is a fine result in one of the largest bankruptcy cases in history.

Second, the results for the previous equity shareholders also reflects a rare and extraordinary recovery, particularly compared to the zero recovery proposed by the Debtors’ Initial Plan and First Amended Plan. On March 31, 2005, after the Debtor had announced its Initial Plan and First

Amended Plan, and before the start of the valuation hearings, Mirant Common stock closed at \$0.285 per share, reflecting the market's very faint hope of some small recovery. There were approximately 405 Million shares reported outstanding, reflecting a the total market value of Mirant's equity at only \$115,425,000.

According to the terms of the Plan, as confirmed by Mirant December 15, 2005 SEC Form 8-K, existing Mirant shareholders received 10,980,000 New Mirant shares and 35,294,118 New Mirant Series A Warrants. On February 3, 2006, thirty days after the effective date of the Plan, the new Mirant common stock closed at \$27.50 per share; the Mirant Series A Warrants closed at \$13.00 per warrant. Based upon those two publicly traded components, shareholders of New Mirant enjoyed a total value of \$760,772,000. This represents an increase in value to the existing Mirant shareholders of at least \$645,527,000, not including the value of the litigation fund.

This \$645,527,000 increase in value represents the most important factor for the Court to consider and should fully justify the fee enhancement sought. The amount sought is only 1% of such an amount. Further, such an award will not be taxed to the former shareholders, but taxed primarily to the Class 3 creditors who have been overpaid.

Fundamentally, as stated by the court in *in re Elmendorf Board Corp.*, where counsel involved in the case could have proceeded with the minimal plan first proposed, under which their administrative fees and expenses at least would have been paid, but "chose instead to wage a vigorous battle against various parties to force negotiation of a plan that ultimately resulted in pay-out of all general creditors [and, in this case, resulted in a win for equity]...[i]f the bankruptcy court is going to have the services of attorneys who will perform in that fashion it must recognize in those

cases...that such attorneys should be rewarded commensurate with the type of compensation they would seek in the nonbankruptcy world for similar services.” *Id.*, at 586. The type of enhancement is such compensation, and should be awarded for Wilson’s efforts in this case.

CONCLUSION

The Court should approve the Fee Application, including both the lodestar hourly rates and expenses, and the earned contingency success fee, or, in addition to the approval of the lodestar hourly rates and expenses, approve this Fee Enhancement Application, finding that an upward adjustment of Wilson’s lodestar hourly rates in the aggregate amount of \$6.45 Million is appropriate.

WHEREFORE, PREMISES CONSIDERED, the Applicant respectfully requests that the Court:

- a. Grant final approval of a fee enhancement in the amount of 6,450,000.00;
- b. Approve and direct the Debtors to pay to the Applicant the foregoing amount, and,
- c. Grant the Applicant such other and further relief as is just.

RESPECTFULLY SUBMITTED this 28th day of February, 2006.

THE WILSON LAW FIRM, P.C.

/s/ L. Matt Wilson
L. MATT WILSON, COUNSEL TO
CERTAIN MIRANT SHAREHOLDERS

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**FIRST AND FINAL FEE ENHANCEMENT APPLICATION OF FRANK SMITH,
KENT KOERPER, PETER DEPAVLOFF, BART ENGRAM, MARY LEIGHT AND
L. MATT WILSON ON BEHALF OF THE WILSON LAW FIRM, P.C.**

CERTIFICATION OF CERTIFYING PROFESSIONAL

The undersigned hereby certifies that he has been designated by these Certain Mirant Shareholders as the Certifying Professional with respect to the Bonus Application, and that (a) he has read the Bonus 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 The Wilson Law Firm, P.C. and generally accepted by The Wilson Law Firm, P.C.'s other clients.

The certifying professional certifies under penalty of perjury that the information contained in the Fee Application and the foregoing statements are true and correct to the best of his knowledge.

/s/ L. Matt Wilson
L. MATT WILSON, COUNSEL TO
CERTAIN MIRANT SHAREHOLDERS

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon the persons listed below via electronic mail on the 28th day of February, 2006.

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