

3. The Court hereby approves and confirms the Settlement embodied in the Agreement as being a fair, reasonable, and adequate settlement and compromise of this Action, adopts the Agreement as its judgment, and orders that the Agreement shall be herewith effective, binding, and enforced according to its terms and conditions.

4. The Court determines that Plaintiff is asserting, among others, claims on behalf of the Plan to recover losses alleged to have occurred as a result of a breach of fiduciary duty pursuant to ERISA § 502(a)(2). See *Mass Mutual Life Ins Co v Russell*, 473 U.S. 134 (1985).

5. The Court determines that the Settlement, which includes the payment of \$15 million by the Southern Defendants' applicable fiduciary liability insurance carriers, has been negotiated vigorously and at arm's length by Plaintiff and Class Counsel, and further finds that, at all times, Plaintiff has acted independently and that his interests are identical to the interests of the Plan and the Settlement Class. The Court further finds that the Settlement arises from a genuine controversy between the Parties and is not the result of collusion, nor was the Settlement procured by fraud or misrepresentation.

6. The Court finds that the Plan's participation in the Settlement is on terms no less favorable than Plaintiff and the Settlement Class and that the Plan

does not have any additional claims above and beyond those asserted by Plaintiff that are released as a result of the Settlement. The Court further finds that the Plan engaged an independent fiduciary to review the Settlement, and that such fiduciary has authorized the Plan to give the release provided for in the Agreement. [Docket #149]

7 The Court determines that the Settlement is not part of an agreement, arrangement or understanding designed to benefit a party in interest, but rather is designed and intended to benefit the Plan, Plan Participants, and Beneficiaries.

8 Accordingly, the Court determines that the negotiation and consummation of the Settlement by Plaintiff on behalf of the Plan and the Settlement Class do not constitute “prohibited transactions” as defined by ERISA §§ 406(a) or (b), 29 U.S.C. §§ 1106(a) or (b). Further, the Court finds that, to the extent any of the transactions required by the Settlement constitute a transaction prohibited by ERISA § 406(a), 29 U.S.C. §§ 1106(a), such transactions satisfy the provisions of Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632 (2003).

9 The Court determines that the form of notice transmitted to the Settlement Class, pursuant to the Preliminary Approval Order concerning the Settlement and the other matters set forth therein, is the best notice form

practicable under the circumstances and included individual notice to all members of the Settlement Class who could be identified through reasonable efforts. Such notice form provides valid, due and sufficient notice of these proceedings and of the matters set forth therein, including the Settlement described in the Agreement to all persons entitled to such notice, and such notice has fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process.

10. The Court hereby approves the maintenance of the Action as a non-opt-out class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1) with the class being defined as follows:

All persons who were participants in or beneficiaries of the Southern Company Employee Savings Plan (the "Plan") at any time between April 2, 2001 and July 26, 2006 (the "Class Period") and whose Plan accounts held Mirant Stock in the Plan's Mirant Stock Fund, excluding the Southern Defendants and their Immediate Family, beneficiaries, alternate payees, Representatives, or Successors-in-Interest in connection with their accounts in the Plan (the "Settlement Class")

Such a class meets the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23

11 The Court hereby dismisses the Second Amended ERISA Complaint and the Action against all Defendants with prejudice on the merits based on the Settlement.

12 As of the Effective Date, the Plaintiff, the Plan, and each member of the Settlement Class on their own behalf and on behalf of their present or former agents, employees, attorneys, accountants, representatives, advisers, investment bankers, trustees, parents, heirs, estates, executors, administrators, successors and assigns, shall be deemed to have released each and all of the Releasees from the Released Claims.

13 All members of the Settlement Class and the Plan are hereby barred and enjoined from the institution and prosecution, either directly or indirectly, of any other actions in any court asserting any and all Released Claims against any and all Releasees.

14. The litigation and notice expenses incurred by Class Counsel in the course of prosecuting this action are reasonable. Accordingly, Class Counsel is awarded expenses in the amount of \$69,155.08, to be paid from the Class Settlement Amount.

15. The attorneys' fees sought by Class Counsel are reasonable in light of the successful results achieved by Class Counsel, the monetary benefits obtained in

this Action, the substantial risks associated with the Action, Class Counsel's skill and experience in class action litigation of this type, and the fee awards in comparable cases

16 Class Counsel is awarded attorneys' fees in the amount of \$4,125,000.00 (27.5%), payable from the Class Settlement Amount


17 Class Counsel's request for a Case Contribution Award for the Named Plaintiff in the amount of five thousand dollars (\$5,000.00) in recognition of his efforts in assisting in the prosecution of this Action is hereby acknowledged. Accordingly, the Named Plaintiff is hereby awarded a Case Contribution Award of \$5,000.00, payable from the Class Settlement Amount.

18. The Plan of Allocation for the Class Settlement Amount established pursuant to Section 9.3 of the Agreement and attached hereto as Exhibit A, is approved as fair, reasonable and adequate. The Court will retain jurisdiction over the Plan of Allocation to the extent necessary to ensure that it is fully and fairly implemented.

19 The Court finds that the payment and distribution of the Class Settlement Amount, as allocated in the Agreement, is a "restorative payment" as defined in IRS Revenue Ruling 2002-45.

20. Without affecting the finality of this Judgment, the Court retains jurisdiction for purposes of implementing the Agreement and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Agreement and Settlement, as may from time to time be appropriate, and resolution of any and all disputes arising thereunder.

SO ORDERED this ~~14th~~ day of August, 2007.


Richard W. Story
United States District Court Judge