

JUN 12 2007

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAMES M. HATTEN, Clerk  
*[Signature]* Deputy Clerk

MARK T SPIVEY, individually and )  
on behalf of a class of all others )  
similarly situated, )  
Plaintiff, )  
v. )  
SOUTHERN COMPANY, *et al*, )  
Defendants )

Civil Action No  
1:04-CV-01912 RWS

**FINDINGS AND ORDER PRELIMINARILY CERTIFYING A CLASS FOR SETTLEMENT PURPOSES, PRELIMINARILY APPROVING PROPOSED SETTLEMENT, APPROVING FORM AND DISSEMINATION OF CLASS NOTICE, AND SETTING DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT**

Currently before the Court for preliminary approval is a settlement (the "Settlement") of this class action (the "Action") asserting claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq ("ERISA"), with respect to Mirant Stock held in the Mirant Stock Fund of the Southern Company Employee Savings Plan (the "Plan"), against Southern Company, Southern Company Services, Inc., Employee Savings Plan Committee, Michael D Garrett, Charles D McCrary, David M Ratcliffe, H Allen Franklin, Elmer B Harris, Robert A Bell, W Dean Hudson, Ellen N Lindemann, Christopher C Womack, R Craig Elder, Thomas A. Fanning, Robert M Gilbert,

Carson B Harreld, William B Hutchins, Kathleen S King, Ronnie R Labrato, Michael W. Southern, Kirby R. Willis, Gale E Klappa, Allen L Leverett, and Pension Fund Investment Review Committee (collectively the “Defendants”). The terms of the Settlement are set out in a Class Action Settlement Agreement (the “Settlement Agreement”), which has been executed by counsel for Plaintiff Mark T. Spivey, on behalf of Spivey and all other members of the “Settlement Class” as defined in this Order (“Plaintiff”), and by counsel for the Defendants (collectively with Plaintiff, the “Parties”) Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement

On June 6, 2007, the Court held a hearing to consider preliminarily the Settlement and to determine among other things, whether to certify a class for settlement purposes and whether the Settlement is sufficient to warrant the issuance of notice to members of the Settlement Class. Upon reviewing the Settlement, including the Settlement Agreement, and the matter having come before the Court, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows.

**Jurisdiction** The Court has jurisdiction over the subject matter of this Action and over all parties to this Action, including all members of the Settlement Class.

**Class Findings.** The Court preliminarily finds, for purposes of the Settlement, that the requirements of the Federal Rules of Civil Procedure, the United States

Constitution, the Rules of the Court and any other applicable law have been met as to the Settlement Class, in that:

- The Settlement Class is ascertainable from records kept with respect to the Plan and from other objective criteria, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable
- Based on allegations in Plaintiff's Second Amended Complaint, the Court preliminarily finds that there are one or more questions of fact and/or law common to the Settlement Class
- Based on allegations in Plaintiff's Second Amended Complaint, the Court preliminarily finds that Defendants purportedly engaged in uniform conduct affecting members of the proposed Settlement Class, and the Court finds that the claims of Plaintiff are typical of the claims of the Settlement Class
- Plaintiff will fairly and adequately protect the interest of the Settlement Class in that: (i) the interests of Plaintiff and the nature of his alleged claims are consistent with those of the members of the Settlement Class; (ii) there are no conflicts between or among Plaintiff and the Settlement Class; and (iii) Plaintiff is represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complex ERISA class actions of this type
- The prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications as to individual class members, which would establish incompatible standards of conduct for the parties opposing the claims asserted in the Action; or (ii) adjudications as to

individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests

**Settlement Class Certification** Based on the findings set out above, the Court PRELIMINARILY CERTIFIES the following class for settlement purposes under Federal Rule of Civil Procedure 23(b)(1) in this Action (the "Settlement Class")

- All persons who were participants in or beneficiaries of the Southern Company Employee Savings 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 Court finds that the Settlement Class is sufficiently well-defined and cohesive to warrant certification as a non-opt-out class under Fed R. Civ. P. 23(a) and 23(b)(1). As required by Fed R. Civ. P. 23(g), the Court has considered: (i) the work Class Counsel has done in identifying or investigating potential claims in this action, (ii) Class Counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in this action; (iii) Class Counsel's knowledge of the applicable law and, in particular, its knowledge of ERISA as it applies to claims of the type asserted in this action (i.e., breach of fiduciary duty

claims that pertain to the Plan's investment in Mirant Stock); and (iv) the resources Class Counsel has committed to representing the class. Based on these factors, the Court finds that Class Counsel has and will continue to represent, fairly and adequately, the interests of the Settlement Class. Accordingly, the Court finds that Class Counsel shall serve as class lead counsel with respect to the Settlement Class in this Action.

As indicated above, the Court finds that Plaintiff is an adequate class representative of the Settlement Class and, therefore, hereby appoints Plaintiff as the representative of the Settlement Class.

The Court having determined preliminarily that this Action may proceed as a non-opt-out class action under Fed. R. Civ. P. 23(a) and 23(b)(1), all members of the Settlement Class shall be bound by any judgment concerning the Settlement in this Action, subject to the Court's final determination as to whether this Action may so proceed.

**Preliminary Approval of Settlement** The Settlement memorialized in the Settlement Agreement is hereby PRELIMINARILY APPROVED, as the Court preliminarily finds that (a) the proposed Settlement resulted from extensive arm's-length negotiations over numerous months, (b) the Settlement Agreement was

executed only after Class Counsel had conducted informal discovery and researched and investigated multiple legal and factual issues pertaining to Plaintiff's claims; (c) there is a genuine controversy between the parties involving the Defendants' compliance with the fiduciary requirements of ERISA, (d) the Settlement appears on its face to be fair, reasonable, and adequate, and (e) the Settlement, evidenced by the Settlement Agreement, is sufficiently fair, reasonable, and adequate to warrant sending notice of the Action and the Settlement to the Settlement Class.

**Fairness Hearing** A hearing (the "Fairness Hearing") pursuant to Fed R Civ P 23(e) is hereby SCHEDULED to be held before the Court on August 14, 2007 at 9:30 a m in Courtroom 2105 at the Richard B. Russell Courthouse, 75 Spring Street NW, Atlanta, Georgia, to determine finally, among other things.

- Whether the Settlement should be approved as fair, reasonable, and adequate.
- Whether the Settlement Class should be finally certified pursuant to Fed. R. Civ. P. 23 as preliminarily found by the Court,
- Whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement,
- Whether the form of notice and manner of issuing notice implemented pursuant to the Settlement Agreement (i) constituted notice that was reasonably calculated, under

the circumstances, to apprise members of the Settlement Class of the pendency of the Action, their right to object to the Settlement, and their right to appear at the Fairness Hearing, (ii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice and (iii) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law.

- Whether, as preliminarily found by the Court, Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement as required by Fed. R. Civ. P. 23(g).
- Whether the proposed Plan of Allocation of the Qualified Settlement Fund is fair, reasonable and adequate and should be approved by the Court;
- Whether the Settlement has been negotiated at arm's length by Class Counsel on behalf of the Plan and the Settlement Class, whether the Named Plaintiff has acted independently, whether Named Plaintiff's interests are identical to the interests of the Plan and the Settlement Class, whether an independent fiduciary has been engaged to evaluate the Settlement for and on behalf of the Plan, and whether the negotiations 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), or qualify for a class exemption from the prohibited transaction rules, including Prohibited Transaction Exemption 2003-39.
- Whether the application for attorneys' fees and expenses to be filed by Class Counsel should be approved,
- Whether the Named Plaintiff should receive a Case

Contribution Award in light of his assistance in prosecuting this Action; and

- Whether the payment of fees and expenses arising from the administration and implementation of the Settlement shall be approved as payable from the Qualified Settlement Fund
- Any other issues necessary for approval of the Settlement

**Class Notice** The Parties have presented to the Court one form of proposed notice, the Class Notice, which is appended hereto as Exhibit A. The Court APPROVES this form of notice, as the Court finds that such form of notice fairly and adequately. (1) describes the terms and effect of the Settlement Agreement and of the Settlement, (2) gives notice to the Settlement Class of the time and place of the Fairness Hearing, and (3) describes how the recipients of the notice may object to approval of the Settlement. The Parties have proposed the following manner of communicating the notice to members of the Settlement Class, and the Court finds that such proposed manner is adequate, and directs that Class Counsel shall

- By no later than forty-five (45) days before the Fairness Hearing, cause the Class Notice, with such nonsubstantive modifications or clarifications thereto as may be agreed upon by the Parties, to be disseminated pursuant to the Settlement Agreement to the last known address of each person in the Settlement Class who can be identified by reasonable effort.
- The Southern Company Employee Savings Plan

Committee shall use reasonable efforts to assist Class Counsel in obtaining the names and last known addresses of the members of the Settlement Class within ten (10) days following the entry of this Order. No charge against the Qualified Settlement Fund shall be made by the Southern Company Employee Savings Plan Committee, directly or indirectly, for the gathering or the provision of such information. Such information shall be used to deliver the Class Notice, and implement the Settlement, including the Plan of Allocation, and for no other purpose.

- By no later than forty-five (45) days before the Fairness Hearing, cause the Class Notice to be published on the website identified in the Class Notice.

At or before the Fairness Hearing, Class Counsel shall file with the Court a proof of timely compliance with the foregoing mailing and publication requirements.

**Objections to Settlement** “Objector” shall mean any member of the Settlement Class who wishes to object to the fairness, reasonableness or adequacy of the Settlement, to any term of the Settlement Agreement, to the Plan of Allocation, to the proposed award of attorneys’ fees and expenses, or to the request for a Case Contribution Award for the Named Plaintiff. Any Objector must file with the Court a statement of his or her objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that such Objector wishes to bring to the Court’s attention or introduce in support of such objection (the “Objection”). The Objector must also mail the objection and all supporting law

and/or evidence to counsel for the Parties, as stated below. The addresses for filing objections with the Court and service on counsel are as follows

Court	Class Counsel		Defense Counsel
<b>Clerk of the Court</b> <b>N. District of Georgia</b> <b>Richard B. Russell</b> <b>Federal Building</b> <b>75 Spring Street, SW</b> <b>Atlanta, Georgia</b> <b>30303-3361</b>	<b>Keller Rohrback L.L.P.</b> <b>Lynn Lincoln Sarko</b> <b>Derek W. Loeser</b> <b>1201 Third Avenue,</b> <b>Suite 3200</b> <b>Seattle, Washington</b> <b>98101-3052</b>	<b>Schiffman Barroway</b> <b>Topaz &amp; Kessler, LLP</b> <b>Joseph H. Melzter</b> <b>Gerald D. Wells, III</b> <b>280 King of Prussia</b> <b>Road</b> <b>Radnor, PA 19087</b>	<b>Jones Day</b> <b>G. Lee Garrett, Jr.</b> <b>David M. Monde</b> <b>1420 Peachtree St.,</b> <b>Suite 800</b> <b>Atlanta, GA 30309</b>

The Objector, or, if represented by counsel, his or her counsel, must both effect service of the Objection on counsel listed above and file the Objection with the Court by no later than fourteen (14) days before the date of the Fairness Hearing. Any member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely Objection shall be barred.

**Appearance at Fairness Hearing** Any Objector who files and serves a timely, written Objection in accordance with the paragraph above may also appear at the Fairness Hearing either in person or through counsel retained at the Objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must effect service of a "Notice of Intention to Appear" setting forth, among other

things, the name, address, and telephone number of the Objector (and, if applicable, the name, address, and telephone number of the Objector's attorney) on counsel identified above and file it with the Court by no later than fourteen (14) days before the date of the Fairness Hearing. Any Objector who does not timely file and serve a "Notice of Intention to Appear" in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown. The Parties' Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

**Response to Objectors:** Class Counsel shall respond to any timely-filed and served Objection by seven (7) days before the Fairness Hearing.

**Notice Expenses** The expenses of effectuating Class Notice shall be paid from the Qualified Settlement Fund. Class Counsel shall provide an accounting of such expenses at the Fairness Hearing. In the event the Settlement is not approved and the Settlement Amount is not paid, the Qualified Settlement Fund, less the above expenses, shall be returned pursuant to the Settlement Agreement.

**Independent Fiduciary** Counsel for Defendants represent that the Employee Savings Plan Committee has retained Independent Fiduciary Services, Inc. (the "Independent Fiduciary") to evaluate the Settlement for and on behalf of the Plan

Pursuant to the Settlement Agreement, the Settlement will be contingent upon the Independent Fiduciary, no later than ten (10) days in advance of the Fairness Hearing (a) approving the Settlement and giving a release, in its capacity as a fiduciary of the Plan, for and on behalf of the Plan, on the terms set forth in Section 4.1 2 of the Settlement Agreement or such other terms acceptable to the Independent Fiduciary and the Southern Defendants, and/or (b) authorizing the settlement in accordance with Prohibited Transaction Class Exemption 2003-39, and/or finding that the Settlement does not constitute a prohibited transaction under ERISA § 406(a). Nothing herein shall be deemed to preclude the Independent Fiduciary from objecting to the Settlement if it deems such action warranted in the exercise of its independent professional judgment.

**Motion for Final Approval of Settlement and Applications for Attorneys'**

**Fees** By no later than seven (7) days before the Fairness Hearing, Plaintiff shall file his motion for final approval of the proposed Settlement (including approval of the Plan of Allocation) Any application by Class Counsel for attorneys' fees and reimbursement of expenses, and/or by Named Plaintiff for a Case Contribution Award, and all papers in support thereof, shall be filed with the Court and served on all counsel of record no less than seven (7) days before the Fairness Hearing. Copies

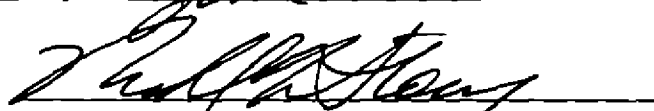
of such materials shall be available for inspection at the office of the Clerk of this Court

**Termination of Settlement.** If the Settlement is terminated or does not become Unconditional under the terms of the Settlement Agreement, this Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order

**Use of Order** In the event this Order becomes of no force or effect, it shall not be construed or used as an admission, concession, or declaration by or against any of the Parties, or as a waiver of any defenses or claims he, she, or it may have.

**Continuance of Hearing** The Court reserves the right to continue the Fairness Hearing without further written notice

SO ORDERED this 6th day of June, 2007

  
RICHARD W. STORY  
UNITED STATES DISTRICT JUDGE