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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

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

**DEBTORS' MOTION TO DISQUALIFY
SEGAL, GOLDMAN, MAZZOTA & SIEGEL, P.C. AND ITS ATTORNEYS**

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors and debtors-in-possession, file this motion pursuant to Texas Disciplinary Rule of Professional Conduct 1.09 to disqualify the firm Segal, Goldman, Mazzota & Siegel, P.C. (“Segal, Goldman”) and its attorneys, including partner Paul Feigenbaum, from representing the Town of Ramapo and any other taxing authority in the contested matter concerning Mirant’s motion pursuant to 11 U.S.C. §§ 105(a) and 505 to determine certain tax claims (“505 Motion”).

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

INTRODUCTION

2. The conflict is as follows: Mr. Feigenbaum is personally involved in the representation of the Town of Ramapo, which is directly adverse to the Debtors on the 505 Motion. Mr. Feigenbaum was formerly a partner at Couch White LLP, special counsel to Mirant in these cases. While at Couch White (until 2002), Mr. Feigenbaum personally spent hundreds of hours at the partner level representing Mirant (i) in its purchase of the properties that are at the heart of the Debtors' 505 Motion and (ii) in the New York State court proceedings brought by Mirant to enforce a settlement of the state court tax certiorari proceedings involving the same facts and issues to the Debtors' 505 Motion.

3. Despite numerous oral and written requests by the Debtors', Mr. Feigenbaum and Segal, Goldman have refused to withdraw. See, e.g., Letter from Shore to Feigenbaum of 12/12/2003 (attached as **Exhibit A**). Further, despite a representation that the Firm's representation would be limited to the state court remand issues, Segal, Goldman has appeared in these cases as recently as last week, when it filed papers "of counsel," seeking an order permitting the Town of Ramapo to appeal this Court's interlocutory order on the 505 Motion. Mr. Feigenbaum is listed in that pleading as one of the two responsible counsels.

4. The issue of the conflict is not even close. Mr. Feigenbaum is, among other things, representing an adverse client on a substantially related matter. Neither he nor his firm may do that. Indeed, neither Mr. Feigenbaum nor Segal, Goldman have satisfied even the basic

ethical obligation of requesting a conflict waiver from Mirant. For the following reasons, the Court should grant the Motion.

FACTS

5. Mr. Feigenbaum, a member of the New York bar, was a partner at Couch White, LLP or its predecessor firms (“Couch White”) in Albany, New York from 1986 through July 31, 2002. Affidavit of Algird F. White, Jr. (“White Aff.”) ¶ 4 (Attached as **Exhibit B**).

6. In April 1998, Southern Energy, Inc., which changed its name to Mirant Corporation in 2001 (referred to hereinafter as “Mirant”), retained Couch White to represent it in the acquisition of certain electric generation assets from Orange and Rockland Utilities, Inc. (“O&R”) in New York State, including the Hillburn Gas Turbine, in the Town of Ramapo, New York. White Aff. ¶¶ 4-5.

7. Algird White, Esq., the Couch White partner in charge of the Mirant matter, asked Mr. Feigenbaum to take the lead with respect to real estate issues related to Mirant’s acquisition of the O&R assets. White Aff. ¶ 5.

8. From November 1998 through January 2000, Mr. Feigenbaum billed almost 400 hours (charging Mirant close to \$90,000) for Mirant’s acquisition of the O&R assets.¹ Mr. Feigenbaum was one of a team of 6 attorneys from Couch White that worked on the transaction and he was the lead attorney on real property issues. In that role, Mr. Feigenbaum was involved in a wide variety of discussions regarding the plants, the purchase price of the plants, and the high real property taxes at each of the plants. White Aff. ¶¶ 5, 7. Those very plants and taxes are the subject of Mirant’s 505 Motion.

¹ We have not included Mr. Feigenbaum’s time records because to do so would arguably waive the privilege Mirant is trying to protect by filing this Motion. See In re American Airlines, Inc., 972 F.2d 605, 618 (5th Cir. 1992).

9. Couch White is a firm of about 30 attorneys and, at most, had 6 attorneys working on matters for Mirant. Because of the size of the firm and its Mirant team, confidential information about Mirant was generally known by attorneys in the firm, and each member of the Mirant team, including Mr. Feigenbaum, was intimately familiar with all aspects of the Mirant engagement, even on issues in which those attorneys were not actively involved. White Aff. ¶ 7.

10. During the time that the O&R acquisition was being negotiated, real property taxes were being assessed against the properties, and O&R was filing protests with the local boards of assessment review and then filing tax *certiorari* proceedings in New York State Court, seeking refunds of overpaid real property taxes, including claims against the Town of Ramapo. After the acquisition, Couch White began representing Mirant in its tax *certiorari* cases, including those against the Town of Ramapo. White Aff. ¶ 6.

11. In his role as lead counsel on real property issues, Mr. Feigenbaum had unfettered access to all information related to Couch White's representation of Mirant. White Aff. ¶¶ 5, 7.

12. In 2000, Couch White negotiated a settlement on behalf of Mirant of the tax *certiorari* cases related to the Bowline Generating Station with the Town of Haverstraw and the parties executed a Memorandum of Understanding.

13. When the Town of Haverstraw refused to go forward under the terms of the Memorandum of Understanding, Couch White represented Mirant in litigation in New York State court seeking to enforce the agreement. Again, Mr. Feigenbaum was involved in reviewing briefs filed by Couch White for Mirant. White Aff. ¶ 8.

14. In September 2000, two years before Mr. Feigenbaum joined his firm, Paul Goldman sent Couch White a letter, stating that his firm was "special counsel" to the Town of Ramapo in the tax *certiorari* proceeding filed for tax year 2000. Letter from Goldman to

Barriere of 9/8/2000 (Attached as **Exhibit C**). Couch White received no further correspondence, pleadings or calls from the Segal, Goldman firm until late 2003.

15. Almost two years after the September 2000 letter from Segal, Goldman, Mr. Feigenbaum left Couch White and joined Segal, Goldman. Since Mr. Feigenbaum joined Segal, Goldman, neither Mr. Feigenbaum nor Segal, Goldman revealed to Mirant that they were continuing to act as counsel to the Town of Ramapo in the tax actions brought by Mirant, until the Town of Ramapo filed its motion to remand in the United States District Court for the Southern District of New York in November 2003.

16. Once counsel for Mirant learned of Mr. Feigenbaum's involvement, they repeatedly requested that Mr. Feigenbaum and his firm withdraw from their representation of the Town of Ramapo in these matters. See, e.g., Exhibit A.

17. Even after being asked to withdraw, Segal, Goldman has persisted in its representation of the Town of Ramapo. Segal, Goldman has also compounded the problem because it has acted as co-counsel with Vinson & Elkins, LLP, which also represents the Town of Haverstraw and the Town of Stony Point.

18. Because of the failure of Mr. Feigenbaum and Segal, Goldman to withdraw, even after the courtesy of numerous requests, Mirant now moves this Court to disqualify Mr. Feigenbaum and Segal, Goldman from any further representation of the Town of Ramapo in these proceedings.

MR. FEIGENBAUM'S REPRESENTATION OF THE TOWN OF RAMAPO IS DIRECTLY ADVERSE TO HIS FORMER CLIENT, MIRANT, AND A VIOLATION OF THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

19. There can be no question that the Town of Ramapo is directly adverse to Mirant in these proceedings. There also can be no question that Mr. Feigenbaum's former representation of Mirant in its acquisition of the assets whose valuation is the only issue in these

proceedings is “substantially related” to the 505 Motion. As such, Mr. Feigenbaum is disqualified from representing the Town of Ramapo in these proceedings.

20. The Texas Disciplinary Rules of Professional Conduct² provide that:

Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:

(2) if the representation in reasonable probability will involve a violation of Rule 1.05 [which forbids attorneys from disclosing confidential information of a client]; or

(3) if it is the same or a substantially related matter.

Tex. Disciplinary R. of Prof'l Conduct 1.09(a).

21. Mr. Feigenbaum’s representation of the Town of Ramapo against his former client Mirant is a violation of Rule 1.09(a).

22. First, there is more than a “reasonable probability” that Mr. Feigenbaum’s representation of the Town of Ramapo against Mirant will result in the disclosure, intentional or not, of confidential information in violation of Rule 1.09(a)(2). Undoubtedly, Mr. Feigenbaum possesses confidential information about Mirant relevant to these proceedings. Given that Mr. Feigenbaum is personally involved in the 505 Motion, there is more than a “reasonable likelihood” that an unauthorized disclosure will occur. In re Epic Holdings, Inc., 985 S.W.2d 41, 51 (Tex. 1998).

² Attorneys appearing in this Court are subject to the Code of Professional Responsibility of the State Bar of Texas as well as the ethical rules announced by the national profession. In re American Airlines, Inc., 972 F.2d 605, 610 (5th Cir. 1992). The Texas and New York rules are patterned after the ABA Model Rules of Professional Conduct, and so the result should be the same under the rules of either jurisdiction. See N.Y. Code of Professional Responsibility DR 5-108 (prohibiting an attorney from representing a party adverse to a former client in the “same or a substantially related matter”) and DR 5-105 (disqualifying a firm where any attorney is disqualified).

23. Moreover, a violation can occur even if confidential information is not directly used to the disadvantage of the former client. See Rule 1.09 cmt. 4. As one court has noted “[a]dverse use of confidential information is not limited to disclosure. It includes knowing what to ask for in discovery, which witnesses to seek to depose, what questions to ask them, what lines of attack to abandon and what lines to pursue, what settlements to accept and what offers to reject, and innumerable other uses.” Ullrich v. Hearst Corp., 809 F. Supp. 229, 236 (S.D.N.Y. 1992) (interpreting similar provision in New York Code of Professional Conduct). Mr. Feigenbaum is in precisely the position the rules say he should not be in.

24. Second, Mr. Feigenbaum’s representation of the Town of Ramapo is also improper because his prior representation and current representation relate to “the same or a substantially related matter.” Rule 1.09(a)(3). Although “substantially related” is not defined in the Rules, “it primarily involves situations where a lawyer could have acquired confidential information concerning a prior client that could be used either to that prior client’s disadvantage or for the advantage of the lawyer’s current client or some other person.” Rule 1.09 cmt. 4A (emphasis added).

25. Debtors need not show that Mr. Feigenbaum actually had confidential information that could be used to Mirant’s disadvantage or to the Town of Ramapo’s advantage (or to the advantage of any of the other taxing authorities). In re American Airlines, Inc., 972 F.2d 605, 618 (5th Cir. 1992); see also Rule 1.09 cmt. 8. Rather, the law provides an irrebuttable presumption that “an attorney in a law firm has access to the confidences of the clients and former clients of other attorneys in the firm.” In re Epic Holdings, Inc., 985 S.W.2d at 50; In re American Airlines, 972 F.2d at 614 (same).

26. This matter is “substantially related” to Mr. Feigenbaum’s prior representation of Mirant. While at Couch White, Mr. Feigenbaum represented Mirant in its acquisition of the Bowline plant, the Lovett plant, the Hillburn gas turbine facility and other hydroelectric facilities, billing hundreds of hours to those matters. As part of that acquisition, Mirant’s lawyers at Couch White advised Mirant on issues related to the purchase price, including the effect of the high real property taxes on that purchase price.

27. The Town of Ramapo recognizes the importance of the purchase price in these proceedings. In an affidavit filed on behalf of the Town of Ramapo in the Bankruptcy Court in New York, Paul Goldman, Mr. Feigenbaum’s partner in the Segal, Goldman firm, stated:

It is respectfully submitted that the purchase price as reflected on the form TP 584 [the New York State Real Property Transfer Tax return] for the conveyance of the Property, . . . may well have been contrived as a result of an overall negotiation of the entire transaction, taking into account any ancillary agreements, such as a power purchase agreement. In other words, the terms of any ancillary agreements, such as the purchase agreement, presumably have affected the purchase price for the property. It may, for example, have led to an artificially low allocation of the overall purchase price for the Property at issue in connection with an allocation of the overall multi-asset transaction and complex allocation process pursuant to which Mirant acquired the Property from O&R as part of a much larger transaction. Such a low allocation would be beneficial to Mirant’s position in any tax certiorari proceeding commenced by Mirant.

Affidavit of Paul J. Goldman of 11/26/2003 ¶ 16 (excerpts attached as **Exhibit D**).

28. Mr. Feigenbaum, while representing Mirant, advised Mirant on the very allocations referred to in Mr. Goldman’s affidavit. The e-mail attached as **Exhibit E** (redacted to prevent disclosure of confidential communications), written by Mr. Feigenbaum while representing Mirant, is direct evidence of his personal involvement with the allocation issues. This email clearly shows Mr. Feigenbaum’s conflict: “Consequently, I will be doing the following re the allocations . . .”; “We have broken down [redacted] further as follows . . .”;

“These allocations were arrived at by [redacted] . . .”; “These figures [redacted] will be used to calculate the transfer tax . . .” See Exhibit E.

29. Only a few weeks ago, the Segal, Goldman firm, acting on behalf of the Town of Ramapo requested that Mirant produce information of the type created by Mr. Feigenbaum during his representation of Mirant:

Please provide a copy of all documents showing how the purchase price . . . was determined and a statement of the calculation of the allocation (and the method of allocation) of the purchase price between the [Hillburn Station in Ramapo, New York] and the other assets acquired from Orange & Rockland Utilities, Inc. in connection with the sale transaction, including all notes, schedules, and documents relative to the negotiation of the allocation of the entire purchase price for the generating assets owned by Orange and Rockland Utilities, Inc.

Respondents’ First Notice for Discovery and Inspection of 12/30/2003 (excerpts attached as **Exhibit F**).

30. In other words, if Segal, Goldman, is permitted to continue in its representation of the Town of Ramapo, Mirant will be in the absurd position of having to produce documents prepared by Mr. Feigenbaum to Mr. Feigenbaum, or claiming privilege to Mr. Feigenbaum on documents he created at Mirant’s expense.

31. In addition, Couch White negotiated a settlement with the Town of Haverstraw for the real property taxes on the Bowline facility and litigated whether the agreement reached was binding. The facts and issues in Mr. Feigenbaum’s representation of the Town of Ramapo are identical to those in his prior representation of Mirant.

32. Mr. Feigenbaum’s billing records show that he reviewed briefs Mirant filed to enforce the settlement of real property taxes for the Bowline plant. Because that settlement failed, those same taxes, for the same years, are at issue in these proceedings. In fact, the Bowline facility represents the lion’s share of the refund that Mirant seeks in its 505 Motion.

33. It is clear that the same properties, the same facts, the same purchase prices, and the same taxes that were the subject of Mr. Feigenbaum's prior representation of Mirant are at issue in these proceedings. Accordingly, he must be disqualified from representing the Town of Ramapo and any other taxing authorities in these proceedings.

MR. FEIGENBAUM'S FIRM, SEGAL, GOLDMAN, IS SIMILARLY DISQUALIFIED

34. Just as Mr. Feigenbaum is disqualified from representing the Town of Ramapo or any other taxing authority in this matter, Mr. Feigenbaum's firm, Segal, Goldman also is disqualified.

35. Rule 1.09(b) provides:

When lawyers are or have become members of or associated with a firm, none of them shall knowingly represent a client if any one of them practicing alone would be prohibited from doing so by [Rule 1.09(a)].

36. As discussed above, Mr. Feigenbaum if practicing alone, would be prohibited from representing the Town of Ramapo in this matter. Under the plain language of Rule 1.09(b), all lawyers in his firm, Segal, Goldman, are similarly disqualified. See Nat'l Med. Enters., Inc. v. Godbey, 924 S.W.2d 123, 131-32 (Tex. 1996) (disqualifying law firm where attorney was disqualified because of prior representation of party subject to a joint defense agreement); see also Amon Burton, Migratory Lawyers and Imputed Conflicts of Interest, 16 Rev. Litig. 665 (1997) (discussing imputation of conflicts to law firms under Texas law).

37. Accordingly, Debtors respectfully request that the Court order that Paul Feigenbaum, Esq. and the firm Segal, Goldman, Mazzota & Siegel, P.C. and each of its attorneys be disqualified as counsel for the Town of Ramapo and any other taxing authority in this matter.

OTHER RELIEF REQUESTED

38. The Debtors also seek the attorneys fees they have incurred in bringing this motion. Debtors' counsel repeatedly requested that Mr. Feigenbaum and Segal, Goldman

withdraw because of the obvious conflict. They have refused, without any basis in law or fact. It seems particularly inequitable here that the Debtors should have to spend estate assets to enforce its right to demand that a fiduciary remain a fiduciary.

39. Mirant further requests that the Court conduct an in camera inquiry into whether counsel for any of the other taxing authorities were improperly exposed to privileged information about Mirant due to either a joint defense agreement or joint representation with the Town of Ramapo. See, e.g., Decora Inc. v. DW Wallcovering, Inc., 901 F. Supp 161, 164 (S.D.N.Y. 1995) (“district courts should devise methods, including in camera submissions, and other protective devices, to safeguard the interests of the former client”). One might reasonably assume that the taxing authorities have shared information and perhaps have entered into a joint defense agreement. Indeed, the Towns of Haverstraw and Stony Point where the Bowline and Lovett facilities are located, and the Town of Ramapo are all represented by Vinson & Elkins LLP in this matter. Mr. Feigenbaum worked on the litigation with the Town of Haverstraw while with Couch White and certainly has confidential information related to the failed settlement between Mirant and the Town of Haverstraw. Mirant is entitled to know who now holds its confidence.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order disqualifying Mr. Feigenbaum and Segal, Goldman from any further representation of the Town of Ramapo in these proceedings, awarding Mirant attorneys fees, and requiring an in camera inquiry into whether any other counsel are tainted because of a joint defense arrangement or joint representation.

Respectfully submitted,

Dated: January 27, 2004

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By: /s/ Robin Phelan
Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200

-and-

J. Christopher Shore
(admitted *pro hac vice*)
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Miami, Florida 33131

**ATTORNEYS FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 27, 2004 he caused the foregoing motion and accompanying exhibits to be served on the counsel identified below via electronic mail. The undersigned further certifies that on January 27, 2004, he authorized BSI as service agent to serve a true and correct copy of the foregoing motion and accompanying exhibits upon all parties on the Limited Service List via U.S. first class mail.

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/s/ Ian T. Peck

EXHIBIT “A”

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BRUSSELS
BUDAPEST
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December 12, 2003

BY FACSIMILE AND MAIL

Paul Feigenbaum, Esq.
Segel, Goldman, Mazzotta & Siegel, P.C.
9 Washington Square
Albany, N.Y. 12205

Re: Town of Ramapo

Dear Mr. Feigenbaum:

Over the past several weeks, we have repeatedly asked that you and your firm withdraw from your representations of the Town of Ramapo in the legal proceedings currently docketed as Adversary Proceedings Nos. 03-05022-ASH, 03-05039-ASH, and 03-05045-ASH in the Southern District of New York and related proceedings in the bankruptcy case, In re Mirant Corp., et al., docketed at 03-46590 (DML) in the Northern District of Texas (collectively the "Actions"). Those representations present a direct, irremedial conflict to your prior representation of Mirant New York, Inc. and its affiliates (collectively "Mirant") on substantially related matters. You have, however, refused to withdraw.

We again request that you and your firm immediately withdraw from your representation of the Town of Ramapo, and any similarly situated persons or entities, in connection with the Actions. While at Couch White LLP, you personally represented Mirant in real estate transactions which are substantially related the present Actions. Indeed, billing records show that you billed over 300 hours on real estate transactions for the purchase of the properties which are the subject of the Actions. As part of your representation of Mirant, you undoubtedly were privy to confidential information about Mirant's decisions in Mirant's valuation of those properties. Your representation of a party adverse to Mirant on these issues is, unequivocally, a direct conflict.

We consider that your continued representation would be a violation of DR 5-108 of New York's Code of Professional Responsibility. Similarly, your firm is disqualified from the Actions pursuant to DR 5-105(d). As you know, DR 5-108 provides that "a lawyer who has

Page 2

represented a client in a matter shall not, without the consent of the former client after full disclosure ... [t]hereafter represent another person in the same of a substantially related matter in which that person's interests are materially adverse to the interest of the former client." Mirant has not consented and will not consent to you or your firm's representation of a party directly adverse to it.

Please confirm in writing that you and your firm have withdrawn from the Actions. Your failure to do so will compel us to move the relevant courts to disqualify and to refer this matter to the state bar disciplinary committee.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

J. Christopher Shore

cc: Hugh Davenport, Esq.
James Barriere, Esq.
Mark Lansing, Esq.
Thomas E Lauria, Esq.
Robin Phelan, Esq.

EXHIBIT “B”

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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

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

AFFIDAVIT OF ALGIRD F. WHITE, JR.

STATE OF NEW YORK)
) ss.:
 COUNTY OF ALBANY)

Algird F. White, Jr., being duly sworn, deposes and says:

1. I am a Partner of the firm of Couch White, LLP ("Couch White" or the "Firm"). I am admitted to practice before the United States District Courts for the Northern, Southern, Eastern and Western Districts of New York. I am admitted to practice before the United States Court of Appeals for the Second Circuit and the Supreme Court of the United States. I am a member in good standing of the Bar of the State of New York. Unless otherwise stated herein I have personal knowledge of the facts stated herein.

Affidavit of Algird F. White, Jr.

2. I am filing this Affidavit to set forth the facts of Paul A. Feigenbaum's participation in the representation of Mirant Corporation and its predecessor, Southern Energy, Inc.; during the period of time when Mr. Feigenbaum was a partner at Couch White, LLP.
3. Mr. Feigenbaum was a partner at Couch White, LLP or its predecessor firms from 1986 until he voluntarily left the Firm on July 31, 2002.
4. In April, 1998, Couch White was retained by Southern Energy, Inc., which became known as Mirant Corporation in 2001 ("Mirant"), to represent it in connection with its potential acquisition of electric generation assets in New York State. In the summer and fall of 1998, Couch White counseled Mirant in connection with its bid for the generation assets of Orange and Rockland Utilities, Inc. ("O&R") and the interest of Consolidated Edison of New York, Inc. in O&R's Bowline Point Generation Station. Mirant's bid for the O&R assets (including the Consolidated Edison interest) was successful and asset purchase agreements were negotiated during October and November 1998 and executed on November 24, 1998.
5. I was and continue to be the Couch White partner in charge of the Mirant representation. In early November, 1998, I asked Mr. Feigenbaum to take the lead with respect to real estate issues associated with Mirant's acquisition of the O&R generation assets, which are the same assets at issue in these proceedings, including the Hillburn gas turbine facility in the Town of Ramapo, New York. From November 6, 1998 through the closing on the assets on June 30, 1999 and continuing through January 31, 2000, Mr. Feigenbaum recorded 392.90 billable hours associated with Mirant's acquisition of the O&R generation assets. During this period of time, Mr. Feigenbaum was one of four Couch White attorneys devoting substantial time to legal matters associated with Mirant's acquisition of the O&R generation assets and was the Couch White lead attorney on real property issues. As such, Mr. Feigenbaum was involved in a wide variety of discussions regarding the O&R generation assets including their purchase price and

Affidavit of Algird F. White, Jr.


discussions of issues related to the high level of real property taxes at each of the O&R facilities at issue in these proceedings, including the Hillburn facility in the Town of Ramapo. No aspect of the Mirant acquisition was screened from Mr. Feigenbaum.

6. Following Mirant's acquisition of the assets at issue in these proceedings, Couch White began representing Mirant in its real property tax issues related to those properties, including the Hillburn Gas Turbine in the Town of Ramapo.

7. Couch White is firm of about 30 attorneys. The Mirant team at Couch White at was comprised of 6 attorneys. Because of the size of the firm and the size of our Mirant team, confidential information about Mirant was known generally by attorneys in the firm, and each member of the Mirant team, including Mr. Feigenbaum, was intimately familiar with all aspects of the Mirant engagement, even on issues on which those attorneys were not actively involved.

8. Subsequent to the acquisition of the O&R generation assets, which are the only assets acquired by Mirant in New York State, Mr. Feigenbaum continued to work on a variety of Mirant issues. From February 25, 2000 through March 20, 2001, Mr. Feigenbaum billed 113.4 hours to a variety of Mirant matters.. Of particular note are Mr. Feigenbaum's time entries in October, November and December, 2001 related to Mirant's appellate briefs to the New York State Supreme Court, Appellate Division on the Bowline Generating Station tax issues. The appeal in the Bowline case arose out of an alleged settlement agreement concerning the assessed value and corresponding real property tax payments for one of the generation assets acquired from O&R. The resolution of the tax issues involved in that appeal are at the core of the proceedings currently before the bankruptcy court. The time recorded by Mr. Feigenbaum concerning the acquisition of the O&R assets, including the Hillburn facility in the Town of Ramapo, and the litigation of a tax certiorari case involving one of those assets demonstrates his

direct and substantial involvement in matters that are integrally related to the proceedings before the bankruptcy court.


Algird F. White, Jr.

Sworn to before me this 23rd day
of January, 2004

Barbara S. Brenner
Notary Public # 4703344
My Commission Expires:
DEC. 31, 2006

J:/data/client/07795/bankruptcy/affidavit2.doc

EXHIBIT “C”

SEGEL, GOLDMAN, MAZZOTTA & SIEGEL, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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September 8, 2000

James Barriere, Esq.
Couch White, LLP
540 Broadway
Albany, NY 12207**Re: Southern Energy**

Dear Jim:

Please be advised that this law firm is special counsel to the Town of Ramapo. As a follow-up to our most recent conversation, it was my understanding that you, on behalf of Southern Energy, were to provide us with all inventory on the property owned by Southern Energy in the Town of Ramapo and all of the villages within the constituent body of the Town.

Notwithstanding our request and your agreement to provide this information, to date, we have not received this material. This letter shall serve as notice that we intend to make a motion for disclosure in this regard to obtain this material so that we may begin work on our defense to your tax certiorari case. Please provide this material to us within ten (10) days of your receipt of this letter. If we do not receive this material within ten (10) days of your receipt of this letter, we will be forced to seek Court intervention.

I would appreciate your prompt attention, courtesy and cooperation in this regard.

If you have any questions or comments, please do not hesitate to call. I am,

Very truly yours,

SEGEL, GOLDMAN, MAZZOTTA & SIEGEL, P.C.


Paul J. Goldman

PJG/cabj

SEGEL, GOLDMAN, MAZZOTTA & SIEGEL, P.C.
ATTORNEYS AND COUNSELORS AT LAW

cc: **Stephen J. Fromson, Esq.**
Mr. James Zimmerman
Mr. Scott Shedler

EXHIBIT ‘D’

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

AFFIDAVIT

**MIRANT NEW YORK, INC., d/b/a SOUTHERN
ENERGY NEW YORK-GEN LLC and MIRANT
CORPORATION et al.,**

Debtor.

Chapter 11
Case Nos. 03-05022;
03-05039; 03-05045

STATE OF NEW YORK)

) **SS.:**

COUNTY OF ALBANY)

PAUL J. GOLDMAN, being duly sworn, deposes and says as follows:

1. I am an attorney duly admitted to practice law in the New York State and federal courts. I am a member of Segal, Goldman, Mazzotta & Siegel, P.C., located in Albany, New York. I am a Special Counsel to the Town of Racopus (the "Town"), Rockland County, State of New York.

2. I have represented the Town as Special Counsel in equalization rate, utility valuation, state lands and other complex tax certiorari proceedings since approximately 1997. As Special Counsel to the Town and other municipalities that are located in the Ninth Judicial District of the Supreme Court of the State of New York, in which Judicial District Rockland County is located, I have substantial experience practicing in the Ninth District Tax Certiorari Part, presided over by New York State Supreme Court Justice Thomas Dickerson, who succeeded Justice Peter Rosato and Louis Pallela.



In all events, based upon Mr. Farhat's affidavit, their trial preparation would involve spending significant amounts of time in New York State.

14. In addition, it is my understanding that Orange and Rockland Utility Company ("O&R") retains an ownership interest in the Property that it sold to Mirant. This has been confirmed to the Town's assessor by representatives of O&R. As such, O&R's presence in these proceedings would appear to be necessary. The corporate offices of O&R are located in the Village of Spring Valley, Rockland County, New York. This is approximately three miles from the Ramapo Town Hall. The corporate offices of O&R's parent corporation, Consolidated Edison Company ("Con Ed") are located in New York, and the attorneys for Con Ed and O&R are located in New York City.

15. Substantially all, if not all, of the physical evidence in these tax certiorari proceedings is located in New York State. Apart from the physical plant itself, the relevant documents from both sides are located in Rockland County, including documents concerning the relationship between O&R, Con Ed and Mirant.

16. This relationship is important to these proceedings in light of the attempt by Mirant to indicate that the purchase price for the Property is an appropriate indication of fair market value. If Mirant has a power purchase agreement or other contractual arrangement with O&R and Con Ed, then presumably, the pricing under, and duration of, that power purchase agreement very well may have affected the ultimate purchase price paid by Mirant to O&R for the Property, which price is used for, *inter alia*, the calculation of New York State transfer taxes under the Article 15 of the Tax Law. It is respectfully submitted that the purchase price as reflected on the

form TP 584 for the conveyance of the Property, a form that parties to a real estate transaction must file with the State of New York, may well have been contrived as a result of an overall negotiation of the entire transaction, taking into account any ancillary agreements, such as a power purchase agreement. In other words, the terms of any ancillary agreements, such as the purchase agreement, presumably have affected the purchase price for the Property. It may, for example, have led to an artificially low allocation of the purchase price for the Property as issue in connection with an allocation of the overall multi-asset transaction and complex allocation process pursuant to which Mirant acquired the Property from O&R as part of a much larger transaction. Such a low allocation would be beneficial to Mirant's position in any tax certiorari proceeding commenced by Mirant. Furthermore, there are substantial allocation issues as among the various generating facilities purchased by Mirant from O&R, including the Bowline and Lovett power plants and a number of hydroelectric facilities that were sold in a single transaction.

17. Consequently, the O&R documentation, which is located in New York State, and any O&R and Coe Ed witnesses needed in this matter likely would be located in New York as well. Under the circumstances, this aspect of the discovery process and trial evidence militates strongly against transferring these proceedings to Texas, where evidence and witnesses would be required, at significant inconvenience and expense, not to mention the scheduling difficulties inherent in coordinating the appearances of all the witnesses thousands of miles from their New York locations.

EXHIBIT “E”

REDACTED

From: Paul Felgenbaum
To: **REDACTED**
Date: 6/23/99 11:28AM
Subject: 6/23 Revision of the allocations

REDACTED

Consequently, I will be doing the following re the allocations:

REDACTED

We have broken down further as follows. Of the , we are allocating

These allocations were arrived

at by **REDACTED**

We have broken down

The method used

was to **REDACTED**

These figures will be

will be used to calculate the transfer tax.

REDACTED

EXHIBIT “F”

**STATE OF NEW YORK
SUPREME COURT COUNTY OF ROCKLAND**

In the Matter of the Application of

SOUTHERN ENERGY NY-GEN LLC,

Petitioner,

- against -

**RESPONDENTS' FIRST
NOTICE FOR
DISCOVERY AND
INSPECTION**

**THE ASSESSOR OF THE TOWN OF RAMAPO, THE
BOARD OF ASSESSMENT REVIEW OF THE TOWN OF
RAMAPO AND THE TOWN OF RAMAPO,**

Index No.: 4356/00

Respondents.

For a Review of Tax Assessments under Article 7 of the Real
Property Tax Law.

In the Matter of the Application of

MIRANT NEW YORK, INC.,

Petitioner,

- against -

Index No.: 4700/01

**THE ASSESSOR OF THE TOWN OF RAMAPO, THE
BOARD OF ASSESSMENT REVIEW OF THE TOWN OF
RAMAPO AND THE TOWN OF RAMAPO,**

Respondents.

For a Review of Tax Assessments under Article 7 of the Real
Property Tax Law.

McGraw-Hill Tax Research Database

N. Please provide a copy of all documents showing how the purchase price referenced in item V-M above was determined and a statement of the calculation of the allocation (and the method of allocation) of the purchase price between the Real Property and the other assets acquired from Orange and Rockland Utilities, Inc. in connection with the sale transaction, including all notes, schedules and documents relative to the negotiation of the allocation of the entire purchase price for the generating assets owned by Orange and Rockland Utilities, Inc.

O. Please provide a copy of all documents relative to how the purchase price was derived for the purposes of the preparation of all recording instruments, including without limitation, NYS Forms TP-584 and RP-5217.

VI. Selected Filings.

A. Copies of the following for all controlling and subordinate entities:

1. The petitioner's annual FERC-1 Report submitted to the FERC for the years 1996 to the present.
2. The petitioner's annual report to stockholders for the years 1996 to the present.
3. The petitioner's quarterly 10-K statements filed with the Securities and Exchange Commission for the years 1996 to the present.
4. All engineering Appraisals and/or valuation Appraisals of the Real Property performed by or for the petitioner since 1996.
5. The petitioner's FERC Form #714: Annual Electric Control and Planning Area Report for the years 1996 to the present.
6. The petitioner's FERC Form #715: Annual Transmission Planning and Evaluation Report for the years 1996 to the present.
7. All FERC Form #423: Monthly Report of Cost and Quality of Fuels for Electric Plant filed by the petitioner for the years 1996 to the present.

PLEASE TAKE FURTHER NOTICE, that this demand shall be deemed to continue during the pendency of these proceedings, including the trial thereof, and


PLEASE TAKE FURTHER NOTICE, that in the event of failure or refusal to comply with this demand, the Respondents shall seek to preclude the testimony of any such witness, and

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 3101(h) you are required to amend or supplement your reply to this demand promptly upon your thereafter obtaining information that the reply was incorrect or incomplete when made, or that the reply, though correct and complete when made, no longer is correct and complete, and the circumstances are such that a failure to amend or supplement the reply would be materially misleading.

Dated: December 30, 2003

SEGEL, GOLDMAN, MAZZOTTA & SIEGEL, P.C.

By:


Paul J. Goldman, Esq.
Attorneys for Respondents
9 Washington Square
Albany, New York 12205
(518) 452-0941

TO: ALBERT & ALBERT
(Joseph F. Albert, Esq., of counsel)
Attorneys for Petitioner
The Office Mansion
100 White Plains Road
Tarrytown, New York 10591
(914) 332-6666

CC: GREENBERG WANDERMAN & FROMSON
(Stephen M. Fromson, Esq., of counsel)
Attorneys for Ramapo Central School District
150 Airport Executive Park
Suite 159
Nanuet, New York 10954
(845) 356-3334

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

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

**ORDER GRANTING DEBTORS' MOTION TO DISQUALIFY
SEGAL, GOLDMAN, MAZZOTA & SIEGEL, P.C. AND ITS ATTORNEYS**

The Court, having considered Debtors' Motion to Disqualify Segal, Goldman, Mazzota & Siegel, P.C. and its Attorneys is of the opinion that the Motion should be granted. It is, therefore,

ORDERED that Paul Feigenbaum, Esq. and the firm Segal, Goldman, Mazzota & Siegel, P.C. and each of its attorneys, are disqualified from any further representation of the Town of Ramapo or any other taxing authority in this matter;

IT IS FURTHER ORDERED that the firm Segal, Goldman, Mazzota & Siegel, P.C. shall pay Debtors' attorneys fees in bringing its motion;

IT IS FURTHER ORDERED that the Court will conduct an in camera inquiry into whether counsel for any of the other taxing authorities has been tainted because of a joint defense or joint representation agreement with the Town of Ramapo or the firm Segal, Goldman, Mazzota & Siegel, P.C.

SIGNED this ____ day of January 2004.

Honorable D. Michael Lynn
United States Bankruptcy Judge