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

In re:	§	Chapter 11 Case
	§	
MIRANT CORPORATION, <u>et al.</u> ,	§	Case No. 03-46590 (DML)
	§	Jointly Administered
Debtors.	§	
	§	Hearing Date: March 10, 2004
	§	Hearing Time: 10:30 a.m.

**MOTION OF COUNTY OF ROCKLAND TO COMPEL
DEBTORS' PAYMENT OF POST-PETITION AD VALOREM
REAL PROPERTY TAXES PURSUANT TO 28 U.S.C. §§ 959(b) AND 960**

The County of Rockland ("Rockland") files this Motion to Compel Debtors' Payment of Post-Petition Ad Valorem Real Property Taxes Pursuant to 28 U.S.C. §§ 959(b) and 960 (the "Motion"), and in support thereof, respectfully shows the following:

I.

OVERVIEW

1. Rockland requests that the Court enter an order compelling Mirant Bowline, LLC (f/k/a Southern Energy Bowline, LLC) ("Mirant Bowline"); Mirant Lovett, LLC (f/k/a Southern Energy Lovett, LLC) ("Mirant Lovett"); Mirant NY-Gen, LLC (f/k/a Southern Energy NY-Gen, LLC) ("Mirant NY-Gen"); and Mirant New York, Inc ("Mirant NY") (Mirant Bowline, Mirant Lovett, Mirant NY-Gen, and Mirant NY collectively, the "NY Debtors") to immediately pay

approximately \$62.3 million in unpaid post-petition ad valorem real property taxes that the NY Debtors owe to Rockland and certain taxing authorities located within Rockland, and further compelling the NY Debtors to pay all prospective post-petition ad valorem real property taxes in accordance with New York law.

2. Rockland's requested relief presents two questions of law to the Court:
 - a. Do sections 959(b) and 960 of title 28 of the United States Code require a debtor-in-possession to comply with state law requirements regarding payment of post-petition ad valorem real property taxes?
 - b. Does title 11 of United States Code (the "Bankruptcy Code") provide any basis for a debtor-in-possession to not comply with, or a Court to not enforce, the requirements imposed under 28 U.S.C. §§ 959(b) and 960?

3. The facts relevant to Rockland's requested relief are not in dispute. Accordingly, as set forth in detail herein, Rockland is entitled to the relief requested as a matter of law because (i) New York law requires taxpayers to pay their ad valorem real property taxes by the legally prescribed due date, regardless of whether a taxpayer initiates a legal challenge to the underlying assessed valuations, (ii) 28 U.S.C. §§ 959(a) and 960 require a debtor-in-possession to comply with all state laws regarding property, including the payment of taxes thereon, and (iii) the Bankruptcy Code excuses neither compliance with, nor enforcement of, 28 U.S.C. §§ 959(a) and 960.

II.

FACTUAL BACKGROUND

4. Beginning on July 14, 2003, Mirant Corporation ("Mirant") and certain of its direct and indirect affiliates (collectively, the "Debtors") each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' bankruptcy cases are jointly administered under Case No. 03-46590 (DML) (collectively, the "Bankruptcy Case"). The

Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. Rockland is a municipal corporation organized and operating under the laws of New York, having its principal office at 11 New Hempstead Road, New City, New York 10956. North Rockland Central School District and Ramapo Central School District (collectively, the "School Districts") and the Towns of Haverstraw, Ramapo and Stony Point (each, a "Town" and, collectively, the "Towns") are all located within the territorial boundaries of Rockland.

6. Each Town has an Assessor who is authorized and required by law, for the purpose of taxation, to assess the value of all real property in that Town. Rockland, the School Districts and the Towns each levy their respective ad valorem real property taxes based upon these assessed valuations.

7. Since July 1999, one or more of the NY Debtors have owned, leased or have otherwise been responsible for the payment of ad valorem real property taxes on three power generation facilities and related real property that are located in Rockland (collectively, the "Rockland County Property"), commonly referred to as the Bowline Plant, located in the Town of Haverstraw; the Lovett Plant, located in the Town of Stony Point; and portions of certain Hydroelectric Plants, located in the Town of Ramapo.

8. On or about September 1, 2003, the School Districts levied approximately \$50 million in ad valorem real property taxes on the Rockland County Property for the 2003-2004 fiscal year (collectively, the "2003-2004 School District Taxes"). The 2003-2004 School District Taxes first became due and payable to the School Districts on September 1, 2003, and became delinquent on or about October 1, 2003, as a result of the NY Debtors' failure to pay them by September 30, 2003.

9. On or about December 31, 2003, Rockland levied its ad valorem real property taxes on the Rockland County Property for its 2004 fiscal year in the approximate amount of \$2.3 million (the "2004 Rockland Taxes"), and in accordance with New York law, also relieved the unpaid 2003-2004 School District Taxes. The Towns also each levied their ad valorem real property taxes on the Rockland County Property for their 2004 fiscal year in the approximate amount of \$10 million (collectively, the "2004 Town Taxes"). The 2004 Rockland Taxes and the 2004 Town Taxes first became due and payable to Rockland and the Towns on January 1, 2004, and became delinquent on or about February 2, 2004, as a result of the NY Debtors' failure to pay them by February 2, 2004.

10. Accordingly, as of February 2, 2004, the total amount of the NY Debtors' unpaid post-petition ad valorem real property taxes is \$62.3 million, as illustrated in the following table:

**Ad Valorem Real Property Taxes
Delinquent as of February 1, 2004**

Taxing Authority	Tax Amount (\$)
Town of Haverstraw	6,135,905.66
Town of Ramapo	282,586.55
Town of Stony Point	3,620,900.35
County of Rockland	2,263,538.27
North Rockland Central School District & Ramapo Central School District	49,996,297.82
Total:	<u>62,299,228.65</u>

11. Under New York law, if the NY Debtors do not comply with their statutory obligation to pay the taxes owed to the School Districts and Towns, Rockland may be required to advance to the School Districts and the Towns the amount of the unpaid taxes. Rockland, however, does not presently have sufficient available funds to make such large advances.

Consequently, if Rockland is required to advance the unpaid taxes, it will be forced to borrow the funds.

12. The NY Debtors have challenged certain assessed valuations of the Rockland County Property for the years 1999 through 2003 pursuant to the applicable provisions of the New York Real Property Tax Law (the "NYRPTL"), ultimately initiating tax certiorari proceedings in the Supreme Court of New York, County of Rockland. The NY Debtors also assert an interest in any refund that may be payable to the NY Debtors' predecessor in interest to the Bowline Plant, Orange and Rockland Utilities, Inc. ("O&R"), as a result of the tax certiorari proceedings initiated by O&R challenging the assessed valuations on the Bowline Plant for the years 1995 through 1998. Currently, forty-one tax certiorari proceedings are pending in New York state court, of which twenty relate to the Rockland County Property and are pending before the Supreme Court of New York, County of Rockland.

13. On September 30, 2003, the Debtors filed their Motion Pursuant to 11 U.S.C. §§ 105(a) and 505(a) for the Determination of Tax Liability (the "505 Motion") requesting, inter alia, that the Court redetermine the amount of the NY Debtors' tax liabilities arising from the assessed valuations on the Rockland County Property for the years 1995 through 2003 (collectively, the "Assessments"), and that this Court defer penalties and interest on the 2003-2004 School District Taxes until thirty days after a final judgment has been entered on the 505 Motion.

14. On October 6, 2003, the NY Debtors removed the forty-one tax certiorari proceedings to the United States District Court for the Southern District of New York, which were subsequently referred to the United States Bankruptcy Court for Southern District of New York (Hardin, J.) (the "NY Bankruptcy Court"). The NY Debtors filed a consolidated motion

seeking transfer of all forty-one of the removed tax certiorari proceedings to this Court, and Rockland and the affected taxing authorities filed counter motions seeking remand of the tax certiorari proceedings back to the New York state courts from which they were removed. On December 4, 2003, after a contested hearing, the NY Bankruptcy Court denied the NY Debtors' motion to transfer and granted the motions to remand.

15. Rockland and certain other parties subsequently filed pleadings seeking to dismiss the 505 Motion on jurisdictional grounds or else have the Court abstain from hearing the 505 Motion. On or about January 8, 2004, this Court entered an order wherein, among other things, the Court held that it had jurisdiction over the 505 Motion, but that it would abstain from hearing and ruling on the 505 Motion if the trials of the remanded tax certiorari proceedings are commenced and proceeding as of August 1, 2004.

III.

ARGUMENT AND AUTHORITY

16. The NY Debtors are obligated to pay all of their post-petition ad valorem real property taxes, including the 2003-2004 School District Taxes, 2004 Rockland Taxes and 2004 Town Taxes, regardless of whether the NY Debtors' challenges to the Assessments may ultimately result in a determination that Rockland, the Towns or other tax authorities are obligated to refund some of the ad valorem real property taxes paid by O&R or the NY Debtors for the years 1995 through 2003, because (i) New York state law requires taxpayers to pay such taxes when due; (ii) federal law requires the NY Debtors to comply with all applicable state laws; and (iii) the Bankruptcy Code does not excuse the NY Debtors from paying their post-petition taxes pending the outcome of their challenges of the Assessments.

A. New York Law Requires The NY Debtors To Pay Ad Valorem Real Property Taxes When Due Notwithstanding Any Challenge To The Assessed Valuations

17. Under New York law, "a locality's tax assessment is presumptively valid." In re Niagara Mohawk Power Corp., 92 N.Y.2d 192, 196 (N.Y. 1998). New York law requires taxpayers to pay their real property taxes when due. See, e.g., NYRPTL § 924. New York law also requires taxpayers to pay interest and penalties on taxes that remain unpaid as of the due date, which, in the case of the 2003-2004 School District Taxes was on or about September 30, 2003, and in the case of the 2004 Rockland Taxes and 2004 Town Taxes was on or about February 2, 2004. Id.

18. There is no provision under New York law authorizing a taxpayer to withhold payment of ad valorem real property taxes if the taxpayer is of the opinion that the assessed value of the real property was erroneously or wrongfully determined, even if the taxpayer initiates a legal challenge to such assessed value.

B. Federal Law Requires The NY Debtors To Adhere To All Applicable State Laws

19. Sections 959(b) and 960 of title 28 of the United States Code mandate that debtors-in-possession "manage estates in compliance with state law." In re Al Copeland Enters., Inc., 991 F.2d 233, 237 (5th Cir. 1993). Specifically, the NY Debtors, as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code, are required to comply with the laws of New York pursuant to 28 U.S.C. § 959(b), which states, in relevant part:

a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

28 U.S.C. § 959(b) (emphasis added).¹ See also In re H.L.S. Energy Co., 151 F.3d 434, 438 (5th Cir. 1998).

20. Also, in addition to this general duty of compliance, federal law expressly requires the NY Debtors to pay their taxes pursuant to 28 U.S.C. § 960, which states:

Any officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.

21. 28 U.S.C. § 960 (emphasis added); see also In re Hatfield Const. Co., 494 F.2d 1179, 1181 (5th Cir. 1974) ("Indeed, it has been long settled that property in the hands of a trustee in bankruptcy is not thereby exempt from state and local taxes, absent a clear expression from Congress to the contrary."); accord, California State Bd. of Equalization v. Sierra Summit, Inc., 490 U.S. 844, 850 n5 (1989) (trustee's duties under Bankruptcy Code extend to debtors-in-possession).

22. Regardless of whether the challenges to the Assessments are ultimately successful, pursuant to either a proceeding before a New York state court under Article 7 of the NYRPTL or before this Court pursuant to the 505 Motion, sections 959(b) and 960 of title 28 provide that the NY Debtors must still pay their post-petition ad valorem real property taxes just as the NY Debtors would have to do if they were not in bankruptcy because such payment is mandated under New York law. See In re Thurman, 163 B.R. 95, 98-99 (Bankr. W.D. Tex. 1994); accord, In re Gifaldi, 207 B.R. 54, 56 (Bankr. W.D.N.Y. 1997) (debtors "obliged to pay" post-petition real property taxes "as they became due and owing" pursuant to 28 U.S.C. §§ 959(b) and 960).

¹ The express exception to this provision, 11 U.S.C. § 1166, is not implicated in the present case. Furthermore, the NY Debtors' challenges arise not from their contention that the NYRPTL and the New York state real property tax system are not valid, but rather that the Assessments are not valid under the provisions of the NYRPTL and the New York state real property tax system.

C. The Bankruptcy Code Does Not Excuse Payment Of The NY Debtors' Post-Petition Ad Valorem Real Property Taxes

23. Neither the plain language of nor the legislative history behind section 505 of the Bankruptcy Code provides any authority for the NY Debtors to not pay their post-petition ad valorem real property taxes pending the outcome of their challenges to the Assessments. Moreover, the Bankruptcy Code does not contain any provision that operates to excuse a debtor-in-possession's duties under 28 U.S.C. §§ 959(b) and 960.

24. Likewise, the Court's equitable power under section 105(a) of the Bankruptcy Code to issue any order "that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code powers has its limits and "can only be exercised within the confines of the Bankruptcy Code." In re Cajun Elec. Power Coop., Inc., 185 F.3d at 453 (quoting Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, (1988)); see also In re Southmark Corp., 49 F.3d 1111, 1116 (5th Cir. 1995) (stating that section 105(a) "does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law," or "to act as roving commissions to do equity") (internal quotation marks omitted); In re Smith, 21 F.3d 660, 665 (5th Cir. 1994). Under section 105 of the Bankruptcy Code, "a court may exercise its equitable power only as a means to fulfill some specific Code provision. By the same token, when a specific Code section addresses an issue, a court may not employ its equitable powers to achieve a result not contemplated by the Code." In re Cajun Elec. Power Coop., Inc., 185 F.3d at 453 (quoting In re Fesco Plastics Corp., 996 F.2d 152, 154 (7th Cir. 1993)). Accordingly, since neither section 505 nor any other "specific Code provision" excuses the NY Debtors from paying their post-petition ad valorem real property taxes pending the outcome of their challenges to the Assessments, section 105 of the Bankruptcy Code cannot be legitimately employed by the Court to block the mandates of 28 U.S.C. §§ 959(b) and 960.

25. Even if, however, section 105 of the Bankruptcy Code could legitimately be read to authorize the Court to give tacit approval to the NY Debtors' willful violation of state and federal law based upon equitable considerations by denying the relief requested herein, the equities of this situation lie with Rockland and its citizens, and thus support granting Rockland's requested relief. The prospective financial impact on the NY Debtors arising from an order compelling them to pay the \$62.3 million in now delinquent post-petition ad valorem real property taxes is comparatively small to the harm to Rockland and its citizens from the absence of such relief.

26. Whereas Rockland, if it is so required, will be imminently forced to borrow funds to advance to the School Districts and Towns, Mirant's November 2003 Monthly Operating Report demonstrate that it presently has in excess of approximately \$1.6 billion in available cash and cash equivalents in the Debtors' cash management system. Combined with the Debtors' \$500 million DIP credit facility this Court approved, the Debtors have over \$2.1 billion in immediately available liquidity. Thus, to the extent that the NY Debtors are ultimately found to be entitled to a refund of previously paid ad valorem real property taxes or a reduction in the 2003-2004 School District Taxes, 2004 Rockland Taxes or 2004 Town Taxes, the NY Debtors will ultimately have suffered only the inconvenience of the temporary unavailability of a relatively small fraction of their liquid assets, which will ultimately be returned if so ordered by the courts.

27. Significantly, requiring the NY Debtors to pay their post-petition ad valorem real property taxes, both past-due and on an ongoing basis, will not impede the NY Debtors' reorganization efforts because the Debtors' have more than sufficient cash to pay their taxes.

28. Likewise, the NY Debtors have intimated throughout the preliminary 505 Motion proceedings that they are concerned that Rockland will not be able to satisfy its portion of any refund of previously-paid real property taxes that may ultimately be awarded. Thus, payment of the taxes would "risk squandering [the NY Debtors'] setoff rights" See 505 Motion at ¶ 22. Such concerns are substantively unfounded because Rockland has the authority and ability to borrow funds adequate to satisfy any refund Rockland may be required to issue to O&R or the NY Debtors. See Affidavit of H. Chris Kopf, CPA, First Deputy Commissioner of Finance of Rockland, attached hereto as Exhibit "A" and incorporated herein by reference as if fully set forth at length.

29. On balance, it is far less equitable to make Rockland prematurely borrow \$62.3 million, and incur the costs associated with such borrowing, to advance the unpaid post-petition taxes to the School Districts and Towns (as a result of the NY Debtors' unlawful conduct) than it is to require the NY Debtors to comply with state and federal law and pay their taxes like every other taxpayer must do. Given that the NY Debtors have the burden of proof to show that the Assessments are invalid, to require that Rockland, rather than the NY Debtors, bear the financial burden of the NY Debtors' challenges pending the outcome of the challenges is counterintuitive, effectuates a result not contemplated by the Bankruptcy Code and impermissibly creates substantive rights that are otherwise unavailable under either federal or state law.

30. Allowing the NY Debtors to ignore state and federal law by not paying their post-petition ad valorem real property taxes pending resolution of the challenges to the Assessments will result in fiscal damage to Rockland and its citizens because of the requirement that Rockland, and ultimately all of Rockland's other taxpayers, satisfy the deficiency in taxes created by the NY Debtors' unlawful refusal to pay. Rockland does not suggest that requiring the NY

Debtors to pay all of their post-petition ad valorem real property taxes will have no effect on the NY Debtors' estates, but simply that the relative fiscal impact on the involved parties is so grossly disproportionate as to not even be comparable. Accordingly, to the extent the equities of the matter are dispositive, they lie with Rockland.

31. Furthermore, even if it is determined that O&R or the NY Debtors are entitled to a reduction in any of the assessed valuations on the Rockland County Property for the years 1995 through 2003, any resulting refund in the previously-paid taxes may not inure to the benefit of O&R or the NY Debtors. Section 113(2) of the New York Public Service Law empowers the Public Service Commission of the State of New York (the "NYPSC") to order a utility to pass on to its consumers all, or any part of, the refunds charged and collected by it from any source, in the manner and to the extent determined just and reasonable by the NYPSC.² The provision has been expressly held to include refunds of real property taxes. Orange & Rockland Utilities, Inc. v. Public Service Com., 86 A.D.2d 912 (N.Y. App. Div. 1982).³

D. The NY Debtors Must Pay Interest And Penalties On Their Unpaid Taxes

32. Article 9 of the NYRPTL provides for the assessment of penalties and interest on unpaid taxes. See, e.g., NYRPTL §§ 924, 924-a. In this Circuit, the rule is that statutory

² The statute provides:

Whenever any public utility company or municipality, whose rates are subject to the jurisdiction of the commission, shall receive any refund of amounts charged and collected from it by any source, the commission shall have the power after a hearing, upon its own motion, upon complaint or upon the application of such public utility company or municipality, to determine whether or not such refund should be passed on, in whole or in part, to the consumers of such public utility company or municipality and to order such public utility company or municipality to pass such refunds on to its consumers, in the manner and to the extent determined just and reasonable by the commission.

N.Y. Pub. Serv. Law § 113(2).

³ In Orange & Rockland, the court upheld an order by the NYPSC requiring O&R to refund to its ratepayers over 60% of a property tax refund it received from the Town of Stony Point. The court explained that because the rates that utilities are allowed to charge its customers are based upon projected operating costs, including property taxes, provided by the utility, whenever the utility received a refund, such funds must pass through to the ratepayers since rates cannot be enacted retroactively and a failure to flow through this money would result in a windfall to the utility. 86 A.D.2d at 912.

penalties and interest that accrue as a result of a trustee or debtor-in-possession failing to "carry out its statutory obligations" regarding payment of taxes under state law constitute administrative expenses under section 503(b) of the Bankruptcy Code. In re Al Copeland Enters., Inc., 991 F.2d at 239-240 (citing Reading Co. v. Brown, 391 U.S. 471 (1968)). Accordingly, Rockland is entitled to be awarded an allowed administrative expense claim for the amount of penalties and interest that have accrued and will continue to accrue until such time as all of the post-petition ad valorem real property taxes have been paid by the NY Debtors. See In re H.L.S. Energy Co., 151 F.3d at 438. For the 2003 School District Taxes, penalties and interest began accruing as of September 30, 2003. For the 2004 Rockland Taxes (exclusive of the relieved 2003 School District Taxes) and the 2004 Town Taxes, penalties and interest began accruing as of February 1, 2004.

33. Finally, to the extent that any refund is ultimately awarded to O&R or the NY Debtors for the 2003 School District Taxes, 2004 Rockland Taxes, 2004 Town Taxes or any other previously-paid ad valorem real property taxes on the Rockland County Property, Rockland would be entitled to setoff or recoup the amount of such administrative expense against the amount of such refund.

IV.

PRAYER

WHEREFORE, for the foregoing reasons, Rockland respectfully prays that this Court enter an order (i) compelling NY Debtors to pay the 2003-2004 School District Taxes, 2004 Rockland Taxes and 2004 Town Taxes, as well as pay, in accordance with New York law, all post-petition ad valorem real property taxes levied on the Rockland County Property on an ongoing basis, until such time as the NY Debtors cease to be responsible under New York law for the payment of such taxes; (ii) awarding Rockland an allowed administrative expense claim

for the amount of penalties and interest that have accrued and will continue to accrue on all of the NY Debtors' post-petition ad valorem real property taxes; and (iii) granting Rockland such other and further relief as it may be justly entitled.


Respectfully submitted,

By: /s/ Kevin M. Lippman
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**ATTORNEYS FOR COUNTY OF
ROCKLAND, STATE OF NEW YORK**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of February, 2004, I caused a true and correct copy of the foregoing document to be served upon each of the parties listed on the attached service list by United States first class mail, postage prepaid.

By: 

J. David Leamon, Esq.

EXHIBIT "A"

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

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

AFFIDAVIT OF H. CHRIS KOPF

STATE OF NEW YORK §
COUNTY OF ROCKLAND §

BEFORE ME, the undersigned Notary, on this 11th day of February 2004, personally appeared H. CHRIS KOPF, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. I am the First Deputy Commissioner of Finance of the County of Rockland ("Rockland"), State of New York ("New York"). I serve in the office of the Commissioner of Finance and Budget Director of Rockland, who is the Enforcing Officer of Rockland for, among other things, ad valorem real property taxes. I am fully familiar with the facts and circumstances herein, based upon my personal knowledge, my review of the books and records of this office and my review of documents relating to the issues described herein, including the Debtors' Motion Pursuant to 11 U.S.C. §§105(a) and 505(a) for the Determination of Tax Liability (the "505 Motion").

2. Rockland is a municipal corporation organized and operating under the laws of New York, having its principal office at 11 New Hempstead Road, New City, New York 10956.

3. Upon information and belief, the following entities are the owners or lessees of certain real property located in Rockland County (the "Rockland County Property") or are

otherwise responsible for the payment of ad valorem real property taxes on the Rockland County Property: Mirant Bowline, LLC (f/k/a Southern Energy Bowline, LLC) ("Mirant Bowline"); Mirant Lovett, LLC (f/k/a Southern Energy Lovett, LLC) ("Mirant Lovett"); Mirant NY-Gen, LLC (f/k/a Southern Energy NY-Gen, LLC) ("Mirant NY-Gen"); and Mirant New York, Inc ("Mirant NY") (Mirant Bowline, Mirant Lovett, Mirant NY-Gen, and Mirant NY collectively, the "NY Debtors").

4. The New York State real property tax is an ad valorem tax based on the assessed value of real property. Rockland and other taxing authorities located within Rockland, including towns and school districts, raise money by collecting taxes based on the assessed value of real property located within their respective jurisdiction.

5. The North Rockland Central School District and Ramapo Central School District (collectively, the "School Districts") are among the tax authorities in whose jurisdictions the Rockland County Property is located. Based on the 2003 assessed valuations on the Rockland County Property, the NY Debtors were obligated to pay the School Districts approximately \$50 million in ad valorem real property taxes (collectively, the "2003-2004 School District Taxes"). The 2003-2004 School District Taxes were due and payable by the NY Debtors no later than September 30, 2003.

6. On or about December 31, 2003, Rockland levied its ad valorem real property taxes on the Rockland County Property for its 2004 fiscal year in the approximate amount of \$2.3 million (the "2004 Rockland Taxes"). The failure of the NY Debtors to pay the 2003-2004 School District Taxes resulted in the relevying of the 2003-2004 School District Taxes by Rockland, as part of the 2004 Rockland Taxes.

7. On information and belief, the Towns of Haverstraw, Ramapo and Stony Point (each, a "Town" and, collectively, the "Towns") also levied their ad valorem real property taxes on the Rockland County Property for their 2004 fiscal year in the approximate total amount of \$10 million (collectively, the "2004 Town Taxes"). The 2004 Rockland Taxes first became due and payable to Rockland and the Towns on January 1, 2004, and became delinquent as a result of the NY Debtors' failure to pay them by February 2, 2004. Including the relieved 2003-2004 School District Taxes, the aggregate amount of ad valorem real property taxes currently owed to Rockland and the Towns is approximately \$62.3 million.


8. Attached hereto as Exhibit "1" is a true and correct copy of a summary, of the NY Debtors' unpaid ad valorem real property taxes as of January 31, 2004, with respect to property located in Rockland, which I created based upon copies of tax statements provided to me by the Towns.

9. If the NY Debtors do not pay these taxes, Rockland will be required to advance to the School Districts and the Towns the amount of unpaid taxes owed by the NY Debtors. Rockland does not presently have sufficient available funds to make such large advances. Consequently, if Rockland is required to advance the NY Debtors' unpaid taxes, it will be required to borrow funds to do so.

10. Rockland currently has both the legal authority and the ability to borrow funds through the issuance of bonds to (i) advance the NY Debtors' unpaid taxes owed to School Districts and Towns as of January 31, 2004; or (ii) refund, if necessary, to the NY Debtors Rockland's portion of previously-paid ad valorem real property taxes that the NY Debtors have asserted in the 505 Motion that they are entitled to receive.


11. Based on my experience, I estimate that (i) it will cost the County approximately \$1 million in interest and other related costs to borrow the funds needed to advance the NY Debtors' unpaid taxes and (ii) from the date the decision is made to issue bonds, it will take approximately sixty (60) days to ultimately obtain the funds that would be necessary to advance the unpaid, or refund any previously-paid, ad valorem real property taxes.

FURTHER AFFIANT SAYETH NOT.



H. Chris Kopf

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this 11th day of February 2004, to certify which witness my hand and seal of office.



Notary Public for the State of New York

LUCIA CARUSO
Notary Public, State of New York
Qual. in Rockland Co. No. 01CA6095761
Commission Expires July 21, 20 07

EXHIBIT "1"

County of Rockland Listing of Delinquent Properties - Mirant As Of 1/31/04

Town	ID #	(per town tax bill)	Total Tax	Town Tax	County Tax	School Relevy
Haverstraw	27.5-2-2		284.53	22.58	11.00	250.95
Haverstraw	27.5-2-3		592.79	47.06	22.91	522.82
Haverstraw	27.5-2-4		2,371.15	188.21	91.65	2,091.29
Haverstraw	27.05-2-6		2,686,035.80	213,200.32	103,821.12	2,369,014.36
Haverstraw	27.09-1-1		569.09	45.17	22.00	501.92
Haverstraw	27.09-1-2		2,086.62	165.63	80.65	1,840.34
Haverstraw	26.07-4-4		13,380.96	1,658.56	492.16	11,230.24
Haverstraw	26.07-4-5		1,868.86	231.65	68.74	1,568.47
Haverstraw	26.07-4-6		1,270.81	157.52	46.74	1,066.55
Haverstraw	26.07-5-71		13,879.31	1,720.33	510.49	11,648.49
Haverstraw	26.07-5-72		7,973.75	988.34	293.28	6,692.13
Haverstraw	26.08-2-39		11,836.04	1,467.08	435.34	9,933.62
Haverstraw	26.08-3-32		19,311.44	2,393.65	710.29	16,207.50
Haverstraw	26.08-3-33		7,724.58	957.46	284.12	6,483.00
Haverstraw	600.00-324		460,633.67	57,095.21	16,942.42	386,596.04
Haverstraw	600.00-325		127,081.66	15,751.68	4,674.15	106,655.83
Haverstraw	20.16-2-4		104,896.15	15,921.30	3,754.74	85,220.11
Haverstraw	21.17-1-2		62,050.63	9,419.93	2,209.68	50,421.02
Haverstraw	21.17-1-3		8,235.67	1,250.26	293.28	6,692.13
Haverstraw	21.17-1-4		11,066.72	1,680.06	394.10	8,992.56
Haverstraw	27.05-1-1		30,703.59	4,661.12	1,093.38	24,949.09
Haverstraw	27.05-1-2		4,775,192.15	731,730.67	169,763.30	3,873,698.18
Haverstraw	27.05-1-3		34,100.83	5,176.86	1,214.36	27,709.61
Haverstraw	27.05-1-4		12,945.46	1,965.26	461.00	10,519.20
Haverstraw	21.17-1-5		34,744.27	5,274.56	1,237.28	28,232.43
Haverstraw	27.05-1-5		8,750.40	1,328.40	311.61	7,110.39
Haverstraw	600.00-277-1		5,147,294.85	781,413.00	183,300.00	4,182,581.85
Haverstraw	600.00-277-2		5,147,294.85	781,413.00	183,300.00	4,182,581.85
Haverstraw	600.00-277-3		5,147,294.85	781,413.00	183,300.00	4,182,581.85
Haverstraw	600.00-277-4		5,147,294.85	781,413.00	183,300.00	4,182,581.85
Haverstraw	600.00-277-5		5,147,294.85	781,413.00	183,300.00	4,182,581.85
Haverstraw	600.00-277-6		5,147,294.85	781,413.00	183,300.00	4,182,581.85
Haverstraw	600.00-277-7		2,091,044.79	317,442.40	74,464.07	1,699,138.32
Haverstraw	600.00-330		32,929.63	25,394.17	7,535.46	0.00
Haverstraw	600.00-333		29,954.36	24,262.89	5,691.47	0.00
Haverstraw	600.00-334		<u>7,196.75</u>	<u>5,829.33</u>	<u>1,367.42</u>	<u>0.00</u>
Sub-total			<u>41,484,481.56</u>	<u>6,135,905.66</u>	<u>1,498,098.21</u>	<u>33,850,477.69</u>
Stony Point	10.4-2-10		12,965.02	2,421.84	459.66	10,083.52
Stony Point	10.4-2-19		120,046.60	22,424.55	4,256.15	93,365.90
Stony Point	10.4-2-11		1,312.11	245.10	46.52	1,020.49
Stony Point	10.4-2-12		609.84	113.92	21.62	474.30
Stony Point	10.4-2-13		6,770.62	1,264.74	240.05	5,265.83
Stony Point	10.4-2-14		6,894.19	1,290.30	244.90	5,358.99
Stony Point	10.4-2-15		9,387.65	1,753.61	332.83	7,301.21
Stony Point	10.4-2-16		2,400.93	448.49	85.12	1,867.32
Stony Point	10.4-2-17		1,632.64	304.98	57.88	1,269.78
Stony Point	10.4-2-18		1,608.63	300.50	57.03	1,251.10
Stony Point	10.2-3-17		12,178.72	2,274.96	431.79	9,471.97
Stony Point	10.4-2-2		3,937.51	735.52	139.60	3,062.39
Stony Point	10.4-2-3		2,015.57	376.50	71.46	1,567.61
Stony Point	10.4-2-4		5,618.18	1,049.46	199.19	4,369.53
Stony Point	10.4-2-5		4,801.87	896.98	170.25	3,734.64
Stony Point	10.4-2-6		400.96	74.90	14.22	311.84
Stony Point	10.4-2-7		19,184,891.95	3,583,713.08	680,184.01	14,920,994.86
Stony Point	10.4-2-8		3,841.49	717.58	136.20	2,987.71
Stony Point	10.4-2-9		<u>2,635.96</u>	<u>493.34</u>	<u>93.64</u>	<u>2,048.98</u>
Sub-total			<u>19,383,950.44</u>	<u>3,620,900.35</u>	<u>687,242.12</u>	<u>15,075,807.97</u>
Ramapo	47.15-1-6		643,858.45	127,163.94	35,189.07	481,505.44
Ramapo	600.-119-20		729,706.27	144,119.14	39,880.95	545,706.18
Ramapo	600.-119-10		<u>57,231.93</u>	<u>11,303.47</u>	<u>3,127.92</u>	<u>42,800.54</u>
Sub-total			<u>1,430,796.65</u>	<u>282,586.55</u>	<u>78,197.94</u>	<u>1,070,012.16</u>
Grand Total			<u>62,299,228.65</u>	<u>10,039,392.56</u>	<u>2,263,538.27</u>	<u>49,996,297.82</u>

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