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ATTORNEYS FOR THE TOWN OF RAMAPO, NEW YORK

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

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

**MOTION FOR LEAVE TO APPEAL INTERLOCUTORY ORDER
REGARDING MOTIONS TO DISMISS AND/OR ABSTAIN FROM
HEARING DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(A)
AND 505(A) FOR THE DETERMINATION OF TAX LIABILITY**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

THE TOWN OF RAMAPO, NEW YORK ("Ramapo") files this Motion for Leave to Appeal (the "Motion") Interlocutory Order Regarding Motions to Dismiss and/or Abstain from Hearing Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and 505(a) for the Determination of Tax Liability (the "Order"), entered by the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the "Bankruptcy Court") on January 9, 2004, and pursuant to FED. R. BANKR. P. 8003(a) respectfully states:¹

¹ Pursuant to FED. R. BANKR. P. 8001(b), this Motion is being filed contemporaneously with a Notice of Appeal.

PRELIMINARY STATEMENT

1. Bankruptcy Code § 505(a)(2) states, in relevant part:

“The court may not so determine...the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title...”

11 U.S.C. § 505(a)(2).

2. On December 10, 2003, the Bankruptcy Court held, notwithstanding the express provisions of Bankruptcy Code § 505(a)(2), that it did indeed have jurisdiction to **redetermine over \$200 million in taxes** previously assessed, contested, and properly adjudicated before the applicable New York State tax tribunals of competent jurisdiction.

3. Now faced with the prospect of incurring the expense of a trial for which the Bankruptcy Court has no jurisdiction, in addition to the expense of preparing for and trial of the proceedings in the Supreme Court for the State of New York, a court which **does** have jurisdiction over these matters, Ramapo seeks immediate review of the Bankruptcy Court’s Interlocutory Order.

STATEMENT OF THE FACTS NECESSARY TO AN UNDERSTANDING OF THE QUESTIONS TO BE PRESENTED BY THE APPEAL

The Chapter 11 Cases

4. On July 14, 2003 (the “Petition Date”), Mirant Corporation and certain of its affiliates (the “Debtors”) filed for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court. The Debtors’ Chapter 11 Cases are being jointly administered under Case No. 03-46590-DML-11 (the “Cases”).

Ramapo is a town located in the State of New York, and a respondent to the 505 Motion (as defined below).²

The Tax Assessments

5. In June 1999, Mirant New York, Inc. ("Mirant New York"), one of the Debtors, purchased a gas fired turbine plant located on 15.95 acres in the Village of Hillburn, Town of Ramapo, Rockland County, known as SBL #600-119A, 600-119B and 16-A-6 (the "Hillburn Plant"). Pursuant to Article 5 of the New York Real Property Tax Code (the "RPTL"), the Assessor for the Town of Ramapo completed tax assessments for the tax years 2000, 2001, 2002 and 2003. The assessment roll included assessed values for each parcel constituting the Hillburn Plant (the "Ramapo Assessments").

The Board of Assessment Review Proceedings

6. Pursuant to RPTL § 524, *and prior to the commencement of the Debtors' Cases*, Mirant New York appeared, duly protested and otherwise complained of the Ramapo Assessments and filed with the applicable Board of Assessment Review (the "BAR")³ a statement of protest, thereby challenging the Ramapo Assessments and commencing the BAR review of the Assessments (the "Administrative Proceedings"). In adjudicating before the BARs, Mirant New York filed statements under oath, specifying

² Ramapo may also hold a to-be-assessed claim for ad valorem taxes owed for the fiscal year 2004 and forward.

³ Under RPTL § 525, a BAR is required to meet to hear assessment complaints in a public forum. At any such proceedings, the BAR is allowed under New York law to administer oaths, take testimony and hear proof in regard to a complaint and assessment. Additionally, if the taxpayer chooses to do so, the taxpayer is authorized to submit any documentary evidence to the BAR. RPTL § 525. The BAR also is allowed, in its discretion, to require the complainant to appear before the BAR and be examined concerning the complaint and to produce papers or other information concerning the complaint. After the completion of the review by the BAR, the BAR is required to determine the final assessed valuation of the real property and provide notice to the taxpayer.

the respects in which the Ramapo Assessments should be corrected, reviewed, or reduced. After considering Mirant New York's protests, the applicable BARs rendered determinations affirming the Ramapo Assessments. ***These determinations were also rendered prior to the commencement of the Debtors' Cases.*** Then, pursuant to the RPTL, the Ramapo Assessments were finalized, became open for public inspection, and the Administrative Proceedings became final. Following the BARs' determinations, Mirant New York filed petitions for certiorari review with the Supreme Court of the State of New York, County of Rockland (the "State Court"), thereby commencing the next level of appellate review of the Ramapo Assessments pursuant to Article 7 of the RPTL (the "State Court Proceedings").

7. Various of the Debtors' other affiliates operating in New York pursued similar challenges of their tax assessments before the applicable Board of Assessment Review, and upon adjudication by the applicable BAR, commenced mirror review proceedings pursuant to Article 7 of the RPTL in Rockland County, Orange County and Sullivan County, New York. ***All in all, and prior to the commencement of the Debtors' Cases, forty-one (41) separate tax assessments were contested before and adjudicated by an administrative tribunal of competent jurisdiction in New York, the applicable BAR.*** Some of these assessments were adjudicated as long ago as 1995 (collectively with the State Court Proceedings, the "Tax Certiorari Proceedings").

The Collateral Attack on the BAR Decisions

8. After filing for bankruptcy relief, the Debtors (including Mirant New York) abandoned any effort to pursue the Tax Certiorari Proceedings, instead commencing an aggressive effort to have the Bankruptcy Court **redetermine** the previously adjudicated Assessments. First, on September 30, 2003, the Debtors filed their Motion Pursuant to Bankruptcy Code §§ 105(a) and 505(a) for the Determination of Tax Liability (the "505 Motion"), in which the Debtors sought review by the Bankruptcy Court of not merely the property values already set by the BAR, but also of the methodology long used by the New York State Courts in a review of the assessments of electric power generation plants in the hope that the Bankruptcy Court would establish a different methodology for valuation of the Hillburn Plant and other plants at issue in these proceedings.

The Removal of the Tax Certiorari Proceedings

9. Soon thereafter, on October 14, 2003, Mirant filed Notices of Removal, thereby removing the Tax Certiorari Proceedings (hereinafter, the "Removed Proceedings") to the United States District Court for the Southern District of New York (the "New York District Court"). On October 20, 2003, the New York District Court referred the Removed Proceedings to the United States Bankruptcy Court for the Southern District of New York (the "New York Bankruptcy Court").

10. The Debtors also sought transfer of venue of the Removed Proceedings to the Fort Worth Bankruptcy Court, whereas Ramapo, and numerous other tax authorities that are parties to the Tax Certiorari Proceedings, sought immediate remand of the proceedings back to the New York Supreme Court.

Remand by the Southern District of New York Bankruptcy Court

11. On December 4, 2003, the New York Bankruptcy Court **remanded** the Removed Proceedings to the applicable divisions of the New York Supreme Court. In doing so, the New York Bankruptcy Court held that:

“We are talking about matters of great moment not only to these taxpayers but to all other like taxpayers in the State of New York in an era of deregulation...issues of New York law of such gravity to the body politic in New York should be decided by New York courts.”⁴

12. Accordingly, all forty-one (41) of the Tax Certiorari Proceedings were remanded back to the New York Supreme Court for review of the assessments.

The Bankruptcy Court Retains Jurisdiction of the 505 Motion

13. Notwithstanding the remand of the Removed Proceedings, the 505 Motion remained pending before the Bankruptcy Court (in Fort Worth). Accordingly, in response to the 505 Motion, on November 21, 2003, Ramapo (and nearly every other affected tax authority in New York) filed various motions to dismiss the 505 Motion, namely, on the grounds that Bankruptcy Code § 505(a)(2) expressly denies the Bankruptcy Court subject matter jurisdiction to redetermine the Debtors' tax liability (the “Dismissal Motions”). In these responsive pleadings, Ramapo (and the other tax authorities) argued that the Bankruptcy Court lacked subject matter jurisdiction under Bankruptcy Code § 505 to redetermine the assessments. Alternatively, Ramapo and others argued that the Bankruptcy Court should have abstained from determining the 505 Motion, either under mandatory or permissive abstention doctrines.

⁴ The Honorable Adlai S. Hardin, United States Bankruptcy Judge for the Southern District of New York, December 4, 2003, remanding the Tax Certiorari Proceedings.

14. On December 10, 2003, the Bankruptcy Court heard arguments on the 505 Motion and the Dismissal Motions. The Bankruptcy Court held, among other things, that it **does** have subject matter jurisdiction redetermine the assessments, notwithstanding the express provisions of Bankruptcy Code § 505(a)(2).

15. However, notwithstanding its finding of subject matter jurisdiction, the Bankruptcy Court decided it would **temporarily** refrain from hearing the 505 Motion. In doing so, the Bankruptcy Court crafted an unprecedented ruling whereby the Debtors and Ramapo (as well as every other affected tax authority in New York) must endeavor to be in trial in the New York Supreme Court not later than August 1, 2003. If the parties fail to achieve such a result, then the Bankruptcy Court will set the 505 Motion for trial in Fort Worth, Texas in September, 2004.

16. Accordingly, in disregard of the clear requirement of Bankruptcy Code § 505(a)(2), the Bankruptcy Court is now requiring Ramapo (and every other tax authority) to prepare for two trials in two separate jurisdictions over 1600 miles apart, thereby multiplying the time, cost and expense that each party must bear. Accordingly, Ramapo is compelled to seek relief by way of this requested interlocutory appeal.

RELIEF REQUESTED

17. Section 158(a)(3) of the Judiciary Code states, in relevant part:
- (a) The district courts of the United States shall have jurisdiction to hear appeals
 - (3) with leave of the court, from other interlocutory orders and decrees;

of bankruptcy judges entered in cases and proceedings referred to bankruptcy judges under section 157 of this title.

28 U.S.C. § 158(a)(3).

18. Furthermore, FED. R. BANKR. P. 8001(b) states, in relevant part:

An appeal from an interlocutory judgment, order or decree of a bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

FED. R. BANKR. P. 8001(b).

19. By this Motion, Ramapo seeks leave to appeal the Bankruptcy Court's interlocutory Order.

**STATEMENT OF QUESTIONS TO BE RAISED BY THE
APPEAL AND OF THE RELIEF SOUGHT**

20. On appeal are the following questions:

- a. Did the Bankruptcy Court err in holding that it had subject matter jurisdiction to over the 505 Motion pursuant to Bankruptcy Code § 505(a) and 28 U.S.C. §§ 1334 and 157?
- b. Did the Bankruptcy Court err in determining that, specifically, Bankruptcy Code § 505(a)(2) does not deprive it of subject matter jurisdiction over the 505 Motion?
- c. Did the Bankruptcy err in holding that Bankruptcy Code § 505(a)(2) functions as an affirmative defense, and not as a limitation on the Bankruptcy Court's subject matter jurisdiction?
- d. Did the Bankruptcy Court err in determining that it was not required to mandatorily abstain from determining the 505 Motion?
- e. Did the Bankruptcy Court err in failing to permissively abstain from determining the 505 Motion?

21. Ramapo would seek the following relief on appeal:

- a. that the United States District Court determine that the Bankruptcy Court erred on the aforelisted grounds and that, as such, the Bankruptcy Court is reversed and is prohibited, due to lack of subject matter jurisdiction and the requirements of abstention, from determining the 505 Motion;
- b. that the Bankruptcy Court be reversed and, upon remand, instructed to dismiss the 505 Motion for lack of subject matter jurisdiction; and
- c. that Ramapo receive any and all other relief to which it is legally and equitably entitled.

STATEMENT OF THE REASONS WHY AN APPEAL SHOULD BE GRANTED⁵

The Appeal Should Be Granted Because the Bankruptcy Court's Order is in Error Regarding Multiple Controlling Questions of Law

22. The Bankruptcy Court erred in deciding multiple controlling questions of law. First, the Order is without basis under the Bankruptcy Code and is based upon an erroneous interpretation of Bankruptcy Code § 505(a)(2). The Bankruptcy Court erred in determining that the Assessments have not already been “contested before and adjudicated by” an administrative tribunal of competent jurisdiction. Additionally, the Bankruptcy Court erred in determining that Bankruptcy Code § 505 is not a statute establishing subject matter jurisdiction, but instead is in the nature of an affirmative defense.

23. Additionally, the Bankruptcy Court erred in determining that neither mandatory abstention nor permissive abstention was warranted. Even if the Bankruptcy Court in fact has subject matter jurisdiction under Bankruptcy Code § 505, it should have abstained from hearing the 505 Motion.

⁵ 28 U.S.C. § 158(a) does not indicate the standard a district court should use in determining whether to grant leave to appeal. However, the Fifth Circuit has recognized that most courts use the standard delineated in 28 U.S.C. § 1292(b): (i) a controlling issue of law must be involved, (ii) the question must be one where there is substantial ground for difference of opinion, and (iii) an immediate appeal must materially advance the ultimate termination of the litigation. See *In re Ichinose*, 946 F.2d 1169, 1177 (5th Cir. 1991).

24. These are controlling questions of law because if the Bankruptcy Court erred in its determinations on any of these issues, the Bankruptcy Court's determination of the 505 Motion is improper and without authority. These errors are not harmless but rather go directly to the seminal issue of whether the Bankruptcy Court may adjudicate the 505 Motion.

There are Substantial Grounds for Difference of Opinion as to the Conclusions of Law and the Relief Ordered Thereon

25. Leave to appeal should be granted because there are substantial grounds for a difference of opinion as to whether the Bankruptcy Court erred in making its conclusions of law. The statute at issue is Bankruptcy Code § 505:

§ 505. Determination of tax liability

(a) (1) Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

(2) *The court may not so determine*

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title; or . . .

26. First, the Bankruptcy Court erred in its interpretation of Bankruptcy Code § 505(a)(2), by ignoring the text of the statute, which is clear and unambiguous on its face. As the Fifth Circuit has stressed repeatedly, Federal Courts must “presume that a legislature says in a statute what it means and means in a statute what it says.” *Texas*

Food Indus. v. United States, 81 F.3d 578, 582-83 (5th Cir. 1996). By ignoring the express, unambiguous provisions of the Bankruptcy Code, the Bankruptcy Court erred as a matter of law.

27. In concluding that the Assessments have not been contested before and adjudicated by an administrative tribunal of competent jurisdiction for purposes of Bankruptcy Code § 505(a)(2), the Bankruptcy Court rejected the Fifth Circuit's articulated, stated purpose of Bankruptcy Code § 505,⁶ and the Second Circuit's recent, exhaustive analysis of whether New York State BAR proceedings qualify as an "adjudication" for purposes of Bankruptcy Code § 505(a)(2).⁷

28. There is no issue as to whether the BARs had, prepetition, adjudicated the Debtors' tax liability; they had. There is also no issue that Bankruptcy Code § 505 specifically limits the Bankruptcy Court's authority to determine tax liabilities that have been adjudicated before and contested by, an administrative tribunal of competent jurisdiction. Therefore, the only real issue before the Bankruptcy Court (on December 10, 2003) was whether the BAR hearings at issue constituted adjudications **for the purposes of Bankruptcy Code § 505(a)(2)**. Determining instead that it could conduct an independent analysis of New York's real property tax laws and the procedures by

⁶ In dismissing a similar proceeding for lack of subject matter jurisdiction, the Fifth Circuit held that the "purpose behind section 505 of the bankruptcy code is to protect the estate from the potential loss incurred because of a debtor's failure, due either to financial inability or mere indifference, to contest potentially incorrect assessments...the purposes underlying section 505 would not be served by allowing [a debtor] to relitigate in a federal forum." *In re Trans State Outdoor Advertising Co.*, 140 F.3d 618 (5th Cir. 1998).

⁷ In *Cody, Inc. v. County of Orange (In re Cody, Inc.)*, 338 F.3d 89, 95 (2d Cir. 2003), the Second Circuit Court of Appeals specifically held that "[t]he fact that the determination of the Assessment Board is subject to further review by the State Court does not alter the fact that the Debtor had a fair and full opportunity to present its case to the Assessment Board and that an adjudication was made by a tribunal of competent jurisdiction."

which the State of New York hears tax grievances, the Bankruptcy Court erred. *Trans State*, 140 F.3d at 620; *Cody*, 338 F.3d at 95.

29. Second, in concluding that Bankruptcy Code § 505 is not a subject matter jurisdiction statute, the Bankruptcy Court ruled contrary to the vast majority of case law on the issue. Not only the Fifth Circuit, but most every other court has recognized the language of Bankruptcy Code § 505(a)(2) as a limitation of subject matter jurisdiction. *Trans State*, 140 F.3d at 620 (“...the key to resolving the jurisdictional issue...”). See also, e.g., *Mantz v. Cal. State Bd. of Educ. (In re Mantz)*, 343 F.3d 1207, 1210-13 (10th Cir. 2003); *Cody, Inc. v. County of Orange (In re Cody, Inc.)*, 338 F.3d 89 (2d Cir. 2003); *I.R.S. v. Luongo (In re Luongo)*, 259 F.3d 323, 329-30 (5th Cir. 2001); *City of Perth Amboy v. Custom Distrib. Servs., Inc. (In re Custom Distrib. Servs., Inc.)*, 224 F.3d 235, 239-40 (3d Cir. 2000); *I.R.S. v. Teal (In re Teal)*, 16 F.3d 619, 622 (5th Cir. 1994); *City Vending of Muskogee, Inc. v. Okla. Tax Comm’n*, 898 F.2d 122, 125 (10th Cir. 1990).

An Immediate Appeal Would Materially Advance the Ultimate Termination of the Litigation

30. An appeal would materially advance the ultimate termination of the litigation because, ***if Ramapo is successful on its appeal of the Order, the 505 Motion would necessarily be dismissed for a lack of subject matter jurisdiction and thereby ending the litigation. For this proposition, there can be no dispute.***

31. Further, the litigation related to the Assessments would be properly resolved in the New York Supreme Courts. Resolution in the New York Supreme Courts is necessary not only due to the express language of Bankruptcy Code § 505(a)(2), but also due to the fact that complex, novel issues of state law clearly

predominate over bankruptcy issues. The Debtors are seeking to change the well-established law in New York as to the method for valuing specialized utility property, which could have profound effects both on the way in which power generation facilities in New York are valued and on the public institutions that rely upon such revenues. As stated by the United States Bankruptcy Court for the Southern District of New York, when remanding the **very** Tax Certiorari Proceedings which the Bankruptcy Court now seeks to adjudicate, these issues are of:

“Great moment not only to these taxpayers but to all other like taxpayers in the State of New York in an era of deregulation...”⁸

32. Further, immediate appeal will prevent the unnecessary and wasteful incurrence of significant costs to both the Debtors and Ramapo in having to prepare for both a federal bankruptcy court trial on the Assessments while also preparing for the state court trial over 1600 miles away in New York. In light of the Bankruptcy Court’s Order, Ramapo is now faced with the prospect of having to prepare for trial in New York, only to have the Bankruptcy Court order a trial on the very same issues in Fort Worth, for matters which the Bankruptcy Court does not have subject matter jurisdiction to adjudicate. Not only will Ramapo have to litigate in both Texas and New York on these issues, on appeal, Ramapo is confident that it will succeed in having the 505 Motion (and any judgment related thereto) dismissed for lack of subject matter jurisdiction, thereby rendering any trial in Fort Worth futile and simply a waste of the taxpayers’ money for the Town of Ramapo.

⁸ The Honorable Adlai S. Hardin, United States Bankruptcy Judge for the Southern District of New York, December 4, 2003, remanding the Tax Certiorari Proceedings.

CONCLUSION

33. In sum, interlocutory appeals are available to prevent grave injustice in substantial and serious matters, and Ramapo files this Motion because it has no other means available to obtain relief from the Bankruptcy Court's erroneous and insupportable ruling. Because good cause for granting immediate leave to appeal the Bankruptcy Court's Order exists, Ramapo requests the Court grant this Motion.

COPY OF THE ORDER

34. A copy of the Order to be appealed from is attached to the Motion as Exhibit "A".

PRAYER

WHEREFORE, Ramapo prays that the Motion be **GRANTED** and leave given for the interlocutory appeal from the Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 20th day of January, 2004, a true and correct copy of this Motion was served via first-class, postage-prepaid, United States mail, upon those entities listed below and upon the parties listed on the attached, official, Master Service List.

/s/ John E. Mitchell

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- Debtors' Omnibus Response to the Jurisdictional Challenges to Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and 505(a) for the Determination of Tax Liability (the "Debtors' Response"); and
- Omnibus Response of Official Committee of Unsecured Creditors of Mirant Corporation, Et Al., in Opposition to Jurisdictional Challenges Relating to Debtors' Motion for Determination of Tax Liability Pursuant to 11 U.S.C. §§ 105(a) and 505(a) (the "Committee Response").

The Court, having considered the 505 Motion, the Jurisdiction / Abstention Motions, the Debtors' Response and the Committee Response, conducted a hearing on the foregoing matters on December 10, 2003, in Fort Worth, Texas (the "Hearing"). At the Hearing, the Debtors offered to present testimony and the Court heard arguments of counsel and after considering the submissions of all pleadings, affidavits and other documentary evidence, issued a decision from the bench at the Hearing resolving the Jurisdiction / Abstention Motions (the "Ruling").

Therefore, for the reasons more fully set forth in the official transcript of the Hearing and the Ruling, each of which are expressly incorporated as if fully contained herein, the Court enters the following Order:

ORDERED, that this Court has jurisdiction over the 505 Motion pursuant to 28 U.S.C. §§ 1334 and 157 and Bankruptcy Code § 505(a). The 505 Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). It is further

ORDERED that Bankruptcy Code § 505(a)(2) does not deprive this Court of subject matter jurisdiction over the 505 Motion. It is further

ORDERED that the Court will hold a trial of the 505 Motion beginning on September 20, 2004 and continuing from day to day until completed. Docket call for such trial will occur on Wednesday, September 1, 2004 at 10:30 a.m. It is further

ORDERED that, subject to further motion, the Court will abstain from hearing and ruling on the tax issues that are the subject of the following proceedings (that have been ordered remanded to the applicable county of the Supreme Court for the State of New York, the "Tax Certiorari Proceedings") so long as judgment is entered in such action or trial of the applicable Tax Certiorari Proceeding is commenced and proceeding as of August 1, 2004:

MIRANT NEW YORK, INC. and/or	:	Adv. Pro. Nos.
SOUTHERN ENERGY LOVETT, LLC,	:	03-05019-ASH, 03-05020-ASH, 03-
	:	05021-ASH, 03-05042-ASH
Petitioners,	:	
-against-	:	Rockland County Index Nos.
	:	4357-00, 4696-01, 3122-02, 5279-03
ASSESSOR OF THE TOWN OF STONY POINT, et al.,	:	
	:	
Respondents.	:	

-----	X	-----
MIRANT NEW YORK, INC., and/or	:	Adv. Pro. Nos.
SOUTHERN ENERGY GEN-NY LLC, and/or	:	03-05047-ASH, 03-05048-ASH, 03-
SOUTHERN ENERGY BOWLINE, LLC, and/or	:	05051-ASH, 03-05053-ASH, 03-
ORANGE AND ROCKLAND UTILITIES, INC.,	:	05055-ASH, 03-05056-ASH, 03-
	:	05057-ASH, 03-05058-ASH, 03-
Petitioners,	:	05059-ASH
-against-	:	
	:	Rockland County Index Nos.
ASSESSOR OF THE TOWN OF HAVERSTRAW, et al.,	:	4133-95, 4346-96, 4424-97, 4639-
	:	98, 4238-99, 4358-00, 4694-01,
Respondents.	:	5120-02, 5278-03

-----	X	-----
MIRANT NEW YORK, INC. and/or	:	Adv. Pro. Nos.
SOUTHERN ENERGY NY-GEN LLC,	:	03-05025-ASH, 03-05035-ASH, 03-
	:	05036-ASH, 03-05037-ASH
Petitioners,	:	
-against-	:	Rockland County Index Nos.
	:	2242-00, 2062-01, 2346-02, 2618-03
ASSESSOR OF THE VILLAGE OF HILLBURN, et al.,	:	
	:	
Respondents.	:	

-----	X	-----
MIRANT NEW YORK, INC. and/or	:	Adv. Pro. Nos.
SOUTHERN ENERGY NY-GEN LLC,	:	03-05022-ASH, 03-05038-ASH, 03-
	:	05039-ASH, 03-05045-ASH
Petitioners,	:	
-against-	:	Rockland County Index Nos.
	:	4356-00, 4700-01, 5121-02, 5331-03
ASSESSOR OF THE TOWN OF RAMAPO, et al.,	:	
	:	

Respondents.

MIRANT NEW YORK, INC. and/or
SOUTHERN ENERGY NEW YORK-GEN LLC,

Petitioners,

-against-

ASSESSOR OF THE TOWN OF FORESTBURGH, et al.,

X -----
:
: Adv. Pro. Nos.
: 03-05023-ASH, 03-05028-ASH, 03-
: 05041-ASH, 03-05044-ASH
:
:
: Sullivan County Index Nos.
: 1506-00, 1693-01, 1665-02, 1841-03
:
:
:

Respondents.

MIRANT NEW YORK, INC. and/or
SOUTHERN ENERGY NEW YORK-GEN LLC,

Petitioners,

-against-

ASSESSOR OF THE TOWN OF LUMBERLAND, et al.,

X -----
:
: Adv. Pro. Nos.
: 03-05027-ASH, 03-05030-ASH, 03-
: 05034-ASH, 03-05043-ASH
:
:
: Sullivan County Index Nos.
: 1507-00, 1691-01, 1666-02, 1839-03
:
:
:

Respondents.

MIRANT NEW YORK, INC. and/or
SOUTHERN ENERGY NEW YORK-GEN LLC,

Petitioners,

-against-

ASSESSOR OF THE TOWN OF BETHEL, et al.,

X -----
:
: Adv. Pro. Nos.
: 03-05031-ASH, 03-05032-ASH, 03-
: 05033-ASH, 03-05040-ASH
:
:
: Sullivan County Index Nos.
: 1505-00, 1692-01, 1667-02, 1840-03
:
:
:

Respondents.

MIRANT NEW YORK, INC. and/or
SOUTHERN ENERGY NEW YORK-GEN LLC,

Petitioners,

-against-

ASSESSOR OF THE TOWN OF WAWAYANDA, et al.,

X -----
:
: Adv. Pro. Nos.
: 03-05049-ASH, 03-05050-ASH, 03-
: 05052-ASH, 03-05054-ASH
:
:
: Orange County Index Nos.
: 4636-00, 4933-01, 5023-02, 5278-03
:
:
:

Respondents.

X -----

MIRANT NEW YORK, INC. and/or
SOUTHERN ENERGY NEW YORK-GEN LLC,

Petitioners,

-against-

ASSESSOR OF THE TOWN OF DEERPARK, et al.,

Respondents.

:
: Adv. Pro. Nos.
: 03-05024-ASH, 03-05026-ASH, 03-
: 05029-ASH, 03-05046-ASH
:
:
: Orange County Index Nos.
: 4635-00, 4932-01, 5021-02, 5280-03
:
:
:

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It is further

for good cause

ORDERED, that the foregoing August 1, 2004 deadline may be extended by order of this Court, upon motion by any party in interest, and upon notice and a hearing.

It is further

ORDERED, that, after notice and a hearing, should any respondent establish that the Debtors have materially delayed the trial date of any particular Tax Certiorari Proceeding, the Court will abstain indefinitely. It is further

ORDERED that the Court will conduct a status conference on these matters on Wednesday, August 11, 2004, at 10:30 a.m. It is further

ORDERED that the Omnibus Scheduling Order and Discovery Plan, entered by this Court on October 31, 2003, shall be amended by agreement of the parties consistent with the relief ordered herein, or, if no agreement can be reached, this Court will so amend the Scheduling Order.

SIGNED on this 8 day of January, 2004.

Handwritten signature of D. Michael Lynn

**HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE**

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

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

**ORDER GRANTING MOTION FOR LEAVE TO APPEAL INTERLOCUTORY ORDER
REGARDING MOTIONS TO DISMISS AND/OR ABSTAIN FROM
HEARING DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(A)
AND 505(A) FOR THE DETERMINATION OF TAX LIABILITY**

UPON CONSIDERATION of the Motion for Leave to Appeal Interlocutory Order Regarding Motions to Dismiss and/or Abstain from Hearing Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and 505(a) for the Determination of Tax Liability (the "Motion") filed by the Town of Ramapo, New York in the above-numbered bankruptcy cases, the Court **FINDS** sufficient and proper cause existing for the relief requested and hereby **GRANTS** the Motion and **ORDERS** leave to appeal in accordance with the Federal Rules of Bankruptcy Procedure, the Local District Court and Bankruptcy Court Rules, and all other rules and orders applicable to such an appeal.

Dated this ____ day of _____, 2004.

U.S. DISTRICT COURT JUDGE

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