

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

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

_____))
In re:)) Chapter 11
))
MIRANT CORPORATION, et al.,)) 03-46590-DML-11
)) Administratively Consolidated
Debtors.))
))
_____))

AGREED UPON PROTECTIVE ORDER CONCERNING DISCOVERY

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), the Town of Lumberland, New York ("Lumberland"), the Town of Forestburgh, New York ("Forestburgh"), the Town of Bethel, New York ("Bethel"), the County of Sullivan, New York ("Sullivan"), the Monticello Central School District ("MCSD") and the Eldred Central School District ("ECSD") agree that an order should be entered limiting the disclosure of certain confidential information and documents during discovery or at any hearing or trial (the "Bankruptcy Litigation") in connection with the above-captioned Bankruptcy Cases (the "Cases"), including, with respect to the Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and 505(a) for the Determination of Tax Liability (the "505 Motion") in order to facilitate and expedite discovery while protecting confidential information. The Court finds the parties' agreement reasonable and the requested relief appropriate.

IT IS, THEREFORE, HEREBY ORDERED AND AGREED as follows:

1. Limited Use of Discovery. All information produced or discovered in the Bankruptcy Litigation shall be used solely for: (i) the prosecution or defense of the Bankruptcy

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Litigation, and (ii) those certain proceedings currently pending in the Supreme Court of the State of New York in and for the County of Sullivan, styled as:

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MIRANT NEW YORK, INC. and/or	:		Sullivan County Index Nos.	
SOUTHERN ENERGY NEW YORK-GEN LLC,	:		1506-00	
	:		1693-01	
Petitioners,	:		1665-02	
-against-	:		1841-03	
ASSESSOR OF THE TOWN OF FORESTBURGH, et al.,	:			
	:			
Respondents.	:			
	:			
-----		X	-----	
MIRANT NEW YORK, INC. and/or	:		Sullivan County Index Nos.	
SOUTHERN ENERGY NEW YORK-GEN LLC,	:		1507-00	
	:		1691-01	
Petitioners,	:		1666-02	
-against-	:		1839-03	
ASSESSOR OF THE TOWN OF LUMBERLAND, et al.,	:			
	:			
Respondents.	:			
	:			
-----		X	-----	
MIRANT NEW YORK, INC. and/or	:		Sullivan County Index Nos.	
SOUTHERN ENERGY NEW YORK-GEN LLC,	:		1505-00	
	:		1692-01	
Petitioners,	:		1667-02	
-against-	:		1840-03	
ASSESSOR OF THE TOWN OF BETHEL, et al.,	:			
	:			
Respondents.	:			
	:			
-----		X	-----	

(the "New York Litigation," and collectively with the Bankruptcy Litigation, the "Litigation"), and shall not be used for any other purposes absent agreement of the parties or further order of this Court (the "Bankruptcy Court") or any other court of competent jurisdiction. Nothing in this Order shall be construed to limit access by the Debtors, Lumberland, Bethel, Forestburgh, Sullivan, MCSD or ECSD to any information produced by any other party to the 505 Motion, subject to the confidentiality conditions of this Order. All information produced or discovered in the Bankruptcy Litigation also may be used in connection with future litigation, contested matters, adversary proceedings, withdrawn matters or proceedings, appeals and/or other proceedings in or withdrawn from the Debtors' Chapter 11 proceedings or otherwise related to the New York Litigation (including all appeals and proceedings in the applicable appellate divisions thereof) related in any manner to the subject matter of the Litigation. Documents that have not been designated as CONFIDENTIAL (as defined herein) may be used outside of the Litigation if they have become publicly available or otherwise accessible to a non-producing party without a breach of the terms of this Protective Order.

2. Scope. All documents and information furnished by a party or non-party (collectively, a "Source") in conjunction with the Litigation that contain or are derived from confidential or proprietary research, development, or commercial information, trade secrets or other information that, in the Source's good faith judgment, is entitled to confidential treatment under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, applicable laws of the State of New York, or other applicable law ("Confidential Information") shall be designated CONFIDENTIAL by the Source in the manner provided below and produced to the other parties pursuant to the terms of this Protective Order. The party receiving the Confidential Information shall treat it as proprietary information and shall not use or disclose the Confidential

Information except as authorized by this Protective Order or by such orders as may be issued by this Bankruptcy Court during the course of any Bankruptcy Litigation, or by the Supreme Court of the State of New York in and for the County of Sullivan (the “New York Court”) with respect to any New York Litigation. The provisions of this Protective Order extend to all Confidential Information regardless of the manner in which it is disclosed, including but not limited to documents, interrogatory answers, responses to requests for admissions, deposition transcripts, deposition exhibits, and any other materials produced by a Source in response to or in connection with any discovery conducted in the Litigation, and any copies, notes, abstracts, summaries, analyses or other documents that reflect Confidential Information contained in the foregoing materials.

3. Designation of Confidentiality. Documents or information shall be designated CONFIDENTIAL within the meaning of this Protective Order in the following ways:

(a) In the case of documents and the information contained therein, designation shall be made by means of the following legend placed in a conspicuous manner on each page of any such document: “CONFIDENTIAL.”

(b) In the case of Rule 26(a) Initial Disclosures, interrogatory answers, responses to requests for admissions and similar written discovery, designation shall be made by means of a statement in the answers or responses specifying that the answers or responses or specific parts thereof are designated CONFIDENTIAL. The following legend shall be placed on the front of any written discovery response containing Confidential Information: “CONTAINS CONFIDENTIAL INFORMATION.” Designated parts are not to be used or disclosed except as authorized herein or by Bankruptcy Court Order.

(c) In the case of deposition testimony, counsel may orally indicate on the record questions, answers and exhibits to be designated as containing Confidential Information, and the court reporter shall so indicate in the transcript. In the case of deposition transcripts and exhibits, designation of the portions of the transcript and exhibits which contain Confidential Information shall be made by letter from the designating counsel to all other counsel within five (5) business days of his/her receipt of the deposition transcript. The entire deposition transcript, including exhibits, shall be treated as Confidential Information under this Protective Order until the expiration of the above-referenced five-day period for designation, except that a deponent may review the transcript of his or her own deposition during this five-day period. The parties may also agree, in writing, to extend the time period for providing such designations. The following legend shall be placed on the front of the original deposition transcript and each copy of the transcript containing Confidential Information: "CONTAINS CONFIDENTIAL INFORMATION." Designated parts are not to be used or disclosed except as authorized herein or by Court Order. If all or part of a videotaped deposition is designated as CONFIDENTIAL, the videocassette and videotape container shall be labeled with the legend provided for in Paragraph 3(a) above. Whenever any Confidential Information is to be discussed or disclosed in a deposition, the producing Source may exclude from the room any person who is not entitled to receive such information, it being understood that the court reporter and videographer, if any, are exempt from such exclusion.

(d) To the extent that matter stored or recorded in the form of electronic or magnetic media (including information, databases or programs stored on computers, discs, networks or tapes) ("Computerized Material") is produced by any Source in such form, the Source may designate such matter as CONFIDENTIAL by placing a label with the language

from Paragraph 3(a) above on the disk, tape or other medium containing the Computerized Material.

(e) To the extent that any party or counsel for any party creates, develops or otherwise establishes any electronic or magnetic media, including any database, disc or tape, which contains information designated CONFIDENTIAL, that party and/or its counsel must take all necessary steps to insure that access to that electronic or magnetic media is properly restricted to those persons who, by the terms of this Order, may have access to Confidential Information.

(f) All documents and materials filed with the Bankruptcy Court containing or reflecting the contents of Confidential Information shall be filed in sealed envelopes or other appropriately sealed containers on which shall be endorsed the caption, *In re Mirant Corporation, et al.* 03-46590-DML-11, a generic designation of the contents, the words “CONFIDENTIAL INFORMATION -- SUBJECT TO COURT ORDER” and words in substantially the following form:

By order dated [____], the enclosed [name of document], or a portion thereof, has been filed under seal and may not be examined without further Court order.

Other than parties to this Protective Order, no party or other person may have access to any sealed document from the files of the Court in which the Confidential Information is sought to be used, without an order of such Court, unless otherwise permitted by this Protective Order. The “Judge’s copy” of a sealed document may be opened by the presiding Judge, his/her law clerks and other Court personnel without further Order of the Court. If permitted by the Court where the sealed document is filed, each sealed document filed under seal may be returned to the party or other entity that filed it (1) if no appeal is taken, within ninety (90) days after a final judgment is rendered or (2) within thirty (30) days after the mandate of the last reviewing court which disposes of this Litigation in its entirety is filed (the “Final Resolution”). If the party that filed a

sealed document fails to remove the document within the appropriate time frame, then, after notice from the Clerk of Court, the Source that produced the document shall inform the Clerk to destroy the document, as allowed by the applicable rules of procedure of that Court. Regardless of any provision in this Protective Order to the contrary, a Source does not have to file a document under seal if the Confidential Information contained or reflected in the document was so designated solely by that Source. With respect to the New York Litigation, the parties shall seek to file any Confidential Information under seal, as permitted by the rules of the New York Court.

(g) In the event that purported Confidential Information is provided under this Protective Order, whether in written or oral form, without any designation of confidentiality, such information may be subsequently designated CONFIDENTIAL if, within ten (10) business days of the discovery by the Source that such information was produced without having been so designated, the Source gives written notice thereof to counsel for all other parties, which notice shall be effective upon receipt, in which case the newly designated information shall be treated as Confidential Information by all parties as though such information had been so designated when originally provided. If a Source decides to add a designation to any document previously produced without designation, or to delete the designation on any document previously produced, the designating party shall produce to the parties substitute copies of such documents, either bearing the desired designation or without the designation, as is applicable, within ten (10) days of re-designation. The parties to whom the substitute copies of such documents are produced shall substitute the later produced documents for the previously produced documents, and destroy or return to the producing Source the previously produced documents in their possession, and all copies thereof.

4. Disclosure of Confidential Information. Subject to the further limitation set forth in Paragraph 5 below, access to information designated CONFIDENTIAL pursuant to this Protective Order shall be limited to:

(a) counsel of record for the parties to the Litigation (including any attorneys of such counsel's firm) and any other outside counsel employed by the parties in connection with the Litigation, as well as their respective paralegal, investigative, secretarial and clerical personnel and lawyers engaged as independent contractors who are engaged in assisting such counsel in the Litigation;

(b) outside photocopying, data processing or graphic production services employed by the parties or their counsel to assist in the Litigation;

(c) any expert or consultant for any party or an affiliate of a party and who is retained or employed for the purposes of consulting or testifying in the Litigation;

(d) the parties to the Litigation, their employees, directors, officers, trustees, agents and other affiliated officials;

(e) any person who authored or received the particular material sought to be disclosed to that person, or any person currently employed by the Source or the party that authored the particular material;

(f) except for persons described in Paragraph 4(e), any person from whom testimony is taken or to be taken in the Litigation regarding information contained in any Confidential Information and so long as disclosure of such information is needed, in the good faith judgment of the party seeking to disclose such information, in furtherance of the prosecution or defense of the Litigation, and that such person may only be shown copies of Confidential Information during his or her testimony or in the actual course of preparation

therefore and may not retain copies of any Confidential Information, and further provided that the Source be provided with an opportunity to make an objection to the disclosure to the appropriate court before disclosure;

(g) the Bankruptcy Court, the New York Court or any other court exercising jurisdiction with respect to the Litigation, and all related personnel, and qualified persons (including necessary clerical personnel) recording, taking or transcribing testimony or argument at any deposition, hearing, trial or appeal in the Litigation;

(h) a Mediator or Mediators appointed by the Court, the New York Court or agreed to by the parties; and

(i) any other persons to whom the Source consents in writing, provided that, in the event that consent by the Source is not given, the party seeking to disclose such information may move the appropriate court for an order permitting disclosure pursuant to the terms and restrictions of this Protective Order.

5. Notification Of Confidentiality Order. Other than the persons identified in Paragraph 4(g), or as otherwise ordered by the appropriate court, Confidential Information shall not be disclosed to persons described in Paragraph 4 unless and until such person has been provided a copy of this Protective Order and has executed an Acknowledgment of Protective Order in substantially the form attached hereto as Exhibit A, except that with respect to persons described in paragraph 4(a) only counsel of record or other outside counsel who have appeared in the Litigation must execute an Acknowledgment of Protective Order on behalf of their respective law firms, provided that signing counsel instruct others within their respective law firms as to the provisions of this Protective Order. Nothing within the preceding sentence shall be construed to waive any provision of this Protective Order as to non-signing persons described

in paragraph 4. This prohibition includes either direct or indirect disclosure, including but not limited to any disclosure by counsel or experts. The originals of the executed Acknowledgments of Protective Order shall be maintained by counsel for the party who obtained them until the final resolution of the Litigation. Upon written request, copies of all executed Acknowledgments shall be provided to requesting counsel within ten (10) days.

6. Objections to Designations. The following procedures shall govern all challenges to confidentiality designations:

(a) If a party reasonably believes that information should not be designated as Confidential Information, it must specify to the Source in writing (i) the information at issue and (ii) the grounds for questioning the confidentiality designation. Within five (5) business days of receiving such challenge, the Source must: (a) respond specifically and in writing with the reasons why such information is confidential, or (b) withdraw the designation. The responding party may have such additional time as is reasonable (taking into account the number of documents or other information in issue) as agreed to by counsel for the designating party or as ordered by the appropriate court.

(b) If agreement cannot be reached, the party challenging the confidentiality designation may move the court in which the Confidential Information is sought to be used, to lift the designation. Until such court rules, the confidentiality designation shall remain in effect. If such court rules that the information should not be restricted, the original designation shall remain in effect for five (5) business days after entry of such court's order to that effect. Nothing in this Order shall be deemed to allocate or reallocate any burdens with respect to confidentiality, which shall be determined in accordance with governing law.

7. Preservation of Rights and Privileges. Nothing contained in this Order shall affect the right, if any, of any party or witness to oppose production of any information or documents as being outside the scope of discovery authorized by the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, applicable laws of the State of New York, or other applicable law, or make any other type of objection, claim, or other response to discovery requests, including, without limitation, interrogatories, requests for admissions, requests for production of documents or questions at a deposition. Nor shall this Protective Order be construed as a waiver by any party of any legally cognizable privilege to withhold any Confidential Information, or of any right which any party may have to assert such privilege at any stage of the Litigation.

8. Lumberland, Bethel, Forestburgh, Sullivan, MCSD and ECSD have objected to the Bankruptcy Court's exercise of jurisdiction over the Bankruptcy Litigation. This Order is entered consistent with the 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, and nothing herein shall be deemed a consent to jurisdiction or waiver of any objection to jurisdiction.

9. Return/Destruction of Materials. Within thirty (30) days after the Final Resolution of the Litigation, parties in possession of Confidential Information produced by other Sources shall either destroy or return to counsel for the Source all such Confidential Information, and shall provide counsel for such Sources a list of all persons who signed acknowledgments in respect thereto. Counsel for each party must certify compliance with this Paragraph 8 within this thirty (30) day period. As to those materials which contain or reflect Confidential Information, but which constitute or reflect counsel's work product, counsel of record for the parties shall be

entitled to retain such work product in their files in accordance with the provisions of this Protective Order, so long as it is clearly marked to reflect that it contains information subject to Protective Order, and so long as counsel shall take all other reasonable steps to ensure that such documents are securely maintained. Counsel shall be entitled to retain pleadings, deposition transcripts, and any hearing or trial record (including exhibits) even if such materials contain Confidential Information, so long as such Confidential Information, in accordance with the provisions of this Protective Order, is clearly marked to reflect that it contains information subject to Protective Order, and so long as counsel shall take all other steps reasonably necessary to ensure that such documents are securely maintained. Counsel retaining court reporters shall have the responsibility for ensuring their compliance with this Paragraph. Any party retaining Confidential Information pursuant to this Paragraph shall take all steps reasonably necessary to maintain the security and confidentiality of the materials retained.

10. Inadvertent Disclosure. Inadvertent disclosure of information protected by the attorney-client, work product or other applicable privilege or protection shall not constitute a waiver of any claim of privilege, and failure to assert a privilege in the Litigation as to one document or communication shall not be deemed to constitute a waiver of the privilege as to any other document or communication, even involving the same subject matter. A party that discovers that it has produced privileged information shall request, in writing, its return within ten (10) days of the discovery of such production. The privileged documents together with all copies thereof and any notes made therefrom shall be returned forthwith to the party claiming privilege. Any party filing a motion challenging the privilege to an inadvertently produced document, compelling its production, or otherwise referring to the document(s) at issue shall

seek to have such document(s) filed under seal to the extent permitted by the appropriate court hearing any such dispute.

11. A party's compliance with the terms of this Protective Order shall not operate as an admission that any particular document is or is not (a) confidential, (b) privileged, (c) authentic or (d) admissible in evidence at any hearing or trial.

12. Any party or person in possession of Confidential Information who receives a subpoena (or other process) from any person (including natural persons, corporations, partnerships, firms, governmental agencies, departments or bodies, boards or associations) who is not a party to this Protective Order, which subpoena seeks production or other disclosure of any Confidential Information, shall promptly give written notice by facsimile to counsel for the party who produced or designated the materials as confidential, identifying the materials sought and enclosing a copy of the subpoena or other process. The party or person receiving the subpoena shall also inform the person seeking the Confidential Information that such information is or may be confidential, subject to this Protective Order and may not be disclosed without either (i) the consent of the Source or (ii) applicable court order. The producing Source may move against the subpoena or other process, or otherwise oppose entry of any order by a court of competent jurisdiction compelling production of the Confidential Information. The nonproducing party in possession of the Confidential Information shall have no obligation to oppose any such subpoena. If the producing Source moves against the subpoena or other process, then in no event shall the person or party receiving the subpoena or other process produce Confidential Information of the Source in response to the subpoena or other process unless and until such person or party is ordered to do so by a court of competent jurisdiction.

13. This Protective Order shall apply to non-parties who are obliged to provide discovery, by deposition, production of documents or otherwise, in the Litigation, unless the non-party waives the protection of this Protective Order. This Protective Order shall also apply to non-parties who are afforded access to documents or information produced during discovery in the Litigation, whether by deposition, production of documents or otherwise.

14. Nothing in this Protective Order shall prevent a Source from using or disclosing its own information as it deems appropriate. Any such disclosure by a Source shall not impair the confidentiality obligations imposed upon all other parties and persons subject to this Protective Order, unless such disclosure renders the Confidential Information public or allows such information to be accessed by any non-producing party other than as a result of discovery, hearings or trials in the Litigation.


15. Upon the Final Resolution of the Litigation, the provisions of this Protective Order shall continue to be binding. This Bankruptcy Court expressly retains jurisdiction to enforce this Protective Order following the Final Resolution of the Litigation.

16. This Protective Order shall remain in force and effect until modified, superseded, or vacated by consent of the parties or by order of the Bankruptcy Court, after notice and a hearing.

17. This Bankruptcy Court or the New York Court, as applicable, will enter further orders, at such time and when necessary, regarding the use of Confidential Information in furtherance of trial preparation, at trial or other scheduled hearings in connection with the Litigation.

Dated: ~~March~~ ^{April} 7, 2004

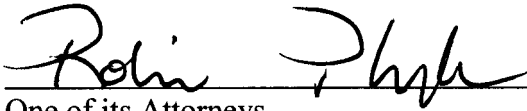
ENTERED:




HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

AGREED:

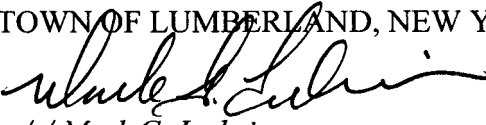
MIRANT CORPORATION AND ITS AFFILIATED DEBTORS

By: 
One of its Attorneys

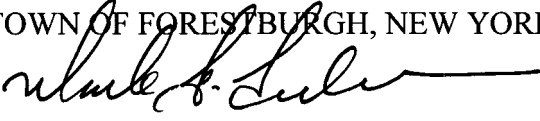
THE TOWN OF BETHEL, NEW YORK

By: 
/s/ Mark G. Ledwin
One of its Attorneys

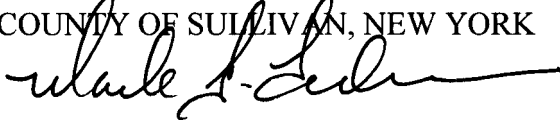
THE TOWN OF LUMBERLAND, NEW YORK

By: 
/s/ Mark G. Ledwin
One of its Attorneys


THE TOWN OF FORESTBURGH, NEW YORK

By: 
/s/ Mark G. Ledwin
One of its Attorneys

THE COUNTY OF SULLIVAN, NEW YORK

By: 
/s/ Mark G. Ledwin
One of its Attorneys

THE MONTICELLO CENTRAL SCHOOL DISTRICT

By: 
/s/ Richard S. Baum
One of its Attorneys

THE ELDRED CENTRAL SCHOOL DISTRICT

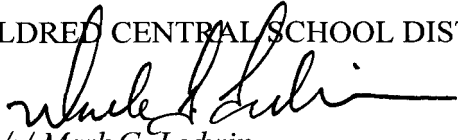
By: 
/s/ Mark G. Ledwin
One of its Attorneys

EXHIBIT A

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

_____)
In re:)

Chapter 11

MIRANT CORPORATION, et al.,)

03-46590-DML-11

Debtors.)
_____)

Administratively Consolidated

1. My name is _____ . I live at _____

_____. I am employed as (state position)

_____ by (state name and address of employer) _____

2. I have read the Protective Order that has been entered in this Litigation (as defined in the Protective Order), and a copy of it has been given to me. I understand the provisions of this Protective Order, and agree to comply with and to be bound by its provisions. I hereby agree to subject myself to the jurisdiction of the Bankruptcy Court for the sole purpose of enforcement of the terms and restrictions of the Protective Order. I agree that I shall not disclose Confidential Information to anyone other than persons permitted to have access to such information pursuant to the terms and restrictions of the Protective Order. I further agree that, upon termination of this Litigation, or sooner if so requested, I shall return all Confidential Information provided to me, including all copies and excerpts thereof, pursuant to the terms of the Protective Order.

3. I declare under penalty of perjury that the foregoing is true and correct.

Name