

1 UNITED STATES BANKRUPTCY COURT  
2 NORTHERN DISTRICT OF TEXAS FORT  
3 WORTH DIVISION

4 IN RE: . Case No. 03-46590  
5 .  
6 MIRANT CORPORATION, . Fort Worth, Texas  
7 . Monday, June 19, 2006 .  
8  
9 D E B T O R .  
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11 . . . . .

12 TRANSCRIPT OF HEARING ON NEW YORK DEBTORS' MOTION FOR ORDER  
13 APPROVING USE OF PROPERTY OF THE ESTATE, ADEQUATE  
14 PROTECTION, FINANCING AND SETTLEMENT BETWEEN MIRANT BOWLINE,  
15 LLC, MIRANT LOVETT, LLC, HUDSON VALLEY GAS CORPORATION,  
16 MIRANT NEW YORK, INC., THE TOWN OF HAVERSTRAW, THE  
17 HAVERSTRAW-STONY POINT CENTRAL SCHOOL DISTRICT, THE VILLAGE  
18 OF HAVERSTRAW, THE VILLAGE OF WEST HAVERSTRAW, THE TOWN OF  
19 STONY POINT AND THE COUNTY OF ROCKLAND FILED BY CONSOLIDATED  
20 DEBTOR HUDSON VALLEY GAS CORPORATION, MIRANT BOWLINE, LLC,  
21 MIRANT LOVETT, LLC, MIRANT NEW YORK, INC. (14084)

22  
23 BEFORE THE HONORABLE D. MICHAEL LYNN  
24 UNITED STATES BANKRUPTCY JUDGE  
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APPEARANCES:  
For Mirant Bowline, LLC  
Mirant Lovett, LLC:  
  
For the Towns of Stony  
Point and Haverstraw, New  
York and Stony Point-  
Haverstraw School  
District, New York:  
  
For County of Rockland, New  
York:  
  
For Town of Stony Point:  
  
For the Town of Haverstraw  
and Stony Point-Haverstraw  
School District, New York:  
  
Court Recorder:  
  
Transcription Service:

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1 Proceedings recorded by electronic sound recording;  
2 transcript produced by transcription service.

3 FORT WORTH, TEXAS, MONDAY, JUNE 19, 2006, 9:14 A.M.

4 THE COURT: Please be seated. All right, I will  
5 loosely use the term, this is the *Mirant New York* case, and  
6 I will ask for appearances, please.

7 MR. FORSHEY: Jeff Prostok and Bobby Forshey on  
8 behalf of Mirant Bowline and Mirant Lovett.

9 MR. MITCHELL: Good morning, Your Honor. John  
10 Mitchell of Vinson & Elkins here today on behalf of the  
11 Towns of Stony Point and Haverstraw, New York, and  
12 Haverstraw-Stony Point School District. I would ask that  
13 the Court allow me to address the Court at this time, just  
14 briefly. Your Honor, I think as you are aware, last week  
15 two of my clients voted in favor of the settlement which is  
16 the subject of today's hearing. One of my clients voted  
17 against the settlement which is the subject of today's  
18 hearing. For some time now, my clients have understood we  
19 may find ourselves in this situation. Accordingly, the  
20 Court should know that my clients have separate  
21 representation for today's hearing.

22 THE COURT: Who has the separate representation?

23 MR. SHERMAN: Your Honor, Mr. Daniel Sherman will be  
24  
25

1 representing the School District and the Town of Haverstraw,  
2 and Mr. Buzz Rochelle will be representing the Town of Stony  
3 Point.

4 THE COURT: All right. Mr. Rochelle, your  
5 client produced an executive, as required by the Court?

6 MR. ROCHELLE: Your Honor, we have.

7 THE COURT: All right, that's fine. Thank you.  
8 I'll hear from you later. All right, you may proceed, Mr.  
9 -- yes, I'm sorry, let's go on with the appearances. I will  
10 take that as your appearance as well if I may, Mr. Rochelle.

11 MR. ROCHELLE: Your Honor, if I might, one other  
12 thing. Here with me today is Mr. Dennis Lynch of the New  
13 York Bar, who is also counsel to the Town of Stony Point. He  
14 does not have a pro hac vice motion on file, but I would  
15 request that if need be, the Court extend to him the  
16 courtesies of appearance in this court.

17 THE COURT: I'll consider it.

18 MR. ROCHELLE: Thank you, Your Honor.

19 MR. LIPPMAN: Your Honor, for appearances, on  
20 behalf of the County of Rockland, New York, Kevin Lippman,  
21 and I have here with me Mr. Scott Vanderhoef. He is the  
22 County Executive for Rockland County. Additionally present  
23 in the courtroom is Mr. Chris Kopf. He is the First Deputy  
24  
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1 Commissioner of Finance for the County. And lastly, present  
2 in the courtroom is Ms. Fina DelPrincipio. She is the  
3 Principal Assistant County Attorney.

4 THE COURT: Very well. My understanding is that  
5 you are jointly proponents of the settlement at this  
6 point; is that correct?

7 MR. LIPPMAN: The County has passed resolutions  
8 authorizing entry into a settlement.  
9

10 THE COURT: Well, while I'm delighted to have you  
11 all here, you needn't have come, and I suspect at this time  
12 of the year, New York upstate would be far more pleasant  
13 than even the most upstate portion of Texas. But of course,  
14 they are welcome.

15 MR. LIPPMAN: And at the appropriate time in the  
16 hearing, there is a statement that we'd like to make into  
17 the record.  
18

19 THE COURT: Very well. Okay, Mr. Forshey.

20 MR. FORSHEY: Your Honor, the Debtors today have  
21 brought Mr. Robert Driscoll, who is the CEO of Bowline and  
22 Lovett. We have here Mr. Jeff Perry, who is the President.  
23 So that we have complied with the Court's requirement, we  
24 have the two top executives here.

25 THE COURT: I appreciate that.

1           MR. FORSHEY: The Court may recall, there has been  
2 an economic settlement that has been on the table going back  
3 to the summer of 2005. The disclosure statement contains  
4 those terms. That was noticed out and served on everybody.  
5 And the deal that we have now, or we thought we had now,  
6 incorporates the same business terms. Last week, as the  
7 Court is aware, we learned that Stony Point had voted  
8 against the settlement. We filed a pleading and second  
9 supplement indicating that Lovett and Bowline are prepared  
10 to go forward without Stony Point. We're here today to say  
11 that we're still willing and ready to go forward without  
12 Stony Point and to give the other parties to the Lovett and  
13 Bowline agreements the same economic terms that they would  
14 have had, except we will not have Stony Point.  
15

16           We understand from the other parties that they  
17 have reservations about doing that, even though it involved  
18 the same economic terms. Perhaps they are best justified of  
19 addressing those reservations. However, we are here today,  
20 we are ready to do the deal, sans Stony Point, on the same  
21 deal with Rockland County, with the Towns of Haverstraw,  
22 Haverstraw Village, the School District, and the West  
23 Village. So basically, we're ready to go, but we need some  
24 partners to dance with.  
25

1           THE COURT: All right. Well, let's find out. Mr.  
2 Lippman, why don't you begin by telling me whether or not  
3 your client wishes to proceed and what your reservations if  
4 any are.

5           MR. LIPPMAN: Thank you, Your Honor. On behalf of  
6 the County, there are certain, I guess key points or  
7 observations which I'd like to share with the Court. The  
8 County was the last of the taxing jurisdictions to take up  
9 for consideration entry into the proposed settlement which  
10 was on the table at the time. At the time the County was  
11 going to consider a resolution, it was already aware that  
12 Stony Point had rejected it and rejected it fairly soundly.  
13 And there was a concern with the County whether or not to  
14 proceed given that. However, because the County strongly  
15 believed, and the Chief Executive of the County, Mr.  
16 Vanderhoef, strongly believed that it's in the best interest  
17 of the citizens of Rockland County that this come to an end,  
18 Mr. Vanderhoef requested, and the legislature to consider,  
19 the approval of the settlement, which the legislature did  
20 and voted for it. And Mr. Vanderhoef has signed the  
21 authorizing resolution which permits the County to enter  
22 into the settlement which was on the table at that time.

25           Secondly, part of the problem we have as we reach

1 today is, the settlement as was being proposed by Mirant  
2 required a linking of the two separate power facilities to  
3 one settlement. The County was aware of, as early as  
4 February of this year, that one of the taxing jurisdictions,  
5 Stony Point, may not approve this deal, and has been urging  
6 since that time to delink the two facilities, because of a  
7 concern that this needed to be resolved, and it needed to be  
8 resolved quickly. Mirant for its own reasons said to the  
9 contrary, that it was an  
10 all-or-nothing deal.  
11

12 When it became evident that Stony Point was not  
13 going to approve it, we reurged the position again with  
14 Mirant, saying, we need to basically go to what we call Plan  
15 B, for if Stony Point doesn't approve, the parties will then  
16 have time to restructure the deal and to address the  
17 situation without Stony Point being a participant in the  
18 settlement. That was rejected by Mirant.  
19

20 As I said, the County is still willing to go  
21 forward for both facilities, but the concern we have, and we  
22 think it's important for the Court to be aware of, that the  
23 delays which have occurred in the settlement discussions are  
24 not the result of the County. The fact that we need to seek  
25 new settlement documents and what new proposal there is,

1 with Stony Point not being a participant, the delay that  
2 that's going to cause is not the result of the County. We  
3 have been urging that that process have already taken place.  
4 And to this date we still have not seen the revised  
5 settlement documents, which Mirant says it's working on.

6 Thirdly, at the last status conference in this  
7 hearing, the Court expressed an observation that it wished  
8 that if not the State of New York, maybe the County,  
9 exercise leverage on the other taxing authorities. I can  
10 assure this Court, the County has done what it can legally  
11 do to encourage the parties to proceed with this settlement,  
12 but it has no legal leverage it can do to force them to  
13 enter into the settlement. It has had these discussions and  
14 has encouraged the parties, but those are their own separate  
15 legal bodies and they make their own decisions.

16  
17 THE COURT: Let me ask you a question. Under  
18 New York law, what rights would the County have in the  
19 event that Stony Point commences a Chapter 9 case?  
20

21 MR. LIPPMAN: I'm not an expert in New York law.  
22 I apologize, Your Honor. I have to defer maybe to the  
23 county attorney maybe for some guidance before I answer that  
24 question. I don't want to misspeak.

25 THE COURT: All right, fine. Thank you, Mr.

1 Lippman. Go ahead.

2 MR. LIPPMAN: The last point which I'd like to  
3 make is, I guess the question of the filing of the 9019. We  
4 understand and we appreciate Mirant's willingness in wanting  
5 to file the 9019 when it did, but as the Court is aware,  
6 because of the ongoing issues with the documentation and  
7 whether or not Stony Point was going to approve it, we  
8 informed Mirant's counsel we think the filing of the 9019  
9 was premature and could set up negative consequences, that  
10 it was important that the --

12 THE COURT: Well, is it the position of the County  
13 that the Court cannot enter an order today approving  
14 the settlement vis-à-vis the County and the Debtors?

15 MR. LIPPMAN: I think the way the settlement is  
16 structured, Mirant will go forward just with the County. It  
17 requires too many other players to have to proceed.

19 THE COURT: Well, I understand, but let's assume  
20 that things are as they appear to be and the party that is  
21 not participating in the settlement is Stony Point.

22 MR. LIPPMAN: I think that Haverstraw counsel  
23 needs to address certain other issues, which I think they're  
24 going to be raising at the appropriate time, so it's just  
25 not right now the County and Mirant at the table.

1           THE COURT: I mean, I don't know that I care about  
2 the timing, except that I will tell you, the ruling of this  
3 Court will be that there will be a determination of any open  
4 issues that are not resolved through settlement within 120  
5 days of today's date.

6           MR. LIPPMAN: And Your Honor, on behalf of the  
7 County, we will welcome that. That was a blessing.

8           THE COURT: And again, we're going to -- I mean,  
9 we're going to restart the 505 as of today, but we'll get to  
10 that later. I just want to be sure, if we can resolve the  
11 County's issues and have Haverstraw's and the School  
12 District's issues, that's dandy, and if it leaves just Stony  
13 Point out, it will cut down on the amount of briefing that  
14 will be required either for Justice Dickerson or this Court.  
15 But we are going to have a final order, subject to appeals,  
16 establishing the taxes in this case, within 120 days from  
17 today. Either my order or Justice Dickerson's, unless, of  
18 course, a higher court mandamuses me, which -- well, you  
19 know, it's the old rule about if you're going to kill a  
20 czar, make sure he's dead.

21           MR. LIPPMAN: Yes, Your Honor.

22           THE COURT: Yes, okay.

23           MR. LIPPMAN: And I think as it's established in  
24  
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1 the record before, and I think this Court is aware of,  
2 during this entire process, it's been the County that's been  
3 economically burdened with taxes.

4 THE COURT: I understand.

5 MR. LIPPMAN: And to date has paid over \$175  
6 million of Mirant's taxes, and it is --

7 THE COURT: I understand.

8 MR. LIPPMAN: And the County needs an end to  
9 this.  
10

11 THE COURT: The County needs the money back, and I  
12 don't blame the County a bit. Let me hear from Mr. Sherman.

13 MR. LIPPMAN: Can I do one last thing, Your  
14 Honor?

15 THE COURT: Right.

16 MR. LIPPMAN: A member of the county legislature,  
17 who is not present here today, has prepared a statement  
18 which they have requested that I at least put into the  
19 record here with respect, on behalf of, I guess the  
20 legislature. They'd be part of today's proceeding, if I may  
21 offer that to the Court as a statement of the county  
22 legislature.  
23

24 THE COURT: Of the legislature, or the  
25 legislator?

1 MR. LIPPMAN: I think the legislator. Is that  
2 correct? Yes, Your Honor.

3 THE COURT: Okay. I wanted to know if it was  
4 the entire legislature speaking, or one legislator.

5 MR. LIPPMAN: The legislator is the Honorable  
6 Ilan Schoenberger.

7 THE COURT: All right. Well, the legislator's --  
8 I'll receive the legislator's statement, understanding that  
9 while I'll receive --  
10

11 MR. LIPPMAN: It's not meant to be offered as  
12 evidence.

13 THE COURT: I understand, I understand. You may  
14 proceed. Go ahead.

15 MR. LIPPMAN: And I have copies for counsel as  
16 well.

17 THE COURT: All right.

18 MR. LIPPMAN: So they'll have an opportunity to at  
19 least see what the statement says.  
20

21 THE COURT: All right. You're not going to read  
22 it into the record then.

23 MR. LIPPMAN: Your Honor, I can. It's three  
24 pages, or two and a half pages.

25 THE COURT: No, that's fine.

1 MR. LIPPMAN: I think the Court may prefer -- THE  
2 COURT: I'm not inviting it. I thought that that's what you  
3 were planning to do.

4 MR. LIPPMAN: I didn't want to take up the Court's  
5 time, because there's a lot of things the Court is going to  
6 need to consider in here from today, so I thought it would  
7 be preferable if we just tender it to the Court for purposes  
8 of the record.  
9

10 THE COURT: All right, that would be fine.

11 MR. LIPPMAN: May I approach? THE COURT:

12 Please.

13 MR. LIPPMAN: And unless the Court has anything  
14 further for me, I will stand down at this time.

15 THE COURT: All right. Let me hear then from  
16 Mr. Sherman.  
17

18 MR. SHERMAN: Thank you, Judge. For the record, Corky  
19 Sherman on behalf of the Town of Haverstraw and the  
20 Haverstraw-Stony Point Central School District. Judge,  
21 Haverstraw, the school district and the town, their  
22 agreement, their willingness to participate in this  
23 agreement, was predicated on Stony Point coming along. We  
24 have had lengthy discussions about what the alternatives  
25 are, and they have been apprised that you will likely set it



1 Justice Dickerson's record. The Court will provide an  
2 additional time for a hearing of two to three days, at which  
3 additional evidence as necessary can be presented. Because  
4 this is under the 505 motion as opposed to the proceeding  
5 before Justice Dickerson, discovery of course is completely  
6 reopened and the Debtor may make such discovery, as may the  
7 other parties, as any parties see fit, in anticipation of  
8 the hearing in 60 days.  
9

10 If Justice Dickerson decides the question within  
11 the next 60 days, of course, this Court need not hear this  
12 matter. If Justice Dickerson -- and I don't want to impose  
13 upon Justice Dickerson. If Justice Dickerson is able in his  
14 view to render a decision within 60 days after that 60-day  
15 period, then I will, on the understanding that he will  
16 render a decision, I will defer again the 505 proceedings.  
17 Failing that, we're going to have a 505 hearing in 60 days,  
18 period. There will be no continuances, no extensions. I  
19 will tell you now, if there are any discovery disputes and  
20 anyone wants to argue about depositions and things, I'll  
21 resolve them, but they're going to be like the last round of  
22 depositions I had to resolve in this matter. It's going to  
23 be all-night depositions in New York state. Okay, any  
24 questions about that? We're going to get this done in 120  
25

1 days. This is going to be over.

2 All right, I have August 21st and August 22nd, and  
3 I'm going to set aside both days for this matter. I want  
4 the entire record in chambers of the New York proceedings.  
5 I need it within probably about 30 days, so you better get  
6 it here by then. I'm trying to -- and it's always been my  
7 preference that the New York State courts resolve this. A  
8 year and a half ago when I was first told that everything  
9 was being stuck up in the air so that settlement  
10 negotiations would proceed, I had my doubts about putting  
11 things up in the air, but I let the parties do as they saw  
12 fit. As a result, here we are 15, 16 months later and we  
13 still don't have this matter resolved. So we're going to  
14 get it resolved. I hope Justice Dickerson can get it done  
15 in time, but if Justice Dickerson can't -- and I would  
16 understand that. I want to make it very, very clear. I  
17 want it on the record and I want Justice Dickerson to  
18 understand this from counsel, that I am not being critical  
19 of Justice Dickerson in any way. He has worked manfully to  
20 accommodate the needs of this Chapter 11 case and to proceed  
21 to a -- and to proceed to a trial and to a result. At the  
22 request of the parties, he suspended proceedings, and my  
23 understanding is they're largely complete but for the filing  
24  
25

1 of one or two briefs. Is that correct, Mr. Forshey?

2 MR. FORSHEY: That is what we were told.

3 THE COURT: All right. Well, I'd advise you, if  
4 anybody has a desire on the New York side to get this heard  
5 up in New York, I'd advise you to get your briefs on file  
6 quickly. If he doesn't feel he can get it done in 60 days,  
7 which is certainly reasonable, but he's certain he can get  
8 it done in 120, I'll hear it. I'll give him the added time.  
9 But at that point I will expect a decision from the New York  
10 Court at the end of 120 days, and I'm going to forbid the  
11 Debtors from negotiating at that point any settlement of  
12 this matter. I'm not going to have this stopped again while  
13 people say that they're going to negotiate. Do understand  
14 me?  
15

16 So if there is a settlement in the meantime, if  
17 the parties sign up, all or some of them, and you want to  
18 proceed, I don't mind doing that either. Let me make it  
19 very clear, once this Court has rendered a decision, there  
20 will be no settlement, period. So if this Court renders a  
21 decision that results in substantial taxes due and owing  
22 from Mirant, those taxes will be paid promptly, or Mirant  
23 will collapse, shut down in New York, whatever. If, on the  
24 other hand, a substantial refund is due, well, either it  
25

1 will be paid promptly, or the party who has to pay it will  
2 seek relief under appropriate federal law, Chapter 9. So if  
3 you're due a refund and it's a couple of hundred million  
4 dollars, I don't want to hear anything about gee, that would  
5 be harsh for the taxpayers to come up with the money if I  
6 have to pay it right away. I will enforce the judgment, I  
7 will do whatever it takes to enforce the judgment, if there  
8 is such a judgment. That cuts both ways. I want it clear,  
9 I'm not happy with this situation. If this wasn't going to  
10 work, we should have known it 14 months ago.

12 Anyone else? All right, that will conclude this  
13 hearing. I will prepare in chambers an order, because I  
14 don't want any of you doing it, which embodies and expresses  
15 what I've just provided for, and we're going to go forward  
16 from here. And I promise you, Mr. Lippman, I promise you,  
17 there will be a decision in 120 days come hell or high  
18 water, and it will be a decision that will be enforced  
19 promptly, just as soon as the judgment is final, promptly.  
20 We'll be in recess.

22 (Proceedings adjourned)

23 I certify that the foregoing is a correct transcript from  
24 the electronic sound recording of the proceedings in the  
25 above-entitled matter.

1        /s/Diane Lancaster

2        June 20, 2006    Diane Lancaster

3        \_\_\_\_\_ Date

4        Transcriber

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