

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re: : Chapter 11
: :
MODERN CONTINENTAL : Case No. 08-14558 (WCH)
CONSTRUCTION CO., INC., : :
: :
Debtor. : :
----- :

**OBJECTION OF NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PENNSYLVANIA TO MOTION
FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)**

National Union Fire Insurance Company of Pittsburgh, Pennsylvania (“National Union”), by and through its undersigned counsel, respectfully submits this objection (the “Objection”) to the Motion for Relief from the Automatic Stay (the “Motion”) filed by Angel Del Valle and Raquel Ibarra Mora, Co-Administrators of the Estate of Milena Del Valle, and Angel Del Valle, individually (collectively the “Del Valle Plaintiffs”), seeking relief pursuant to 11 U.S.C. § 362(d)(1). National Union is the general liability insurer for personal injury claims arising out of the Debtor’s onsite work on the “Big Dig,” including, but not limited to, the Del Valle Plaintiff’s wrongful death suit.¹

In support of the Objection, National Union states the following:

PRELIMINARY STATEMENT

1. The Debtor will be unduly prejudiced by an immediate lift of the automatic stay. The Del Valle Plaintiffs are pursuing a multi-million dollar wrongful death suit against the Debtor stemming from a 2006 ceiling collapse that killed Milena Del Valle (the “Del Valle Suit”). Their strategy is transparent -- to pressure National Union by taking advantage of the

¹ In addition to the Del Valle suit, National Union has provided coverage for thirty-one other claims involving the Debtor arising out of the Big Dig. National Union also provides the Debtor with workers’ compensation insurance related to the Big Dig under a separate workers’ compensation policy.

Debtor's bankruptcy filing, and the uncertainty and dislocation that it has caused, through their expedited lift stay motion so that they may pursue the Del Valle Suit in Massachusetts state court while the Debtors are least capable of focusing on the litigation. By doing so, the Debtor and its creditor constituencies are unnecessarily put at risk.

2. The Debtor's conduct in the face of the Motion has increased the risk that uninsured unsecured claims may be left to the Estate and has created the possibility that its failure to cooperate with National Union may expose the Debtor to coverage issues, including a risk of the denial of coverage. In the Debtor's zeal to dump the financial consequences of the case onto its insurer as fast as possible, it has exposed the Estate to a potential denial of coverage for some, if not all, of any liability award in the underlying case. National Union agreed to defend the Del Valle Plaintiffs' claim for punitive damages under a reservation of rights. By acquiescing to the Del Valle Plaintiffs' Motion, the Debtor has essentially facilitated the Del Valle Plaintiffs' strategy of deposing the Debtor's employees during this critical period at the outset of the bankruptcy proceedings. The consequence of doing so is that the Debtor has left its counsel in the state court action with the prospect of defending virtually unprepared and distracted witnesses to rigorous examination. These depositions further are taking place at a time when the prospects of the Debtors' employees asserting their Fifth Amendment rights against self-incrimination is nearly assured in light of the indictment handed down against the Debtor on the eve of the bankruptcy filing. In the meantime, the Debtor has ignored National Union throughout the bankruptcy process.² The Debtor's utter failure to cooperate with its insurer during the Chapter 11 proceeding may create coverage issues, such as a breach of the insured's

² The Debtor's failure to consult with National Union since the commencement of the bankruptcy proceeding includes an apparent attempt by the Debtor to stipulate to the relief sought by the Del Valle Plaintiffs in this Motion. A proposed stipulation to lift the stay was delivered by the Debtor to its counsel in the Del Valle Suit yesterday afternoon. The proposed stipulation, a copy of which is appended as Exhibit A, would allow the Del Valle Plaintiffs to conduct discovery immediately from the Debtor, including numerous depositions of the Debtor's employees over the next couple of weeks. Inexplicably, the Debtor, if it were to consent to the stipulation, would be waiving any objection it might have to the taking of these depositions. At no time did the Debtor consult with, or even notify, National Union that it was engaging in such discussions with the Del Valle Plaintiffs.

obligation to cooperate with its insurer, the consequence of which could even lead to a possible denial of coverage. A denial of coverage, either for an award of punitive damages or as a result of the Debtor's failure to honor its contractual obligation to cooperate with National Union, exposes the Debtor's estate to the possibility of paying some or all of any judgment in the Del Valle Suit.

3. While the desire of the Del Valle Plaintiffs to continue their action against the Debtors unabated is understandable, no basis for doing so has been demonstrated. It is evident from the moving papers that imposition of the automatic stay with regard to claims against the Debtor will cause no prejudice to the Del Valle Plaintiffs who, by all accounts, have already reached settlements with parties other than the Debtor. The Debtor, on the other hand, will have to dedicate significant resources and time defending numerous depositions in the near future rather than focusing on the restructuring and anticipated liquidation sale proceedings in this case. In the wake of the bankruptcy, Debtor's counsel in the Del Valle Suit, Mullen & McGourty ("Mullen") has already encountered difficulty in meaningfully coordinating with the Debtor in the defense of the claim. It is evident that the bankruptcy has disrupted the Debtor's business organization. The Debtor is incapable, at least in the near term, of dedicating the time, personnel and resources to both its reorganization efforts and the defense of claims such as the Del Valle Suit.

4. The Debtor's recent application on July 2, 2008 to retain Hinkley, Allen & Snyder LLP ("Hinkley") to serve as "Special Counsel" to the Debtors in unidentified litigation matters raises significant additional concerns about the ability of the Debtor to preserve estate assets for the benefit of creditors. It appears based on the Debtor's application to retain Hinkley that the Debtor envisions that Hinkley will have a broad, leading litigation role, presumably including in the defense of the Del Valle Suit. Yet, Hinkley is not counsel of record for the Debtor in the Del Valle Suit and under National Union's policy, it has the right to select counsel. The firm,

however, may have a conflict of interest as it admittedly represents at least one of the sureties. Furthermore, Hinckley is not on National Union's approved counsel list. Thus, if the Court approves Debtor's application to retain Hinkley, Hinkley's significant professional fees would, to the detriment of creditors, be borne solely by the Debtor if the stay is lifted. In addition, as mentioned, the Del Valle Plaintiffs are seeking to immediately conduct depositions of the Debtor's agents, including a Rule 30(b)(6) deposition, if the stay is lifted. Beyond the issue of the significant administrative expense that the Debtor will bear in connection with the defense of the Del Valle Suit and other insured claims if Hinkley is retained, Mullen has not even been apprised whether it will be replaced or if it is to coordinate with Hinckley over the defense of the Del Valle Suit and other insured claims. It is therefore evident that that the continuity of the critical defense of this action and others would be compromised if the automatic stay is lifted.

5. All of these factors weigh heavily in favor of preserving the automatic stay. The Del Valle Plaintiffs, by engaging in this reckless plan to lift the automatic stay, have created unreasonable risks for the Debtor and its creditors. In addition, by focusing solely on the existence of insurance, the Del Valle Plaintiffs have greatly obscured the impact that relief from stay would have on the Debtor's ability preserve estate assets and to dedicate its efforts toward a successful reorganization. The prejudice to the Debtor is greatly outweighed by any prejudice to the Del Valle Plaintiffs if the Motion is denied at this time.

6. The Court should therefore deny the Motion and preserve the automatic stay.

BACKGROUND

7. On June 23, 2008 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the

“Bankruptcy code”) in the United States Bankruptcy Court for the District of Massachusetts (the “Court”).

8. The Debtor is a closely-held Massachusetts corporation in the business of providing general contractor services for heavy civil and other types of construction projects.

9. The Debtor is a general contractor on the Central Artery/Tunnel project (otherwise known as the “Big Dig”).

10. The Del Valle Plaintiffs are parties to the Del Valle Suit, which is styled *Angel Del Valle and Raquel Ibarra Mora, Co-Administrators of the Estate of Milena Del Valle, and Angel Del Valle, individually, v. Bechtel Corp, et als*, Suffolk C.A. No. 06-3654-BLS2.

11. The Del Valle Suit arises from allegations by the Del Valle Plaintiffs, among other things, that the Debtor and other parties were responsible for the death of Milena Del Valle on June 10, 2006, when a 1-90 Connector Tunnel ceiling tile installed in connection with the construction of the Big Dig fell on the vehicle in which she was a passenger.

12. Among other relief, the Del Valle Plaintiffs seek punitive damages against the Debtor and the other defendants in the Del Valle Suit.

13. National Union issued a CGL insurance policy in connection with the Big Dig naming the Massachusetts Highway Department as insured and providing coverage for certain contractors, including as the Debtor (the “Policy”). In addition to the Del Valle Suit, National Union has provided coverage for thirty-one other claims against the Debtor arising out of The Big Dig. National Union also provides the Debtor with workers’ compensation insurance related to The Big Dig under a separate workers’ compensation policy.

14. National Union agreed to defend the Debtor in connection with the Del Valle Suit under a written reservation of rights. Specifically, National Union agreed to assumed the defense of the Del Valle Suit, but reserved its rights to deny coverage with respect to the Del Valle Plaintiffs’ prayer for an award of punitive damages.

15. On June 20, 2008, the United States Department of Justice indicted the Debtor for alleged violations of federal criminal law as a consequence of its conduct related to construction of the Big Dig, including the ceiling tile that collapsed on and killed Milena Del Valle.

16. The Debtor's Chapter 11 Petition, filed three days later, automatically stayed the Del Valle Suit.

17. On June 27, 2008, only four days after the Petition Date, the Del Valle Plaintiffs filed the Motion seeking, among other relief, (i) to allow all discovery and all proceedings relating to discovery in the Del Valle Suit against the Debtor and several other non-debtor defendants to proceed until October 31, 2008, and (ii) to allow any and all actions to reach and implement settlements between the Del Valle Plaintiffs and non-debtor defendants in the Del Valle Suit to proceed until October 31, 2008.

18. If the automatic stay is lifted, according to the Motion, the Del Valle Plaintiffs propose to immediately conduct seventeen "scheduled" depositions, including at least six involving the Debtor's agents. The Del Valle Plaintiffs give no indication that discovery in the Del Valle Suit would in any way be limited to the "scheduled" depositions. In fact, the Del Valle Plaintiffs seek in the Motion "to notice and conduct such further discovery as is desired and/or permitted [in the Del Valle Suit]."

19. Not surprisingly, the Debtor's bankruptcy filing has impaired the ability of its counsel in the Del Valle Suit from having access to critical witnesses. Mullen represents the Debtor in the Del Valle Suit. It is apparent the Mullen's Michael Mahoney, lead counsel for the Debtor in the Del Valle Suit, has not been consulted with regard to the Del Valle Plaintiffs' Motion for relief from stay. It also is evident that the bankruptcy filing has prevented Mr. Mahoney from having ready access to his client or its employees. Thus, the Debtor's bankruptcy filing has interfered with the Debtor's capacity to defend the claims in the Del Valle Suit.

20. Adding to the confusion, the Debtor has sought leave of Court to retain additional counsel to advise on pending litigation matters, including the Del Valle Suit. On July 2, 2008, the Debtors filed the *Application By Debtor and Debtor-in-Possession to Retain Hinckley, Allen & Snyder, LLP as Special Counsel* (the “Hinckley Application”). It appears that the Debtor has designs for Hinckley to assume a significant litigation role, including in the defense of the Del Valle Suit. According to the Hinckley Application:

The professional services that [Hinckley] will render as Section 327(e) Special Counsel to the debtor will relate solely to the Special Counsel matters, ***including all aspects of the Modern Litigation including prosecution and defense, discovery, motion practice, trial and any necessary appeals or executions on judgment.*** (emphasis supplied).

21. The Modern Litigation, as defined in the Application, includes the Del Valle Suit and “certain litigation pending before various state and federal courts both in the Commonwealth of Massachusetts and in other jurisdictions.”

22. Hinckley is not counsel of record for the Debtor in the Del Valle Suit.³ On the contrary, Hinckley’s involvement in the Del Valle Suit has been to advise the Debtor’s surety. The firm’s role in the defense of the Del Valle Suit is unclear and ambiguous at this confusing juncture in the defense of the action.

23. On July 7, 2008, counsel for the Del Valle Plaintiffs proposed to Debtor’s bankruptcy counsel, Hannify & King, that it enter into the Stipulation which is appended as *Exhibit A* in order to bring about relief from the automatic stay without the benefit of a hearing. National Union has had no involvement in the negotiation of the Stipulation. The Debtor did not consult with or even notify National Union that the Stipulation was proposed. The Debtor, to date, has made no attempt to cooperate or consult with its insurer on any aspect of this bankruptcy, including the Del Valle Plaintiff’s Motion.

³ Hinckley is not approved counsel for National Union and has been notified by the insurer that it will be approved as counsel in the Del Valle Suit.

24. Section 3 of the Stipulation provides as follows:

The Debtor agrees that it will interpose no objections, nor assist others to assert objections, to the proposed depositions of its current and former officers, managers and employees, including without limitation, the pending depositions of Project Engineer Neil Joyce, Foreman Fernando Carvalho, Laborers Manuel Diaz, DeMazio Perreira and Duarte Ciano, or expected depositions of Project manager James Bruno, Quality Control Mangers James Martin, Scott Abbotts and Jason Duplessis, Superintendent Varlei “Bill” Brito and Ironworkers, including without limitation Foreman Robert Vaughan, provided such depositions are scheduled in a reasonable manner.

25. Effectively, Section 3 of the proposed Stipulation would bind the Debtor’s defense counsel in the state court action from being able to object to depositions or addressing the depositions of its employees. Thus the Debtor, if it were to agree to the Stipulation, would impede the ability to effectively and zealously represent it.

26. In addition, the Policy contains a standard cooperation clause requiring the Debtor to fully cooperate in the investigation, settlement and defense of claims under the Policy. If the Debtor agrees to the Stipulation, the Debtor may be deemed to have violated its duty to cooperate thereby creating a coverage issue under the Policy.

ARGUMENT

A. The Del Valle Plaintiffs Have Failed to Establish Sufficient Cause to Immediately Lift the Automatic Stay

27. The Debtor respectfully requests that the Court deny the Motion because the Debtor and its estate will be prejudiced if the automatic stay is lifted and the Del Valle Suit is allowed to proceed as contemplated by the Del Valle Plaintiffs.

28. The automatic stay is “one of the fundamental debtor protections provided by the bankruptcy laws.” Midlantic Nat’l Bank v. New Jersey Dep’t of Env’tl. Prot., 474 U.S. 494, 503 (1986), reh’g denied, 475 U.S. 1090 (1986), 475 U.S. 1091 (1986). As noted in the legislative history:

It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It

permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 340 (1977); S. Rep. No. 95-989, 95th Cong., 2d Sess. 54 (1978).

29. In order to effectuate the efficient reorganization of debtors, the automatic stay stays all proceedings, including civil claims and arbitration. See FAA v. Gull Air, Inc., 890 F. 2d 1255, 1262 (1st Cir. 1989). By shielding debtors from defending litigation in non-bankruptcy forums, the automatic stay permits the debtors to concentrate on devising and obtaining approval of a reorganization plan. Constitution Bank v. Tubbs, 68 F. 3d 685, 691 (3d Cir. 1995). The automatic stay also implements the policy of equitable distribution of assets among all creditors.

As Congress made clear:

Without [the automatic stay], certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 340 (1977); S. Rep. No. 95-989, 95th Cong., 2d Sess. 49 (1978). Accordingly, the automatic stay is intended to (i) centralize all pre-bankruptcy civil claims against a debtor in the bankruptcy court, McCartney v. Integra Nat'l Bank North, 106 F. 3d 506, 511 (3d Cir. 1997); (ii) provide the debtor with a breathing spell from its creditors; and (iii) protect creditors by insuring that the estate's assets will not be dissipated in a multitude of proceedings. Johnson v. First Nat'l Bank of Montevideo, Minnesota, 719 F. 2d 270, 276 (8th Cir. 1983) (citation omitted), cert. denied, 465 U.S. 1012 (1984).

30. Section 362(d) of the Bankruptcy Code permits a court to grant relief from the automatic stay, but only for "cause" on request of a party in interest and after notice and hearing. 11 U.S.C. § 362(d). The party seeking relief from the automatic stay has the burden to establish

such “cause.” In re Conejo Enters., Inc., 96 F. 3d 346, 352 (9th Cir. 1996); In re Sonnax Indus., Inc., 907 F. 2d 1280, 1285 (2d Cir. 1990). “Because the stay is a fundamental protection for all parties affected by the filing of a petition in bankruptcy, it should not be dismantled without good reason.” Napoleon G. Soares v. Brockton Credit Union (In re Soares), 107 F. 3d 969, 977 (1st Cir. 1997). Where, as here, a movant claims to be an unsecured creditor, an initial showing of cause may be established only upon an extraordinary set of circumstances. In re Tristar Auto. Group, Inc., 141 B.R. 41, 44 (Bankr. S.D.N.Y. 1992). In the well-reasoned decision of In re U.S. Physicians, Inc., 236 B.R. 593 (Bankr. E.D. Pa. 1999), the court explained the justification for this heightened standard:

Unsecured creditors are generally relegated to asserting their claims under the bankruptcy claims process. That is because actions by unsecured creditors in other forums would require expenditure of administrative resources of the estate to litigate in alternative forums. Therefore, allowing litigation by, as well as any recovery to, an unsecured creditor would tend to significantly reduce assets of the estate Relief for unsecured creditors is therefore rarely granted in bankruptcy cases under 11 U.S.C. § 362(d).

Id. at 601 (citations omitted).

31. To establish cause, the party seeking relief from the stay must show that “the balance of hardships from not obtaining relief tips significantly in [its] favor.” In re American Classic Voyages, Co., 298 B.R. 222, 225 (D. Del. 2003). In ascertaining whether an unsecured creditor has established “cause” to continue litigation against a debtor, a bankruptcy court may consider a number factors, including the following:

- (a) The lack of any connection with or interference with the bankruptcy case;
- (b) whether the debtor’s insurance carrier has assumed full responsibility for defending the litigation;
- (c) whether litigation in another forum would prejudice the interests of other creditors, the creditors’ committee and other interested parties;

- (d) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (e) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (f) the impact of the stay on the parties and the “balance of hurt.”

Goya Foods, Inc. v. Unanue-Casal (In re Unanue-Casal), 159 B.R. 90, 95-96 (D. P.R. 1993), *aff’d* 23 F. 3d 395 (1st Cir. 1994), *citing* In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Not all of the factors need to be considered by bankruptcy courts in deciding whether to lift the stay or allow litigation to proceed in another tribunal. In re G.S. Distribution, Inc., 331 B.R. 552 (Bankr. S.D. N.Y. 2005). “Generally, courts have relied on only a few factors.” In re Unanue-Casal, 159 B.R. at 96. The failure to meet this heavy burden requires the denial of the request for relief from the automatic stay. *See* In the Matter of Eagle Enter., Inc. & Liberty Recovery Sys., Inc., 265 B.R. 671, 680 (E.D. Pa. 2001).

32. Courts have denied motions for relief from the automatic stay even in instances, not present here, where assets of the estate are not at risk, including instances where the moving party has agreed to pursue insurers and their resources exclusively. *See* A.H. Robbins Co. v. Aetna Cas. & Sur. Co. (In re A.H. Robbins Co.), 828 F. 2d 1023, 1026 (4th Cir. 1987) (retaining stay in product liability action, despite plaintiffs’ vow not to pursue debtor’s assets, because debtor would necessarily be involved in defending the suit); In re Metro Transportation Co., 82 B.R. 351, 354 (Bankr. E.D. Pa. 1988) (denying lift stay motion where “even making claims against a debtor’s insurer impacts upon property of the estate [in] that a debtor must expend resources to some degree to defend claims which are ultimately totally covered for payment by insurance.”).

33. In considering all of the relevant factors, it is evident that the automatic stay should be retained. Although National Union insurance coverage is currently in place that may

cover a judgment in favor of the Del Valle Plaintiffs, National Union has not agreed to assume the full responsibility for (a) the costs of the defense, assuming Hinckley is retained as “Special Counsel,” nor (b) the costs associated with any punitive damages award in favor of the Del Valle Plaintiffs as evidenced by its election to defend the Debtor under a reservation of rights. To the same extent, if the Debtor fails to cooperate in the defense of the Del Valle Suit, thereby eliminating coverage, National Union has not agreed to assume the further defense of the claim.

34. In addition, there is ample evidence in these very early days of the bankruptcy that the Debtors cannot dedicate the necessary effort and manpower to reorganize and wind down its affairs for the benefit of creditors, while at the same time devote the necessary resources to ably defend the Del Valle Suit and other claims which may be the subject of lift stay motions. The Del Valle Plaintiffs are poised to immediately conduct depositions of the Debtors agents and employees, including a critical Rule 30(b)(6) deposition, Yet, Mullen has had no access to these employees since the bankruptcy filing. It is not even clear in light of the Hinckley Application that Mullen will defend these depositions or otherwise take a leading role in the defense of the Del Valle Suit should the stay be lifted. Certainly, the specter of this tension and uncertainty, both for the Debtor and its creditor constituents, speaks to the probable interference which the Del Valle Suit will have on the bankruptcy case if the status quo is not maintained.

CONCLUSION

35. Accordingly, National Union submits that the Del Valle Plaintiffs have not made an initial showing why cause exists to lift the stay and therefore has not met their burden under Bankruptcy Code Section 362(d). National Union respectfully request that the Court (i) deny relief from the stay in order to allow the Del Valle Suit to proceed against the Debtor; and (ii) grant the Debtor such other and further relief as may be just and proper.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)**

In re:)	
)	
)	Chapter 11
MODERN CONTINENTAL)	
CONSTRUCTION CO., INC.,)	Case No. 08-14558 (WCH)
)	
Debtor.)	

STIPULATION AND ORDER FOR RELIEF FROM THE AUTOMATIC STAY

WHEREAS, Angel Del Valle and Raquel Ibarra Mora, Co-Administrators of the Estate of Milena Del Valle, and Angel Del Valle, individually (“Plaintiffs”), filed their Motion For Relief From The Automatic Stay (the “Motion”) pertaining to Civil Action No. 06-3654-BLS2 (the “State Court Action”) pending in the Suffolk County Superior Court (the “Superior Court”) against Modern Continental Construction Co., Inc. (the “Debtor”) and several other non-debtor defendants

WHEREAS, Plaintiffs and the Debtor, subject to the approval of the Bankruptcy Court, have agreed to the terms and conditions pursuant to which the Motion may be allowed;

Now, therefore, it is agreed as follows:

1. The Motion shall be ALLOWED by the Court, and the automatic stay under 11 U.S.C. §362 (a) in this case shall be, and upon approval by the Court hereby is, modified (i) allowing all discovery and all proceedings in the State Court Action relating to discovery to proceed, and (ii) allowing any and all actions to reach, implement and approve settlements between the Plaintiffs and non-debtor defendants in the State Court Action to proceed, including

without limitation allowing any and all actions by such settling defendants to seek separate and final judgment in the State Court Action and allowing any and all actions (other than actions to recover money damages against the Debtor's assets or property of the estate, which may be undertaken only in accordance with the Bankruptcy Code or upon further order of the Bankruptcy Court) to determine any pending cross-claims, including those asserted by the Debtor, against such settling defendants; and (iii) allowing any and all other proceedings to resolve, value and liquidate the Plaintiffs' claims in the State Court Action, whether such claims may be covered by insurance or not; provided, however, that Plaintiffs may pursue and recover money damages for any claims against the Debtor solely from or through the Debtor's Insurers and/or to the extent of insurance proceeds available through the Debtor's insurance policies.

2. Plaintiffs shall not be limited in pursuing any and all claims or recovery for any and all claims against non-debtor defendants, whether from or through their respective insurers and available insurance coverage or otherwise, and whether or not such claims are subject to the provisions of paragraph (1) above.

3. The Debtor agrees that it will interpose no objections, nor assist others to assert objections, to the proposed depositions of its current and former officers, managers and employees, including without limitation, the pending depositions of Project Engineer Neil Joyce, Foreman Fernando Carvalho, Laborers Manuel Diaz, DeMazio Perreira and Duarte Ciano, or expected depositions of Project manager James Bruno, Quality Control Mangers James Martin, Scott Abbotts and Jason Duplessis, Superintendent Varlei "Bill" Brito and Ironworkers, including without limitation Foreman Robert Vaughan, provided such depositions are scheduled in a reasonable manner.

4. This Stipulation and Order is effective immediately upon approval by the Bankruptcy Court, and is not subject to the ten day stay provided for in Federal Rule of Bankruptcy Procedure 4001 (a) (3).

Dated: July ____, 2008

Angel Del Valle and Raquel Ibarra Mora, Co-Administrators of the Estate of Milena Del Valle, and Angel Del Valle, individually,

By their counsel

/s/ Jacob Aaron Esher

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IT IS SO ORDERED.

Signed in said District this ____ day of _____, 2008.

Honorable William C. Hillman
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re: : Chapter 11
: :
MODERN CONTINENTAL : Case No. 08-14558 (WCH)
CONSTRUCTION CO., INC., : :
: :
Debtor. : :
----- :

CERTIFICATE OF SERVICE

James P. Ponsetto, Esquire, attorney with the law firm of Greenberg Traurig, LLP, hereby certify that a copy of the Objection of National Union Fire Insurance Company of Pittsburgh, Pennsylvania to Motion for Relief From the Automatic Stay Automatic Stay Pursuant to 11 U.S.C. § 362(d) was served upon the parties listed on the attached Service List via ECF, facsimile or first class mail, postage pre-paid, on July 8, 2008.

Dated: July 8, 2008

Respectfully submitted,

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Lockton Companies Inc.
444 West 47th Street
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Thomas F. Corbett Associates
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Fax: 718-273-9235

Chenango Contracting
29 Arbutus Road
Johnson City, NY 13790
Fax: 607-729-2415

The Aulson Company
49 Danton Drive
Methuen, MA 01844
Fax: 978-975-0101

City Lights Electrical
290 Pine Street
Canton, MA 02021
Fax: 617-822-2937

Architectural Paving
402 Libbey Parkway
Weymouth, MA 02189
Fax: 781-331-8784

Mass Bay Electrical Corporation
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Fax: 617-561-0854

MRP Site Development
360 Audnbon Road
Wakefield, MA 01880
Fax: 781-245-8700

L&C Flashing Barricades
55 Bodwell Street
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Fonditek International
60 Fireworks Circle
Bridgewater, MA 02324
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687 Columbus Avenue
Mount Vernon, NY 10550
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