

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

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

MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR EMPLOYMENT OF JAGER SMITH P.C.

To the Honorable William C. Hillman, United States Bankruptcy Judge:

The Official Committee of Unsecured Creditors (the “Committee”) of Modern Continental Construction Co., Inc. (the “Debtor”) hereby moves, pursuant to Section 327 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Massachusetts (the “Local Rules”), for an order approving the Committee’s retention of Jager Smith P.C. (“Jager Smith”) as its counsel, effective as of July 2, 2008.

In support of this motion, the Committee respectfully represents as follows:

1. On June 23, 2008, the Debtor filed a *Voluntary Petition* for relief under Chapter 11 of the Bankruptcy Code. Since that time, the Debtor has continued in the possession of its property and in the management of its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. On July 2, 2008, the Office of the United States Trustee formed the Committee pursuant to Section 1102 of the Bankruptcy Code.

3. Also on July 2, 2008, the Committee elected to seek the authority of the Court to employ Jager Smith as its counsel.

4. The Committee seeks to retain Jager Smith as its counsel due to Jager Smith's experience and expertise in bankruptcy practice and in reorganization matters, and in matters involving issues of construction law.

5. The expected professional services that Jager Smith will render to the Committee include, but will not be limited to, the following:

a. legal advice with respect to the Committee's responsibilities, powers and duties;

b. assistance in the Committee's investigation of the acts, conduct, assets, liabilities and financial condition of the Debtor;

c. review of, and representation of the Committee with respect to, pending motions before this Court;

d. legal advice with respect to any proposed plan of reorganization or liquidation, the prosecution of claims against third parties, and any other matters relevant to the case;

e. preparation on behalf of the Committee of necessary applications, motions, complaints, answers, responses, orders, reports and other legal papers; and

f. performance of all other legal services for the Committee which may be necessary and proper herein or under Section 1103 of the Bankruptcy Code.

6. To the best of the Committee's knowledge, based on the *Affidavit of Steven C. Reingold* submitted herewith pursuant to Bankruptcy Rule 2014 and Local Rule 2014-1, Jager Smith and its partners and associates do not hold or represent any interest adverse to the interests represented by the Committee, and Jager Smith, and each of its members and associates, is a "disinterested person" within the meaning of Section 101(14) of the Bankruptcy Code.

7. The Committee has agreed to the following terms of the employment of Jager Smith, subject to the approval of this Court:

a. Certain attorneys and other personnel within the firm of Jager Smith will undertake this representation at billing rates that will be the lesser of their standard hourly billing rates or a blended hourly rate of \$385.00 per hour;

b. The individuals presently designated to represent the Committee are Bruce F. Smith (partner), whose hourly rate for this engagement will be \$450.00 per hour, Steven C. Reingold (partner), whose hourly rate for this engagement will be \$330.00 per hour, Michael J. Fencer (associate), whose hourly rate for this engagement will be \$310.00 per hour, certain other attorneys, the billing rates for whom range from \$270.00 per hour to \$540.00 per hour, and certain paraprofessionals, the billing rates for whom range from \$105.00 per hour to \$175.00 per hour;

c. The hourly rates stated herein are subject to periodic adjustment to reflect economic and other conditions, and to reflect such persons' increased experience and expertise in this area of law; and

d. Jager Smith will make periodic applications to the Court for interim compensation and understands that any compensation for services rendered or reimbursement for expenses incurred will be subject to approval by the Court; in addition, Jager Smith shall provide

the members of the Committee with regular statements showing the services performed and expenditures made, as well as the cumulative costs of such services and expenditures.


8. The Committee submits that the Committee's employment of Jager Smith as its counsel would be in the best interests of the Debtor's estate and its creditors.

9. Approval of this motion as of July 2, 2008 is permissible and appropriate under Local Rule 2014-1(d), since this motion is filed within fourteen days of the Committee's retention of Jager Smith.

WHEREFORE, the Committee respectfully requests that this Court enter an order (i) approving the Committee's employment of Jager Smith to represent the Committee in this case effective as of July 2, 2008 under the terms specified herein; and (ii) granting to the Committee such other and further relief as the Court deems just and proper.

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

By:



Andrew P. Botti, Esq., Chairperson
for URS Corporation

Dated: July 8, 2008

UNITED STATES BANKRUPTCY COURT
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AFFIDAVIT OF STEVEN C. REINGOLD

I, Steven C. Reingold, hereby make oath and depose as follows:

1. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts and in this Court.

2. I am a partner in the law firm of Jager Smith P.C. (“Jager Smith”), which maintains an office for the practice of law at One Financial Center, Boston, Massachusetts 02111.

3. The Official Committee of Unsecured Creditors (the “Committee”) of Modern Continental Construction Co., Inc. (the “Debtor”) has requested that Jager Smith serve as the Committee’s counsel in this case. Jager Smith commenced its service on behalf of the Committee on July 2, 2008.

4. To the best of my knowledge after due inquiry, neither I nor any other partner or associate of Jager Smith represents any interest adverse to the Debtor’s estate or to the creditors of the Debtor.

5. Neither I nor the law firm of Jager Smith has any connection with the Debtor, its creditors, the United States Trustee, employees of the office of the United States Trustee, or any

other party in interest herein or other attorneys or accountants of such parties in interest, except as follows:

a. The Debtor has informed the Court that one of its largest projects of recent years was the Central Artery/Tunnel Project (the “CA/T Project”). Testa Corp. (“Testa”) is a creditor of the Debtor and is a member of the Committee. Jager Smith formerly represented Testa on a regular basis in connection with several matters, including but not limited to a matter concerning services that Testa rendered to the Debtor with respect to one portion of the CA/T Project and a matter concerning services that Testa rendered to the Debtor with respect to another construction project. Neither matter involved claims against the Debtor. Jager Smith’s representation of Testa ceased in or around December 2005.

b. BATG Environmental, Inc. (“BATG”) is also a creditor of the Debtor and is also a member of the Committee. Jager Smith formerly represented BATG on a regular basis in connection with several matters, including but not limited to a matter concerning services that BATG rendered to the Debtor with respect to two portions of the CA/T Project. That matter did not involve claims against the Debtor. Jager Smith’s representation of BATG ceased in or around August 2006.

c. Deloitte Financial Advisory Services, LLP (“Deloitte FAS”) formerly acted as an advisor and consultant to the public entities involved in the CA/T Project. That work ceased in or around 2005. In an abundance of caution, I note that Bruce F. Smith, a partner of Jager Smith, is married to Sheila T. Smith, a principal of Deloitte FAS and the engagement partner for the services referenced above.

d. The Debtor has informed the Court that it is a party to a certain *Fourth Amended and Restated Term Loan Agreement* (the “Bank Credit Agreement”) dated as of February 12, 2004 and entered into by and amongst the Debtor, Fleet National Bank (now Bank

of America, N.A. as successor by merger to Fleet National Bank (“Bank of America”)), and other financial institutions. In an abundance of caution, I note for the Court that my wife is a Senior Operations Consultant in the Global Corporate and Investment Banking group of Banc of America Leasing & Capital, LLC (“BALC”), an affiliate of Bank of America. The business in which BALC engages has no relation to the type of transaction that gave rise to the Debtor’s obligations to Bank of America or any of the other parties to the Bank Credit Agreement.

e. Jager Smith appears in many cases, proceedings and transactions involving different attorneys, financial consultants and investment bankers, some of whom may now or in the future represent an interested party in this case. From time to time, Jager Smith will review its disclosures and, in the event that additional material connections are discovered, Jager Smith will disclose such information to the Court.

6. Jager Smith has not represented any creditor of the Debtor with respect to the claims against the Debtor.

7. I hereby represent that, to the best of my knowledge, I and each member, associate and employee of Jager Smith is a “disinterested person” as that term is defined in 11 U.S.C. § 101(14).

8. I hereby represent that no compensation to be paid for the services rendered in this case by Jager Smith as counsel to the Committee will be shared with any other person except among the members and staff of Jager Smith.

9. Jager Smith has not received any retainer in connection with this case. Pursuant to Jager Smith’s agreement with the Committee, Jager Smith will provide to the Committee regular statements showing the services performed and expenditures made, as well as the cumulative costs of such services and expenditures.

10. I shall amend this statement immediately upon learning that (a) any of the within representations are incorrect; or (b) there is any change of circumstances relating thereto.

11. I have reviewed the provisions of Rule 2016-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Massachusetts.

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

/s/ Steven C. Reingold

Steven C. Reingold (BBO No. 638649)
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Dated: July 8, 2008

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DECLARATION REGARDING ELECTRONIC FILING

I, Steven C. Reingold, hereby declare under penalty of perjury that all of the information contained in the *Affidavit of Steven C. Reingold* (the "Affidavit"), filed electronically, is true and correct. I understand that this declaration is to be filed with the Clerk of the Court electronically concurrently with the electronic filing of the Affidavit. I understand that failure to file this declaration may cause the Affidavit to be struck and any request contained or relying thereon to be denied, without further notice.

I further understand that pursuant to Massachusetts Electronic Filing Local Rule 7(a) all paper documents containing original signatures executed under the penalties of perjury and filed electronically with the Court are the property of the bankruptcy estate and shall be maintained by the authorized CM/ECF Registered User for a period five (5) years after the closing of this case.

/s/ Steven C. Reingold

Steven C. Reingold

Dated: July 8, 2008

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CERTIFICATE OF SERVICE

I, Steven C. Reingold, hereby certify that on this 8th day of July, 2008, I caused true copies of the following to be served upon the parties set forth on the attached service list via first class mail, postage prepaid, or via Electronic Case Filing where indicated:

1. *Motion of Official Committee of Unsecured Creditors for Employment of Jager Smith P.C.; and*
2. *Affidavit of Steven C. Reingold (with Declaration Regarding Electronic Filing).*

/s/ Steven C. Reingold

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In re Modern Continental Construction Co., Inc.

Case No. 08-14558-WCH

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