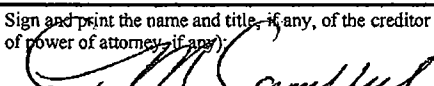


# **EXHIBIT A**

B 10 (Official Form 10) (04/07)

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF MASSACHUSETTS		PROOF OF CLAIM
Name of Debtor <b>Modern Continental Construction Co., Inc.</b>		Case Number <b>08-14558 (WCH)</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>New England Teamsters and Trucking Industry Pension Fund</b>		THIS SPACE IS FOR COURT USE ONLY
Name and address where notices should be sent: <b>Catherine M. Campbell, Esq., BBO# 549397 Feinberg, Campbell &amp; Zack, P.C. 177 Milk St., Ste. 300, Boston, MA 02109 Telephone number: (617) 338-1976</b>		
Last four digits of account or other number by which creditor identifies debtor: <b>200.394</b>		
<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.  <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.		
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input checked="" type="checkbox"/> Other <u>Contributions ERISA</u>		<input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed From _____ to _____ (date) (date)
2. Date debt was incurred: <b>2006 through 2008</b>		3. If court judgment, date obtained:
4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time the case was filed. See reverse side for important explanations.		
Unsecured Nonpriority Claim \$ <u>936.87</u>  <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or c) none or only part of your claim is entitled to priority.		Secured Claim <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Other _____ <input type="checkbox"/> Motor Vehicle  Value of Collateral: \$ _____  Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____
Unsecured Priority Claim <input checked="" type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority.  Amount entitled to priority \$ <u>4,331.17</u>		
Specify the priority of the claim:		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).  *Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950)* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).  <input checked="" type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		
5. Total Amount of Claim at Time Case Filed:		
\$ <u>936.87</u> <u>4,331.17</u> <u>5,268.04</u> (unsecured)      (secured)      (priority)      (total)		
<input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
8. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date <b>04/21/2009</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any).  <b>Catherine M. Campbell</b>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

## NEW ENGLAND TEAMSTERS AND TRUCKING INDUSTRY PENSION FUND

### EXAMINATION OF PAYROLL RECORDS

#### MODERN CONTINENTAL CONSTRUCTION CO.

DATE OF EXAMINATION: January 23, 2009

ADDRESS OF EMPLOYER'S TERMINAL: 540 Groton Road  
Westford, MA 01886

CODE: 379-0384

SCHEDULE NUMBER: 3019

LOCATION OF EXAMINATION: Boston, MA

EMPLOYER'S REPRESENTATIVE: Jeff Bruce  
978-589-1660 jbruce@moderncontinental.com

UNION REPRESENTATIVE: None

PAYROLL AUDITOR: Coleen Barreff-Holland

### SUMMARY OF PAYROLL EXAMINATION

<u>Period</u> <u>Examined</u>	<u>Hours per</u> <u>Remittance</u> <u>Report</u>	<u>Hours</u> <u>Under-</u> <u>Reported</u>	<u>Hours</u> <u>Over-</u> <u>Reported</u>	<u>Hours Per</u> <u>Examination</u>	<u>Average</u> <u>Number of</u> <u>Employees</u>
2006	4,278.00	212.75	187.00	4,303.75	8
2007	1,954.00	124.50	0.00	2,078.50	1
2008	0.00	800.00	0.00	800.00	1

**COMMENTS**

Hours of all employees, part-time, temporary, casual and spares included, must be reported on Remittance Reports from the first hour of employment, provided they work in a job classification covered under the agreement.

Hours of all employees out sick or injured are to be reported at 40 hours per week per employee

All hours paid, including vacations, holidays and overtime hours, up to 2080 hours per year per employee must be reported.

**DETAILS OF OVER-REPORTED HOURS**

(187.00) hours in	2006 =	(\$943.22)
		<hr/>
Credit Due		(\$943.22)
Total Credit Due		<u>(\$943.22)</u>

**DETAILS OF UNDER-REPORTED HOURS**

212.75 hours in	2006 =	\$1,173.32
124.50 hours in	2007 =	706.77
800.00 hours in	2008 =	<u>4,331.17</u>
Amount Due		\$6,211.26
Total Amount Due		<u>\$6,211.26</u>
Amount Due the Pension Fund		<u>\$5,268.04</u>

**RECOMMENDATIONS**

The Employer should be billed in the amount of \$5,268.04 for hours as detailed above.

Additional Interest should be charged at the rate of \$21.95 per month.

**NOTE**

Some payroll records were unavailable for audit. Detailed records for workers' compensation injuries were unavailable for audit.

The company filed for Chapter 11 Bankruptcy on June 23, 2008. The Fund was notified on January 22, 2009.











Debtor has managed its financial affairs and remained in possession of its property as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

4. On July 2, 2008, the Office of the United States Trustee appointed an official committee of unsecured creditors (the "Committee"). The Committee has retained counsel.

5. On July 11, 2008, the Court entered an Order granting the *Motion by Debtor and Debtor-in-Possession For Entry of Order Fixing Bar Dates and Approving Form of Notice*, and established August 22, 2008 as the deadline for any individual or entity to file a proof of claim against the Debtor's estate, and December 22, 2008 as the deadline for governmental units to file a proof of claim against the Debtor's estate. These bar dates were extended only for certain creditors on account of the Debtor's amendment of its bankruptcy schedules. All bar dates for the filing of proofs of claim have expired.

6. On April 6, 2009, the Claimant filed a *Motion for Allowance of a Late Filing of Proof of Claim* (the "Motion") seeking an order authorizing the late filing of a proof of claim by the Fund in the aggregate amount of \$5,268.04, consisting of (a) a priority unsecured claim under 11 U.S.C. § 507(a)(5) in the amount of \$4,331.17 and (b) a general unsecured claim in the amount of \$936.87 (the "Claim").

7. On April 20, 2009, the Court entered an agreed-upon stipulation and order authorizing the Claimant to file the Claim, subject to the Debtor's right to object to the Claim on grounds other than it was filed in an untimely manner.

8. On April 20, 2009, the Claimant filed the Claim, a copy of which is attached as Exhibit A. The Claimant asserts that the Debtor owes amounts to it on account of unpaid benefits associated with union workers employed by the Debtor from 2006 through 2008. The

amounts asserted are based upon an auditor's examination of certain payroll records of the Debtor.

9. The Debtor did not employ any workers who were members of the relevant unions associated with the Claimant during the 180 days immediately prior to the Petition Date.

**BASIS FOR OBJECTION**

10. The Debtor objects to the Claim on the grounds that the Claimant is not entitled to priority treatment under 11 U.S.C. § 507(a)(5) for any portion of its Claim.

11. Section 507(a)(5) provides a priority for claims for employee benefits arising from "services rendered" during the 180 days immediately prior to the filing of a bankruptcy petition. 11 U.S.C. § 507(a)(5)(A).

12. A portion of the Claim asserts an entitlement to priority treatment under Section 507(a)(5) of the Bankruptcy Code. The Claim does not assert an entitlement to priority treatment under any other section of the Bankruptcy Code.

13. The Claimant's asserts that \$4,331.17 of the Claim is entitled to priority under 11 U.S.C. § 507(a)(5), based upon the Debtor's obligation under its collective bargaining agreement and related agreements to continue to make contributions for workers compensation benefits for twelve (12) months after the date of an injury to a union employee who was injured in the course of his employment with the Debtor. The relevant employee who was injured on the job, however, last provided services to the Debtor in April 2007. Accordingly, the Claimant is not entitled to priority treatment of any portion of its Claim because the contributions due to the Claimant do not arise from *services actually rendered* by the union employee during the 180-day priority period under 11 U.S.C. § 507(a)(5).

14. Based upon the foregoing, the Debtor requests that the Court reclassify the Claim as a non-priority general unsecured claim in its entirety.

**RESERVATION OF RIGHTS**

15. This objection describes a specific, limited objection to the Claim. Accordingly, the Debtor reserves the right to: (a) supplement this objection and/or file additional objections to the Claim on any basis; (b) file additional objections to any other claims against the Debtor, including any administrative claims, secured claims, priority claims and non-priority unsecured claims; and (c) file an affirmative lawsuit or action against any party based on any and all causes of action or choses in action, including, without limitation, avoidance actions under Sections 544, 547, 548, 549, 550 and 553.

**NOTICE**

16. A copy of this objection is being served upon: (i) the Claimant, (ii) the Office of the United States Trustee, (iii) counsel to the Committee, and (iv) all parties who have requested notice pursuant to Bankruptcy Rule 2002. Service of this objection in this manner therefore complies with Bankruptcy Rules 2002 and 3007.

[The remainder of this page left blank intentionally.]

**WHEREFORE**, the Debtor respectfully requests that this Court enter an Order: (a) sustaining the objection and reclassifying the Claim as a non-priority unsecured claim in its entirety; and (b) granting to the Debtor such other and further relief as the Court deems just and proper in the circumstances.

Respectfully submitted,

MODERN CONTINENTAL  
CONSTRUCTION COMPANY, INC.,

By its attorneys,

/s/ Christian J. Urbano  
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Email: [cju@hanify.com](mailto:cju@hanify.com)

Dated: August 7, 2009

::ODMA\PCDOCS\DOCS\537048\1

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

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

**CERTIFICATE OF SERVICE**

I, Christian J. Urbano, hereby certify that on August 7, 2009, I caused a copy of the *Debtor's Objection to Proof of Claim No. 168-2 filed by New England Teamsters and Trucking Industry and Pension Fund* to be served by this Court's CM/ECF System and/or by first-class mail, postage prepaid on the persons and entities listed on the attached Service List.

Dated: August 7, 2009  
537071-v1

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*(Counsel to the Debtor)*

**Modern Continental Construction Co., Inc.**

**Case Number: 08-14558 (WCH)**

**Service List**

**Doc. #: 504271**

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