

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

In the Matter of : **Chapter 11**
:
MODERN CONTINENTAL : **Case No. 08-14558 (WCH)**
CONSTRUCTION COMPANY, INC. :
:
Debtors. :

**RESPONSE OF THE COMMONWEALTH OF MASSACHUSETTS TO THE
DEBTOR’S OBJECTION TO PROOF OF CLAIM NO. 42**

The Creditor, Commonwealth of Massachusetts, Abandoned Property Division of the Office of the State Treasurer (the “Treasury”), responding to the Debtors Objection to Proof of Claim No. 42 filed by the Abandoned Property Division of the Office of the State Treasurer, dated July 8, 2009, say:

1. The Treasury timely filed proof-of-claim number 42 in this bankruptcy case. The Treasury filed its claim in its own right as creditor under its abandoned property law, M.G.L. c. 200A, which require that property presumed abandoned after the expiration of the statutory abandonment period is to be reported and delivered into the protective custody of the State.
2. The subject matter of the Treasury’s claims is property belonging to payees of cash dividends and cash in-lieu of fractional share distributions; recipients and/or payees of cash and/or securities for any other debt or equity issue not described above; unredeemed holders of credit memorandums and scrip; payees of outstanding wages, payroll, salary and commissions checks; payees of outstanding healthcare benefit payments; payees of outstanding pension and

profit sharing checks; payees of outstanding vendor and expense checks, as well as any other miscellaneous outstanding checks or unclaimed obligations; and payees of inactive deposit accounts. This property arose from obligations of the Debtors to equity and debt security holders and to employees, vendors, customers, consumers, and other individuals or entities with which the Debtors did business. These obligations are represented by checks issued by the Debtors and subsequently returned as undeliverable or which otherwise remained uncashed; by shares held by the Debtors or their agents; or by entries upon the stock, debt, and financial books and records of the Debtors. In every instance, all of the information concerning these obligations, including the name and last known address of the party entitled to the property, and the dates when the obligations were incurred, is and has always been in the exclusive possession and control of the Debtors and their agents (such as stock transfer, disbursing, exchange, or paying agents).

3. Under applicable State abandoned and unclaimed property laws, the Debtors had a duty to report to the Treasury information about property that they hold that is presumed abandoned and then to deliver that property into the protective custody of the Treasury. These reports are the means whereby the Debtors disclose information to the Treasury about the unclaimed property that the Debtors hold. This Debtor has not filed reports for all of the unclaimed property that they are holding.
4. The substance of the Objections to Treasury unclaimed property claims is that the Treasury has no "claim, contingent or otherwise, against the estate on behalf

of itself or the foregoing persons in its capacity as conservator custodian under the Massachusetts General Laws chapter 200A” because the Debtors’ books and records reflect “no such property as uncashed or abandoned.” The Committee is mistaken. The Debtor’s reporting history indicates that there is a potential they are holding substantial amounts of unclaimed property that were never timely reported and delivered to the Treasury and that the information about this property should be readily available.


5. There are factual issues about the kinds and amounts of unclaimed property that the Debtors held. Those factual issues necessarily can only be resolved by discovery and preclude any summary adjudication upon the Debtor’s Objections. The Bankruptcy Rules contemplate that discovery may be had in such circumstances. An “objection to claim initiates a contested matter which is governed by Bankruptcy Rule 9014.”¹ That Rule incorporates by reference all of the discovery rules in Part VII for adversary proceedings.
6. Erin C. Nally, attorney for the Treasury, whose address and telephone number are shown below, is the person possessing authority to reconcile, settle, or otherwise resolve the claims on behalf of the Treasury, subject to acceptance and approval by the Treasury.

WHEREFORE, the Creditor, Commonwealths of Massachusetts pray that after allowing conduct of discovery in accordance with Fed. R. Bankr. P. 9004, the Court overrule the Debtor’s Objections in their entirety and allow the Treasury’s claim for all property presumed abandoned in the amount established through discovery.

Respectfully Submitted,

STATE TREASURER AND RECEIVER
GENERAL,
By its attorney,

August 17, 2009



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¹ 6 Lawrence P. King, *Collier on Bankruptcy*, Note 5 to Form 5-133, at V63 (15th Ed. 1994).


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CERTIFICATE OF SERVICE

I, Erin C. Nally, hereby certify that on Monday afternoon, August 17, 2009, I caused a copy of the Creditor's Response to the *Debtor's Objection to Proof of Claim No. 42 filed by the Abandoned Property Division of the Office of the State Treasurer*, to be served by hand delivery and/or by first class mail on the persons and entities listed on the attached Service List.

Dated: August 17, 2009


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