

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(Eastern Division)

FILED 08/24/08

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

**MOTION OF THE DEBTOR AND DEBTOR-IN-POSSESSION  
FOR IMPOUNDMENT OF CERTAIN PROTECTED INFORMATION RELATING  
TO MOTION BY DEBTOR AND DEBTOR-IN-POSSESSION TO (A) PAY  
PREPETITION WAGES, SALARIES, EXPENSES AND BENEFITS; AND (B) USE  
EXISTING PAYROLL ACCOUNTS AND BUSINESS FORMS  
(Emergency Hearing Requested)**

Pursuant to MLBR 9018-1, Modern Continental Construction Co., Inc., the above-captioned debtor and debtor-in-possession (the “Debtor”)<sup>1</sup> in the above-captioned Chapter 11 case, hereby moves (the “Motion”) that this Court authorize the impoundment of Exhibit A relating to the *Motion by Debtor and Debtor-in-Possession to (A) Pay Prepetition Wages, Salaries, Expenses and Benefits; and (B) Use Existing Payroll Accounts and Business Forms* (“Wage Motion”) filed contemporaneously with this Motion. As grounds for this request, the Debtor states that Exhibit A to the Wage Motion contain information regarding the hours, wages and salaries, and certain benefit information of the Debtor’s employees that the Debtor makes every effort to maintain confidential and protected, and that revelation of such employee information would irreparably harm the Debtor and each employee.

In further support of this Motion, the Debtor states as follows:

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<sup>1</sup> Capitalized terms not otherwise defined in this Motion have their meanings given to them in the Wage Motion.

1. On June 23, 2008 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Code") in this Court.

2. The Debtor continues to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Code.

3. No trustee or examiner has been appointed, and no official committee of unsecured creditors has yet been appointed in this case.

4. Contemporaneously with the filing of this Motion, the Debtor has filed the Wage Motion. Although reference is made to Exhibit A in the Wage Motion, it was not attached. The Debtor indicated that the instant Motion would be filed pursuant to MLBR 9018-1.

5. Exhibit A identifies the employees, by name and department, who are to be paid if the Wage Motion is approved by the Court, and sets forth the amounts each such employee will be paid pursuant to any such order and the deductions relating to each such employee's gross pay.

6. Pursuant to MLBR 9018-1, effective May 1, 2008, "for good and sufficient cause the court may order that some or all of the papers in the case be impounded by the Clerk. Such impounded papers shall be maintained under Clerk custody separate and apart from files to which the public has access; no computer or other images thereof shall be made for public viewing." MLBR 9018-1(a).

7. The Debtor seeks impoundment of Exhibit A to the Wage Motion because it contains personal information regarding the hours, rates, weekly per diem, gross pay, monthly insurance benefit amounts, payments due to the Debtor's employees under the Retention Plan and prorated insurance benefit amounts of the salaried management and administrative employees, as well as the regular and overtime hours, gross pay, and union information of the

Debtor's union employees. The Debtor has historically kept this information confidential and protected in order to avoid irreparably harming the Debtor and adversely affecting employee morale. The wage information contained in Exhibit A to the Wage Motion is a matter of privacy to each of the Debtor's employees. Moreover, there exists no legitimate purpose for creditors of the Debtor to receive the additional, personal details of each employee set forth in Exhibit A when the Wage Motion itself sets forth the aggregate amount of Prepetition Wage Obligations and other benefit information sought to be paid pursuant to the relief requested in the Wage Motion. Based upon the foregoing, good and sufficient cause exists to impound Exhibit A under MLBR 9018-1(a).

8. The Debtor intends to continue its privacy policy and therefore requests that the Exhibit A to the Wage Motion be kept under seal by the Court so that the wage information of the employees will not become part of a public record accessible to other employees of the Debtor, the Debtor's creditors, and the public in general.

9. The Debtor requests that any impoundment order remain in effect until further order of the Court. Until the wind down of the Debtor's business affairs has been fully effectuated, the retention and morale of all employees remains a critical concern. The Debtor is unable to predict at this time when continued impoundment shall no longer be required. The Debtor has no suggested custody arrangements for the post-impoundment period outside those set forth in MLBR 9018-1(c).

#### **Emergency Hearing Requested**

10. Pursuant to MLBR 9013-1(h), the Debtor has filed an motion for emergency hearing contemporaneously with this Motion.

**Notice**

11. The Debtor has or will serve this Motion by overnight mail, facsimile, by this Court's ECF System, and/or by e-mail, and will serve the notice of the hearing on this Motion in the same manner, on the Office of the United States Trustee, each taxing authority that has a claim in this case, the Debtor's 20 largest unsecured creditors, all parties known by the Debtor claiming to have liens on or security interests in any of the Debtor's assets, and all parties who have filed a notice of appearance in this case. The Debtor submits that such service provides sufficient notice in light of the nature of the relief requested and request that the Court approve such notice.

**WHEREFORE**, Modern Continental Construction Co., Inc. respectfully requests that the Court enter an Order: (a) authorizing the impoundment of Exhibit A to the Wage Motion, which, pursuant to MLBR 9018-1(b) has been placed in a separate envelope and conspicuously marked "**FILED SUBJECT TO PENDING IMPOUNDMENT MOTION,**" until further order of Court; 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 CO., INC.,

By its proposed counsel,

/s/ Christian J. Urbano

Harold B. Murphy (BBO #326610)

D. Ethan Jeffery (BBO #631941)

Christian J. Urbano (BBO #644471)

HANIFY & KING, Professional Corporation

One Beacon Street, 21st Floor

Boston, MA 02108

Tel: (617) 423-0400

Fax: (617) 556-8985

Dated: June 24, 2008

I declare under penalty of perjury that the grounds for impoundment of documents, as set forth above, are true and accurate to the best of my knowledge and belief.

Dated: June 24, 2008

/s/ John H. Pastore  
John H. Pastore, President of Modern  
Continental Construction Co., Inc.

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

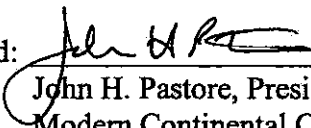
In re:	)	
	)	
MODERN CONTINENTAL	)	Chapter 11
CONSTRUCTION CO., INC.,	)	
	)	Case No. 08-_____ ( )
Debtor.	)	

**DECLARATION REGARDING ELECTRONIC FILING**

I, John H. Pastore, hereby declare under penalty of perjury that all of the information contained in the MOTION OF THE DEBTOR AND DEBTOR-IN-POSSESSION FOR IMPOUNDMENT OF CERTAIN PROTECTED INFORMATION RELATED TO MOTION BY DEBTOR AND DEBTOR-IN-POSSESSION TO (A) PAY PREPETITION WAGES, SALARIES, EXPENSES AND BENEFITS; AND (B) USE EXISTING PAYROLL ACCOUNTS AND BUSINESS FORMS (the "Document") filed electronically is true and correct. I understand that this DECLARATION is to be filed with the Clerk of Court electronically concurrently with the electronic filing of this Document. I understand that failure to file this DECLARATION may cause the Document to be struck and any request contained or relying thereon to be denied, without further notice.

I further understand that pursuant to the Massachusetts Electronic Filing Local Rule (MEFLR)-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 of five (5) years after the closing of this case.

Dated: June 23, 2008

Signed:   
John H. Pastore, President of  
Modern Continental Construction Co., Inc.