

**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 RESPECTING
DEBTOR’S OBJECTION TO PROOF OF CLAIM NO. 157 FILED BY
NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS BENEFIT FUNDS**

This stipulation (the “Stipulation”), entered into on this 15th day of September, 2009, by and between Modern Continental Construction Co., Inc. (the “Debtor”), the debtor and debtor-in-possession in the above-captioned Chapter 11 case, and the New York City District Council of Carpenters Benefit Funds, including the Pension Fund, the Vacation Fund, and the Welfare Fund (collectively, the “Council”) with respect to claim number 157 (the “Claim”) filed against the Debtor’s estate. The Debtor and the Council (sometimes collectively referred to as the “Parties”) stipulate and agree as follows:

Background

A. On June 23, 2008 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”) in this Court. Since the bankruptcy filing, the Debtor has managed its financial affairs and remained in possession of its property as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

B. 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.

C. On January 9, 2009, the Council filed the Claim. The Council asserted that the Debtor owes a non-priority unsecured claim to it in the amount of \$42,221.91 based upon an Opinion and Default Award, dated August 27, 2007, awarded by an impartial arbitrator. The Council also asserted that it has not been afforded an opportunity to conduct an audit of the Debtor's books and records for the period January 14, 2007 through the Petition Date, and, as a result, the Council could not assert a precise amount (or priority) that may be due to it, if any, for such period.

D. On August 7, 2009, the Debtor filed an objection to the Claim (the "Objection"), arguing that the Council is not entitled to priority treatment under 11 U.S.C. § 507(a)(5) for any portion of its Claim. Based upon the Debtor's books and records, the Debtor did not employ any workers entitled to benefits who were members of the relevant union associated with the Council during the 180 days immediately prior to the Petition Date, and thus the Council was not entitled to priority treatment on any portion of its Claim.

E. The Council has completed an audit of the 180 day priority period. The results of the audit indicate that no portion of the Claim is entitled to priority treatment under 11 U.S.C. § 507(a)(5) or otherwise. The audit revealed that \$351.72 is due and owing to the Council by the

Debtor for late payment interest. The Council seeks payment of this amount as a non-priority unsecured claim.

F. The Parties have engaged in negotiations regarding the foregoing disputes and have agreed to the compromises set forth in the Stipulation in order to avoid the risks and expenses associated with formal and protracted litigation.

NOW THEREFORE, the Parties hereby stipulate and agree, subject to the approval of the Bankruptcy Court, as follows:

1. No portion of the Claim shall be entitled to priority treatment under 11 U.S.C. § 507(a)(5) or otherwise.

2. The Council shall have an allowed non-priority unsecured claim in the amount of \$42,573.63 (the "Allowed General Unsecured Claim"). The Allowed General Unsecured Claim shall be treated in the same manner as other allowed non-priority unsecured claims against the Debtor's estate.

3. The Council shall have no other allowed claims against the Debtor's estate.

4. This Stipulation constitutes the complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral or written, between the Parties with respect to such subject matter.

5. Subject to an order of the Court approving this Stipulation, this Stipulation shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns.

6. This Stipulation shall be governed by and construed in accordance with the substantive law of the Commonwealth of Massachusetts, and shall have the force and effect of an

instrument executed and delivered under seal under the law of the Commonwealth of Massachusetts.

7. This Stipulation may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

This Stipulation may be executed by facsimile or portable document format (“pdf”).

8. The Court shall retain jurisdiction to resolve any dispute arising under or in connection with this Stipulation.

9. This Stipulation shall have no force or effect unless it is approved by the Court.

**New York City District Council of Carpenters
Benefit Funds,**

By its counsel,

/s/ Lawrence V. Gelber*

Lawrence V. Gelber, Esq.

Schulte Roth & Zabel LLP

919 Third Avenue

New York, NY 10022

Tel: (212) 756-2000

Fax: (212) 593-5955

Email: meghan.breen@srz.com

Dated: September 17, 2009

[signatures cont'd on next page]

* Pursuant to ECF Rule 8(b)(2), I, Christian J. Urbano, represent that Attorney Gelber has authorized me to attach his electronic signature to this Stipulation.

**Modern Continental Construction Co., Inc.,
Debtor-in-Possession,**

By its 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

Email: cju@hanify.com

Dated: September 17, 2009

IT IS SO ORDERED.

Signed in said District this ____ day of _____, 2009.

Honorable William C. Hillman
U.S. Bankruptcy Judge

::ODMA\PCDOCS\DOCS\539118\1