

“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.

3. The Debtor is a closely-held Massachusetts corporation formed in 1967 to perform general contracting services. At one time, the Debtor was the largest heavy civil construction company in the northeastern United States and one of the largest in the country. The Debtor served as the largest contractor (in terms of the dollar amount of contracts awarded), on the historic “Big Dig” Central Artery/Tunnel project in Boston, Massachusetts (the “CA/T Project”).

4. The Debtor was also the general contractor on the Route 3 North Transportation Improvement Project (the “Route 3 Project”). The Route 3 Project consisted of the widening and reconstruction of Route 3 in Massachusetts, a 21 mile limited access highway running from the Route 3 interchange with Interstate 95 and proceeding north to the border between the Commonwealth of Massachusetts and the State of New Hampshire.

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 August 20, 2008, Liddell filed the Claim. Liddell asserted that the Debtor owes a non-priority claim against the Debtor’s estate in the amount of \$223,003.16 and an

administrative expense claim in the amount of \$2,982.58, the latter relating to amounts allegedly owed for work performed post-petition on the Route 3 Project.

7. On August 7, 2009, the Debtor filed an objection to the Claim (the “Objection”), seeking an order disallowing the Claim on the grounds that (i) the Claim asserts amounts not due to the Claimant, (ii) the Claim fails to provide documentation sufficient to support the Claim, and (iii) to the extent the Claim seeks payment of an administrative expense arising out of post-petition work performed on the Route 3 Project, such relief should not be sought in a proof of claim.

8. On June 22, 2009, the Debtor filed the *Plan of Liquidation of Modern Continental Construction Co., Inc., Debtor and Debtor-in-Possession* (the “Plan”)¹ and a related disclosure statement. On July 15, 2009, the Court entered an order approving the adequacy of the disclosure statement and scheduled a hearing on confirmation of the Plan for August 19, 2009 at 9:30 a.m. On August 19, 2009, the Court confirmed the Plan. Shortly thereafter, the Debtor moved to vacate the confirmation order, which motion was approved by the Court on August 25, 2009. The Court has rescheduled the hearing on confirmation for September 16, 2009 (the “Confirmation Hearing”).

9. The Parties have engaged in negotiations regarding the administrative expense claim portion of the Claim 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.

THE PROPOSED STIPULATION

10. Subject to the Court’s approval, the Parties have entered into the Stipulation to

¹ Capitalized terms not otherwise defined in this motion have their meanings given to them in the Plan.

resolve their disputes. The major terms of the Stipulation are as follows:²

- (a) No portion of the Claim would be entitled to administrative expense priority treatment under 11 U.S.C. § 507(a)(2) or otherwise.
- (b) The Parties reserve all rights and defenses with respect to the non-priority unsecured amount, if any, of the Claim, including, without limitation, the right of the Debtor or the Liquidating Trustee under a plan of reorganization to object to the non-priority unsecured amount of the Claim and the right of Liddell to defend the Claim.

**THE STIPULATION IS FAIR, EQUITABLE AND
IN THE BEST INTERESTS OF THE DEBTOR'S ESTATE**

11. Rule 9019 of the Federal Rules of Bankruptcy Procedure provides, in pertinent part, that “[o]n motion by the trustee and after notice and a hearing, the Court may approve a compromise or settlement.” Local Rule 9019-1 also authorizes “settlement of any controversy that affects the estate.” While the decision to approve a particular settlement lies within the sound discretion of the Bankruptcy Court, the Court should give deference to the business judgment of the debtor-in-possession. *See In re Neshaminy Office Bldg. Assoc.*, 62 B.R. 798, 803 (E.D. Pa. 1986); *In re Resorts Int’l, Inc.*, 145 B.R. 412, 451 (Bankr. D.N.J. 1990).

12. A settlement should be approved where it is fair, equitable and in the best interests of the estate. *See Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 88 S. Ct. 1157 (1968); *Jeremiah v. Richardson*, 148 F.3d 17 (1st. Cir. 1998); *Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mtg. Corp.)*, 68 F.3d 914 (5th Cir. 1995). The First Circuit has held that a bankruptcy court should also consider the following factors in determining whether to approve a settlement:

- a. The probability of the success in the litigation being compromised;

² The summary set forth in this Motion is not intended to be a substitute for the Stipulation, which contains additional terms and provisions.

- b. The difficulties, if any, to be encountered in the matter of collection;
- c. The complexity of the litigation involved and the expense, inconvenience, and delay in pursuing the litigation; and
- d. The paramount interest of the creditors and a proper deference to their reasonable views.

See Jeremiah, 148 F.3d at 23 (citing *Jeffrey v. Desmond*, 70 F.3d 183, 185 (1st Cir. 1995)); *see also Hicks, Muse & Co., Inc. v. Brandt (In re Healthco Int'l, Inc.)*, 136 F.3d 45, 50 (1st Cir. 1998); *In re Lawrence Paperboard Corp.*, 52 B.R. 907, 909 (Bankr. D. Mass. 1985). The Stipulation more than satisfies these requirements.

13. In the present case, the settlement contained in the Stipulation is the product of an arm's length negotiation between the Debtor and Liddell. The Stipulation resolves the disputed administrative expense claim portion of the Claim without the need for costly litigation or expenditure of judicial resources. Pursuant to the Stipulation, Liddell has agreed that no portion of the Claim is entitled to priority treatment pursuant to 11 U.S.C. § 507(a)(1) or otherwise. The Parties have agreed to reserve their respective rights and defenses regarding the amount of the non-priority unsecured portion of the Claim. Since the Stipulation provides for this treatment of the Claim, it falls well within the range of reasonableness and benefits the Debtor's estate and its creditors.

14. The Debtor submits that no party in interest will be prejudiced by the relief requested in the Motion and entry of the Stipulation as an order of this Court.

REQUEST TO LIMIT NOTICE

15. The Debtor requests that this Court limit notice respecting this Motion and the related Stipulation (the "Settlement Pleadings"). The Court has authority to limit notice of this Motion pursuant to 11 U.S.C. § 105(a), Rule 2002(m) of the Federal Rule of Bankruptcy

Procedure and MLBR 9019-1(c). Absent an order of this Court, MLBR 9019-1(c) requires the Debtor to serve all of the Settlement Pleadings on all creditors and parties in interest.

16. There are over eight hundred creditors in the above-captioned case, most of whom have had little or no participation in this case and are unlikely to have an interest in or respond to the Motion. The cost of mailing full copies of the Settlement Pleadings to the full creditor list is substantial and would unnecessarily deplete the Debtor's resources.

17. The Debtor requests that notice and service of the Settlement Pleadings be limited to the following parties: (a) the Office of the United States Trustee, (b) any secured creditors of the Debtor, (c) any taxing authorities that the Debtor believes may have claims against the Debtor, (d) counsel to the Committee, (e) creditors named on the Debtor's list of the twenty largest general unsecured claims against the Debtor; (f) all parties that have filed a notice of appearance in this case; and (g) counsel to Liddell.

18. The Debtor is in the process of serving the Settlement Pleadings on the foregoing parties, and will serve notice of any hearing and objection deadline established by the Court on the same parties.

19. The purpose of the request to limit notice is to avoid the burdensome costs associated with serving the Settlement Pleadings on all creditors and parties in interest in this case. Accordingly, no party in interest will be prejudiced by the relief requested in this motion.

WHEREFORE, the Debtor respectfully requests that the Court issue an order: (a) granting the relief requested in this Motion; (b) approving the Stipulation filed concurrently with this motion as an Order of the Court; (c) approving the manner of notice as set forth above; and (d) 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,

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