

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

In re:

**MODERN CONTINENTAL
CONSTRUCTION CO., INC.,**

Debtor.

Chapter 11

Case No. 08-14558 (WCH)

**MOTION BY DEBTOR TO APPROVE STIPULATION AND ORDER
BY AND BETWEEN DEBTOR AND RICHARD ARESKO REGARDING
MOTION FOR RELIEF FROM STAY**

Pursuant to Rule 2002 and 9019(a) of the Federal Rules of Bankruptcy Procedure, and MLBR 2002-1 and 9019-1, the above-captioned debtor and debtor-in-possession (the “Debtor”) requests that the Court approve the stipulation and order (the “Stipulation”) filed contemporaneously with this motion resolving the *Motion for Relief from Stay* (the “Motion for Relief”) filed by Richard Aresco. Richard Aresco has signed the Stipulation. In support of this motion, the Debtor avers as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are section 105 of the United States Bankruptcy Code (the “Bankruptcy Code”), Rules 2002 and 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and MLBR 2002-1 and 9019-1.

BACKGROUND

2. On June 23, 2008 (the “Petition Date”), the Debtor filed a voluntary petition for

relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts (the “Court”).

3. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee or examiner has been appointed in this case. On July 2, 2008, the United States Trustee for the District of Massachusetts appointed the Official Committee of Unsecured Creditors (the “Committee”).

5. 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”).

6. On July 29, 2008, Richard Aresco filed the Motion for Relief seeking the entry of an Order lifting the automatic stay under section 362(a) of the Bankruptcy Code to enable him to proceed with a Massachusetts state-court personal injury action pending against the Debtor in Boston Municipal Court, Civil Action No. 07-01CV006018 (the “State Court Action”).

7. The parties have discussed the Motion for Relief and have agreed to resolve the Motion for Relief on the following terms:¹

- (a) The Plaintiff [Richard Aresco] would be granted relief from the automatic stay provisions of 11 U.S.C. § 362 to prosecute the State Court Action; provided that, any judgment, assessment or other recovery by the Plaintiff against the Debtor arising from or related to the State Court Action shall be limited solely to the Debtor’s

¹ The *summary* set forth in this motion is not intended to be a substitute for the Stipulation, which contains additional terms and provisions.

insurers and/or to the extent of insurance proceeds available through applicable insurance policies. The Plaintiff [Richard Aresco] will not be entitled to any recovery against the Debtor, the Debtor's bankruptcy estate and/or the assets of each of the foregoing (except to the extent that applicable insurance policies and/or their proceeds constitute assets of the foregoing); and

- (b) The Stipulation and Order would be effective immediately upon approval by the Bankruptcy Court, and would not be subject to the ten day stay provided for in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

THE STIPULATION IS IN THE BEST INTERESTS OF THE DEBTOR'S ESTATE

8. 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. 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). In the present case, the settlement contained in the Stipulation is the product of an arm’s length negotiation between the Debtor and Richard Aresco.

9. Pursuant to the Stipulation, Richard Aresco has agreed to limit any recovery in the State Court Action to the available insurance proceeds. Even though the State Court Action will proceed, no claim will be filed against or incurred by the Debtor’s bankruptcy estate. The Stipulation is therefore in the best interest of the Debtor’s bankruptcy estate and its creditors.

10. 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

11. Pursuant to Fed. R. Bankr. P. 2002 and MLBR 2002-1(b) and 9019-1(c), the

Debtor also requests that the Court enter an order limiting the notice required with respect to this motion. Pursuant to Fed. R. Bankr. P. 2002(m) and MLBR 9019-1(c), the Court has authority to limit notice.

12. Pursuant to Fed. R. Bankr. P. 2002, the Debtor is required to give all creditors and parties in interest at least twenty (20) days' notice by mail of a hearing on the approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d) (relating to motions for approval of agreements to modify or terminate the automatic stay). See Fed. R. Bankr. P. 2002(a)(3). Accordingly, twenty (20) days' notice of this motion is not required.

13. The Debtor has an extensive list of creditors, many of whom are unlikely to have an interest in or respond to this motion. Further, the cost of mailing notices to the full creditor list is substantial and would unnecessarily deplete the resources of the Debtor's estate.

14. The Debtor request that the Court limit the notice required with respect to this motion on Richard Aresco, the Office of the United States Trustee, any secured creditors of the Debtor, taxing authorities, counsel to the Committee, and all parties having filed a notice of appearance in this case. The Debtor further requests that notice of any objection deadline related to this motion be similarly limited.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order: (a) approving the settlement contained in the Stipulation filed contemporaneously with this motion; (b) entering the Stipulation as an Order of the Court; (c) finding notice of this Motion as set forth herein sufficient and appropriate; (d) limiting notice with respect to any objection deadline established by the Court; and (e) 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 counsel,

Dated: August 6, 2008

/s/ Christian J. Urbano

Harold B. Murphy (BBO #326610)

D. Ethan Jeffery (BBO #631941)

Christian J. Urbano (BBO #644471)

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