

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

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

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

(Partial Relief Requested by Expedited Hearing)

Angel Del Valle and Raquel Ibarra Mora, Co-Administrators of the Estate of Milena Del Valle, and Angel Del Valle, individually (“Plaintiffs”), through their counsel, Altman Riley Esher LLP, by this Motion For Relief From The Automatic Stay (the “Motion”) and pursuant to Bankruptcy Rules (“Rule or Rules”) 4001(a)(1) and 9014, and Bankruptcy Code § 362(d), respectfully request relief from the automatic stay (i) allowing all discovery and all proceedings relating to discovery in Civil Action No. 06-3654-BLS2 (the State Court Action), pending in the Suffolk County Superior Court (the “Superior Court”) against Modern Continental Construction Co., Inc. (the “Debtor”) and several other non-debtor defendants, to proceed until October 31, 2008 (the current discovery deadline in the State Court Action), (ii) allowing any and all actions to reach and implement settlements between the Plaintiffs and non-debtor defendants in the State Court Action to proceed until October 31, 2008, (iii) scheduling a hearing prior to October 31, 2008 to consider granting relief from the stay for further proceedings in the State Court Action.

In support of the Motion, Plaintiffs state the following:

BACKGROUND

1. Plaintiffs are Raquel Ibarra Mora and Angel Del Valle as Co-Administrators of the Estate of Milena Del Valle. Ms. Mora is the eldest of Milena's three children. Mr. Del Valle co-administrates as Milena's widower and, in addition, has asserted individual personal injury claims in the State Court Action.

2. On Monday night, July 10, 2006, at about 11 p.m., Milena Del Valle and her husband, Angel, were traveling east in their Buick sedan through the I-90 Connector Tunnel en route to Logan Airport to pick up relatives. As they approached the tunnel's exit -- the 250' long "portal" section of the tunnel -- four concrete slabs and their attached suspension infrastructure that, together, formed a "drop ceiling," suddenly broke free from the upper roof of the tunnel. The collapsing mass broke free without warning or time to escape and crushed the Buick.

3. The four concrete slabs were each 8' wide by 12' long and each weighed about three tons. The collapsing concrete ceiling struck the Buick first on the passenger side roof under which Milena was riding, and then pushed the car into the left (north) tunnel sidewall before collapsing fully down on top of the car. Milena was crushed to death as her husband, just inches away in the drivers' seat, struggled in vain for control of the car. Although injured himself, when the debris stopped falling, Angel crawled out a twelve inch opening in the car window and tried frantically to reach his wife who was buried under fallen steel and concrete.

4. In the State Court Action filed on or about August 30, 2006, Plaintiffs jointly assert on behalf of the Estate of Milena Del Valle, the following claims against all named defendants: (1) Wrongful Death -Negligence; (2) Wrongful Death - Gross Negligence, Recklessness, and Willful and Wanton Misconduct; (3) Survival Claims - Pain and Suffering

and, in addition, plaintiff Angel Del Valle, individually asserts: (4) Negligence Causing Personal Injury against the Debtor and the non-debtor defendants (the "Plaintiffs' Claims"). A true and correct copy of the Plaintiffs' Third Amended Complaint is attached hereto as Exhibit "A".

5. The Debtor and many of the non-debtor defendants have asserted cross-claims against one another for contribution and contractual and/or common law indemnity and answers to all such cross-claims have been filed.

6. In late 2007, Plaintiffs reached settlement terms with non-debtor defendant Powers Fasteners ("Powers"), one of the sixteen named defendants. More recently, plaintiffs reached settlement terms with three other related defendants, Newman Associates, NRC and Renner Colony (with Powers, the "Pending Settlements").

7. On June 23, 2008 (the "Petition Date"), the Debtor filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code.

8. On or about June 25, 2008, the Debtor filed a Suggestion of Bankruptcy in the State Court Action stating that the State Court Action had been stayed pursuant to 11 U.S.C. § 362.

9. The State Court Action was specially assigned to the Honorable Stephen E. Neel who, over the past year and a half, has held fourteen monthly status conferences, numerous hearings, and has issued a series of Case Management and Scheduling Orders that, among other things, declared that all factual discovery is to be completed by October 31, 2008. Factual discovery is now at least 3/4 complete and has been moving forward under close oversight from

Judge Neel . All parties anticipate a trial in 2009, and some parties, including the Plaintiffs, believe the case will be ready for trial in the first half of 2009.

10. To date, all eighteen of the parties have served answers to interrogatories and responses to document requests -- in some cases multiple sets. In early 2007, the parties established and jointly funded an electronic document repository and the most recent estimate is that in excess of 3.5 million documents have been produced. More than twenty separate discovery motions have been served including at least a half dozen motions to compel, all of which have been resolved either by Court action or agreement. In the past eleven months, the parties have completed over sixty days of testimony of more than thirty witnesses, including one week spent taking testimony in Costa Rica. More than 8,500 pages of deposition exhibits have been marked to date.

11. As of the Petition Date, there were an additional 26 days of testimony of 17 witnesses or entities already scheduled for the last week of June and during July and August. Upon learning of the Chapter 11 filing, Plaintiffs immediately postponed depositions which were scheduled to occur this week and next. Subject to this Court's action on this Motion, these depositions have been rescheduled to dates later in July to allow time for consideration and action from this Court on this Motion. Likewise, Plaintiffs have temporarily postponed by agreement further action on motions relating in any way to the Debtor. All of these changes and the fact that the Plaintiffs were filing the instant motion were reported to Judge Neel at his regularly scheduled LCC held on June 26, 2008.

12. Upon information and belief, the Debtor's primary insurance policy for claims against it is an Owner-Controlled Insurance Policy underwritten and serviced by AIG Claim

Services, Inc. - Commercial Gen. Liability Natl. Union Fire Ins. Co. of Pittsburgh (AIG controlled) , with limits Per Occurrence of \$25,000,000 and aggregate coverage of \$25,000,000 (the “ AIG Policy”).

13. Upon information and belief, other insurance policies of the Debtor which may be available to cover Plaintiffs’ Claims are as follows:

Lloyds of London (and other carriers - purportedly denying coverage) Excess Liability
 Per Occurrence \$75,000,000
 Aggregate \$75,000,000

Contractor's Professional and Pollution Liability
 AIG/American International Specialty Lines CPPL4763785 7/1/05 - 7/1/06
 Per Occurrence \$1,000,000
 Aggregate \$2,000,000
 Deductible (Per Claim) \$100,000

Retained Amount Policy
 Clarendon National XSR004112467/1/05 - 7/1/06
 Per Occurrence \$2,000,000
 General Aggregate \$4,000,000
 Products - Completed
 Operations Aggregate \$4,000,000
 Policy General Aggregate \$10,000,000
 SIR (Per Claim) \$500,000

Executive Risk Indemnity
 Chubb Group 8166-2796 8/1/05 - 8/1/06
 Per Occurrence \$2,500,000
 Each Policy Period \$2,500,000
 SIR \$150,000

Excess Directors & Officers Liability
 XL Specialty Insurance Company ELU089891-05 8/1/05 - 8/1/06
 Aggregate \$2,500,000

Materials Supplied / Contractual Insurance Acadia Insurance Co. (as named additional insured to the anchor-bolt supplier, Newman-Renner Colony (purportedly denying coverage)
 Policy Limit \$11,000,000 (per Modern's counsel)

14. The limited nature of the relief requested by Plaintiffs in this Motion does not require the Court to determine at this time the extent to which Plaintiffs may recover their Claims against available insurance or otherwise. Information concerning the Debtor's insurance is provided because it substantiates that there is little prejudice or harm to the Debtor for ongoing discovery to continue in the State Court Action at this time as argued below.

15. Upon information and belief, at present and during the course of the State Court Action, AIG was and is funding and overseeing the defense of the State Court Action. In addition, attorneys believed to have been retained on behalf of Modern by its sureties (FIREMAN'S FUND INSURANCE CO., UNITED STATES FIDELITY AND GUARANTY COMPANY and/or NATIONAL SURETY CORP.) have attended and assisted MCC's insurance counsel at every liability deposition, actively participated in hearings and overseen Modern's defense.

16. By this Motion and the Motion for Expedited Hearing filed herewith, Plaintiffs request that the Court permit all pending discovery through October 31, 2008 to proceed as scheduled (or modified) until a further hearing of this Motion is held. At the present time, the following discovery has been scheduled through August 13, 2008 (the "Scheduled Discovery"):

PENDING DISCOVERY

	Date	Location	Deponent	Affiliation
1.	07/9-10/08	Boston	Paul D. Smith	Gannett
2.	07/11&14/08	Boston	John Tsikouras	Sigma
3.	07/11&14/08	Boston	Sigma Engineering 30(b)(6) (concurrent)	Sigma
4.	07/14/08	Boston	Inspection of Evidence (rescheduling)	State Police
5.	07/15-16/08	Boston	Neil Joyce (subject of gov't motion)	Modern
6.	07/22-23/08	Boston	Anthony Ricci	MTA
7.	07/29-31/08	Boston	Modern 30(b)(6)	Modern

8.	07/30/08	Boston	Fernando Carvalho (subject of motion)	Modern
9.	07/30/08	Boston	Manuel Diaz (subject of motion)	Modern
10.	07/31/08	Boston	DeMazio Perriera (subject of motion)	Modern
11.	07/31/08	Boston	Duarte Ciano (subject of motion)	Modern
12.	by 7/31/08	Boston	Sika 30(b)(6)	Sika
13.	by 7/31/08	Boston	Ed Diaz	Sika
14.	by 7/31/08	Newark	Stuart Hartman	Sika
15.	08/4-5/08	Boston	Giovanni Carderelli (subject of motion)	B/PB
16.	08/5-7/08	Boston	B/PB 30(b)(6)(date conflict)	B/PB
17.	08/12-13/08	Boston	Prabir Das	B/PB

Plaintiffs request that expedited relief be granted to allow them and other parties to proceed with the Scheduled Discovery, to notice and conduct such further discovery as is desired and/or permitted, and to allow all proceedings in the State Court Action relating to discovery through October 31, 2008, the present discovery deadline set by Judge Neel in the Superior Court .

17. The Court is further requested to consider Plaintiffs’ request that the Court grant relief from the stay to allow the Plaintiffs and all parties to take such actions as are necessary and helpful to reach and implement settlements in the State Court Action between Plaintiffs and non-debtor defendants.

18. Plaintiffs further request that a further hearing be scheduled prior to October 31, 2008, and that Plaintiffs be permitted to amend and/or supplement this Motion by a date certain prior to such hearing to provide adequate notice and opportunity for parties to respond to such other and further requests for relief from the stay which Plaintiffs may choose to bring in such amended or supplemental pleadings. It is anticipated that such pleadings will set forth Plaintiffs’ request for relief from stay to proceed with trial and determine the extent to which Plaintiffs may seek recovery for their Claims from available insurance and otherwise.

19. By staging the Plaintiffs' relief in this way, material delay and increased costs in the State Court Action will be avoided and the momentum of the State Court Action so vigorously maintained by Judge Neel will not be lost.

20. From the outset of the State Court Action, various parties have sought to stay the case. See List of Attempts to Stay or Delay Case Progress or Access to Discovery attached hereto as Exhibit "B". In March 2007, the Massachusetts Attorney General's Office -- which, among other things, represents the Massachusetts Turnpike Authority, a central defendant in the Plaintiffs' case -- filed motions to stay all depositions until at least October 2007. Judge Neel granted only a limited stay until July 16, 2007. It tried again in October 2007 and its request for a stay was denied. Then, the United States Attorney's Office tried in December 2007 and was able to prevent some, but not all depositions until March 2008. Meanwhile, a number of the defendants' employees have filed a series of "emergency" motions seeking to stay various depositions. While the Debtor is entitled to certain protections in bankruptcy, none of the remaining defendants are similarly situated. It is the Plaintiffs' hope that those defendants and/or the government itself do not approach this Court seeking the benefit of the automatic stay to which they are not entitled and which, for the most part, they have been unable to secure in the State Court Action.

ARGUMENT

Cause Exists To Grant Plaintiffs Relief From the Automatic Stay Pursuant to Bankruptcy

Code § 362(d)(1)

21. Bankruptcy courts may grant relief from the automatic stay to creditors for cause through either terminating, annulling, modifying, or conditioning such stay. 11 U.S.C. §

362(d)(1) (emphasis added). The Bankruptcy Code “does not define ‘cause’; but, generally speaking, ‘cause’ is said to exist when the harm that would result from a continuation of the stay would outweigh any harm that might be suffered by the debtor or the debtor’s estate if the stay is lifted. Determining whether ‘cause’ exists requires a fact intensive inquiry that must be made on a case by case basis.” *Peerless Ins. Co. v. Rivera*, 208 **B.R.** 313, 315 (D.R.I. 1997) (citing *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990)).

22. Courts within the First Circuit, in determining whether a stay should be lifted or continued, have utilized the twelve factors summarized in *In Re Curtis*, 40 **B.R.** 795, 799-800 (Bankr. D. Utah 1984) (the “*Curtis Factors*”). *Goya Foods, Inc. v. Unanue-Casal* (*In re Unanue-Casal*), 159 **B.R.** 90, 95-96 (D.P.R. 1993), *aff’d* 23 F.3d 395 (1st Cir. 1994).

23. The *Curtis Factors* pertinent to this Motion include: (i) whether the relief will result in a partial or complete resolution of the issues; (ii) the lack of any connection with or interference with the bankruptcy case; (iii) whether the debtor’s insurance carrier has assumed full financial responsibility for defending the litigation; (iv) whether litigation in another forum would prejudice the interest of other creditors, the creditors’ committee and other interested parties; (v) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (vi) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and (vii) the impact of the stay on the parties and the “balance of hurt.” *Id.*

24. In applying the above *Curtis Factors* to the facts of this case, it is clear that cause exists to grant Plaintiffs relief from the automatic stay pursuant to Bankruptcy Code § 362(d)(1).

Partial or Complete Resolution and Fixing/Liquidating of Claim

25. The State Court Action can provide a full and complete resolution and valuation of Plaintiffs' Claims against all defendants, and it is hoped that this Court will agree with Plaintiffs that the State Court is the appropriate forum. However, the Court does not need to reach that issue under the present Motion. For the relief that is being requested, it is sufficient to conclude, as Plaintiffs submit, that allowing continued discovery and proceedings on partial settlements advances the quest toward resolution and valuation of Plaintiffs' claims.

Lack of Interference or Prejudice to Creditors

26. Allowing Plaintiffs to continue the State Court Action in the Superior Court will not interfere with the Debtor's Chapter 11 case nor will it prejudice the interests of creditors. First, the resolution of Plaintiffs' Claims will likely be necessary to determine how the Debtor's assets will be distributed to all creditors. Second, upon information and belief, the Debtor's Insurer is responsible for funding the defense of the State Court Action. Under this Motion, Plaintiffs are not seeking relief to recover money damages for their Claims. To the extent that continued discovery and settlement proceedings with non-debtor defendants result in use of insurance policy proceeds for the Debtor's legal and other costs, Plaintiffs would note that while the policies (or the proceeds thereof) may arguably be considered property of the estate, such property exists solely for disbursements to creditors with valid claims covered by the policies, and is not available to the general unsecured creditors. As noted by *Collier On Bankruptcy*, "[b]ecause the policy proceeds will be available only to creditors with the type of claims covered by the policy, there is no depletion of assets that would otherwise be available to satisfy general, unsecured claims, and there is no reason to delay the creditor seeking to recover under the

policy. Moreover, the insurer will almost invariably be responsible for the cost of defense, so there should be no added expense for the estate.” 3 *Collier On Bankruptcy* ¶ 362.07[3][a] (15th ed. rev. 2006).

Insurer Responsible for Defense

27. As stated previously, upon information and belief, AIG has assumed responsibility for defending the State Court Action for the Debtor in the Superior Court and the Debtor is not required to pay a deductible on the Policy. As a result, the Debtor’s estate will not be depleted of monies needed to defend the State Court Action. *In re Holtkamp*, 669 F.2d 505, 508-509 (7th Cir. 1982) (allowing a civil action to go forward because it did not jeopardize the debtor’s bankrupt estate because his insurance company assumed full financial responsibility for defending the litigation).

Interests of Judicial Economy and Economic Benefits to Parties

28. The interests of judicial economy dictate that stay relief should be granted. The Superior Court has presided over the case for approximately two years, and discovery is well underway. If the proceedings are not allowed to continue, substantial delay in resolving the Plaintiffs’ Claims will result, engendering additional costs to all parties and a likely impediment to the Debtor’s orderly liquidation, which it has indicated it wishes to proceed with most expeditiously. Any other court will have to duplicate and render services which have been and continue to be provided by the Superior Court.

Progress of Pending Litigation

29. All parties have stated to Judge Neel that the State Court Action will almost certainly be ready for trial in 2009, and some parties, including the Plaintiffs, believe it will be ready for trial in the first half of 2009. Discovery is nearly complete with a deadline of October 31, 2008, and the case is moving forward expeditiously. The case has been pending there for two years, and is nearing the dispositive stage.

Balance of Harm

30. In evaluating the balance of harms to the Parties, it is evident that, without relief from the automatic stay, Plaintiffs will endure significant harm because their attempts to ascertain responsibility for the tragedy and secure the just resolution of their Claims will be significantly delayed.

31. Conversely, the Debtor will experience little harm, if any, if relief from the automatic stay is granted because any continuing defense of the State Court Action will be the responsibility of AIG, not the Debtor, the discovery is necessary in any event to move forward toward resolution of Plaintiffs' Claims, and settlements with non-debtor defendants reduce the size and complexity of the litigation for the benefit of all parties.

32. Due to the cost, delay and inconvenience to the Plaintiffs and all parties if pending discovery can not proceed as scheduled, Plaintiffs respectfully request the Court to rule that any relief granted under this Motion be effective immediately upon entry of the Court's order, and not be subject to the 10 day stay provided for in Rule 4001 (a) (3).

WHEREFORE, Plaintiffs respectfully request the Court to grant relief from the automatic stay in accordance with the terms of the proposed order attached hereto as Exhibit C (i) allowing the Plaintiffs and all parties to proceed with discovery through October 31, 2008; (ii) allowing all actions and proceedings in the State Court Action relating to such discovery and settlements with non-debtor defendants to proceed; (iii) scheduling filing and hearing dates prior to October 31, 2008, regarding relief from the stay for further proceedings in the State Court Action, and (iv) granting such other relief as the Court deems necessary and just.

Dated: June 27, 2008

Angel Del Valle and Raquel Ibarra Mora, Co-Administrators of the Estate of Milena Del Valle, and Angel Del Valle, individually,

By their counsel

/s/ Jacob Aaron Esher

Jacob Aaron Esher (BBO No. 544885)

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EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

<p>ANGEL DEL VALLE and RAQUEL IBARRA MORA, Co-Administrators of the Estate of MILENA DEL VALLE and ANGEL DEL VALLE, Individually,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>BECHTEL CORP., BECHTEL INFRASTRUCTURE CORPORATION, PARSONS BRINCKERHOFF, QUADE & DOUGLAS, INC., BECHTEL / PARSONS BRINCKERHOFF, MODERN CONTINENTAL CONSTRUCTION CO., GANNETT FLEMING, INC., MASSACHUSETTS TURNPIKE AUTHORITY, HDR ENGINEERING, INC., POWERS FASTENERS, SIKA CORPORATION, NEWMAN RENNER COLONY, LLC, NEWMAN ASSOCIATES, INC., RENNER COLONY, LLC, SIGMA ENGINEERING INTERNATIONAL, INC., CONAM, INC. and HNTB CORPORATION,</p> <p style="text-align: right;">Defendants.</p>	<p>CIVIL ACTION NO: 06-3654</p>
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**THIRD AMENDED COMPLAINT
AND DEMAND FOR TRIAL BY JURY**

1. This wrongful death action arises out of the tragic death of Milena Del Valle who was killed when a ceiling collapsed in Boston's Interstate 90 Connector Tunnel on July 10, 2006. This action is brought to compensate her next of kin, determine who is accountable for her death, deter the type of wrongful conduct that led to the accident and prevent similar accidents from occurring in the future. In addition, this action is brought to compensate her husband, Angel Del Valle, for personal and emotional injuries he suffered as a result of the accident. This action has been brought expeditiously to ensure compliance with all applicable legal deadlines.

THE PARTIES

2. Plaintiffs, ANGEL DEL VALLE, a resident of Jamaica Plain, Suffolk County,

Massachusetts and RAQUEL IBARRA MORA, a resident of Vasquez de Coronado, Costa Rica, are the duly appointed Co-Administrators of the Estate of Milena Del Valle, formerly a resident of Jamaica Plain, Suffolk County, Massachusetts. In addition, ANGEL DEL VALLE asserts individual claims for personal and emotional injuries he suffered in, and as a result of, the accident.

3. Defendant, BECHTEL CORPORATION (“BECHTEL CORP.”), is a corporation headquartered in San Francisco, California that specializes in engineering, design and construction management and which, at all times relevant hereto, conducted business in Suffolk County as corporate engineer, project manager, designer, planner and/or builder of the Central Artery Tunnel (“the Tunnel” or “the Tunnel Project”).
4. Defendant, BECHTEL INFRASTRUCTURE CORPORATION (“BECHTEL INFRASTRUCTURE” or, together with Bechtel Corp., simply “BECHTEL”), is a Nevada corporation that is a wholly or partly owned subsidiary of Bechtel Corp. Like Bechtel Corp., it specializes in engineering, design and construction management. On or before June 1, 2006, it began conducting business in Suffolk County as corporate engineer, project manager, designer, planner and/or builder of the Tunnel.
5. Defendant, PARSONS BRINCKERHOFF QUADE & DOUGLAS, INC. (“PARSONS”), is a corporation headquartered in New York, New York that specializes in planning, engineering, project and construction management and which, at all relevant times, conducted business in Suffolk County as corporate engineer, project manager, designer, planner and/or builder of the Tunnel.
6. Defendant, BECHTEL/PARSONS BRINCKERHOFF (“BECHTEL/PARSONS” or “B/PB”), is a joint venture that was formed and pursued between BECHTEL CORP. (and later BECHTEL INFRASTRUCTURE) and PARSONS to work in concert on the Tunnel Project. B/PB undertook and oversaw design, planning, engineering and project and construction management of the Tunnel Project and was retained by the Massachusetts Highway Department to manage construction of the Project. B/PB was responsible for (1) providing preliminary design services, (2) managing performance of designers of record, (3) managing construction work of the various contractors and subcontractors, (4) reporting on overall project cost, schedule and progress to the Massachusetts Turnpike Authority (“the MTA”), (5) providing recommendations to the MTA and, in various circumstances, (6) acting as the MTA’s representative.
7. Defendant, MASSACHUSETTS TURNPIKE AUTHORITY (“the MTA”), was at all relevant times, the quasi-public authority responsible for oversight of the Tunnel Project.
8. Defendant, MODERN CONTINENTAL CONSTRUCTION CO. (“MODERN CONTINENTAL”), was, at all relevant times, a Massachusetts corporation with its principal place of business in Cambridge, Massachusetts, and was a contractor responsible for design, management and construction of the Tunnel Project.

9. Defendant, WALSH CONSTRUCTION COMPANY OF ILLINOIS (“WALSH”), is a construction and project management company headquartered in Illinois with Massachusetts offices at Central Artery Tunnel Ventilation Building 3, Boston, Massachusetts. WALSH’s construction activities on the Tunnel Project included, but were not limited to, (1) scheduling, (2) trade contractor solicitation, (3) project control, (4) cost control, (5) change order management, (6) safety programs, (7) document interpretation, (9) installation of portions of the tunnel wall and ceiling; (10) status reports, and (11) project site documentation and record keeping.
10. Defendant, GANNETT FLEMING, INC. (“GANNETT”), was, at all relevant times, a Pennsylvania corporation with Massachusetts offices at 150 Wood Road, Braintree, Massachusetts and was a designer of the ceilings in the I-90 Tunnel.
11. Defendant, HDR ENGINEERING, INC. (“HDR”), was, at all relevant times, a Nebraska corporation with Massachusetts offices at 7 Winthrop Square, Boston, Massachusetts. HDR is an architectural, engineering and consulting firm that provided various services to the Project including, but not limited to (1) leading a multidisciplinary team of consultants in designing Section D001A, which encompassed over one-half mile of main line cut-and- cover tunnel, (2) designing over a mile of ramps and roadways in the I-90 Tunnel, (3) designing and planning bridgework, a ventilation building and other Tunnel-related facilities, and (4) designed the Tunnel’s eastern portal where the accident occurred.
12. Defendant, POWERS FASTENERS (“POWERS”), is a company headquartered in New York, New York, that specializes in the manufacture, marketing and distribution of anchoring and fastening products for concrete, masonry, and steel. POWERS provided epoxy fasteners and anchoring materials for the Tunnel Project.
13. Defendant, SIKA CORPORATION (“SIKA”), is a corporation headquartered in Lyndhurst, New Jersey that develops, manufactures, sells and distributes construction chemicals and products and which, at all times relevant hereto, directly and/or through its subsidiaries and/or affiliated companies, conducted business, sold, distributed and provided epoxies, epoxy resins and/or epoxy-bolt anchoring systems to companies in Suffolk County engaged in the construction of the Tunnel Project.
14. Defendants, NEWMAN RENNER COLONY, LLC and its predecessor companies, NEWMAN ASSOCIATES, INC. and RENNER COLONY, LLC, (collectively, “Newman Renner”) are corporations organized and existing under the laws of the Commonwealth of Massachusetts with principal places of business located in Suffolk County and which, at all times relevant hereto, directly and/or through its subsidiaries and/or affiliated companies, sold, distributed and provided epoxies, epoxy resins and/or epoxy-bolt anchoring systems to companies in Suffolk County engaged in the construction of the Tunnel Project.

15. Defendant, SIGMA ENGINEERING INTERNATIONAL, INC., is a corporation headquartered in Lincoln, Rhode Island which provided engineering services in the construction and evaluation of the Tunnel Project and, in particular, to I-90 Tunnel contractor Modern Continental Construction Co., and which compiled and assessed data relating to engineering tolerances of the anchoring system and the drop ceiling in the I-90 Connector Tunnel.
16. Defendant, CONAM, INC. (“CONAM”) (a/k/a “Staveley Services North America, Inc.”) is a corporation headquartered in Princeton Junction, New Jersey that is engaged in the business of safety and quality control testing and which, at all time relevant hereto, conducted testing on the epoxy-bolt anchoring system of the drop ceiling in the I-90 Connector Tunnel.
17. Defendant, HNTB CORPORATION (“HNTB”) formerly known as Howard, Needles, Tammen & Bergendoff, is a corporation headquartered in Kansas City, Missouri with a place of business at 75 State Street, Boston, Suffolk County, Massachusetts and which, at all times relevant hereto, directly and/or through its subsidiaries and/or affiliated companies, served as consulting engineers and safety inspectors to the Massachusetts Turnpike Authority (“MTA”) and which, among other things, conducted safety inspections of various aspects of the Tunnel Project.

THE ACCIDENT

18. On Monday night, July 10, 2006, Milena Del Valle and her newlywed husband, Angel Del Valle, left their home in Jamaica Plain, Massachusetts, to pick up relatives arriving at Boston Logan International Airport. Milena had worked a long day at one of her jobs as a restaurant worker in Roxbury. Despite her fatigue, she did not want Angel to make the trip alone and so she insisted on accompanying him to the airport.
19. Milena and Angel traveled eastbound in their 1991 Buick sedan on Interstate 90, a major route through Boston to Logan Airport, and arrived at the I-90 Tunnel at about 11:00 p.m. Due to the late hour on a weeknight, there was little traffic entering the tunnel at the time.
20. Just as Milena and Angel approached the Tunnel exit, four massive 20-by-40-foot concrete slabs, each weighing as much as three tons, broke free from the ceiling and crushed the Buick in which Milena and Angel were traveling. The ceiling collapsed with no outward warning and without time or opportunity for Milena or Angel to escape or avoid the disaster.
21. The concrete slabs, totaling approximately 12-tons or 45,000 lbs., landed directly on top of the passenger side of the Buick where Milena was seated and crushed her to death just inches away from her horrified husband. Although he was injured himself, Angel struggled to crawl out a twelve inch opening in the car window and frantically tried to reach his wife who was buried under tons of fallen concrete. Angel desperately tried to

- pull Milena's body from the debris, but could not free her from the mountain of concrete.
22. Milena Del Valle was a thirty-eight-year-old metal sculpture artist from Costa Rica. She worked two jobs to provide for her husband and her three children, her daughter Raquel Ibarra Mora, age 23 and two sons, Kaleb Ibarra Mora, age 19, and Jeremy Ibarra Mora, age 17, and her two infant grandchildren, all of whom were staying with her mother in Costa Rica. After moving to Boston to accept a job as a nanny, she met and fell in love with Angel Del Valle. The Del Valles had united their families and were looking forward to a long, happy life together.
 23. Milena Del Valle, the cornerstone of her family, was returned by her husband to her hometown in Costa Rica to be buried close to her children whom she had so long nurtured and loved.

TUNNEL CEILING DESIGN AND CONSTRUCTION

24. The Central Artery Tunnel Project in Suffolk County (a/k/a "the Big Dig" or "the Tunnel Project") re-routed Interstate 93, the so-called Central Artery, through Boston, Massachusetts, into a 3.2 mile tunnel under the city, replacing an elevated roadway. The Big Dig also extended both I-90 to Logan Airport and the Zakim Bunker Hill Bridge over the Charles River, by placing a four-lane immersed tunnel beneath Boston Harbor.
25. BECHTEL CORP., BECHTEL INFRASTRUCTURE, PARSONS and B/PB, as the engineers and management consultants for the Big Dig, had contractual duties that included overseeing and directing subcontractors to identify and correct any safety and health hazards that could impact the general public, monitoring the development and implementation of safety and health guidelines, providing design services, managing the performance of the final designers of record, managing the construction work of the various contractors, reporting on the project's overall cost and schedule to the MHD and the MTA, and providing recommendations to the MTA.
26. B/BP worked in collaboration with and oversaw the construction designers, contractors and suppliers on the project, namely, MODERN CONTINENTAL, WALSH, GANNETT, HDR, POWERS, SIKA CORPORATION, NEWMAN RENNER COLONY, LLC, NEWMAN ASSOCIATES, INC., RENNER COLONY, LLC, SIGMA ENGINEERING INTERNATIONAL, INC., CONAM, INC., HNTB CORPORATION and the MTA (which, together with B/PB, are collectively referred to herein as the "Big Dig Management Consortium" or "the Consortium.")
27. Under the control and management of the Big Dig Management Consortium, the I-90 Tunnel roof was designed by multiple contractors and subcontractors to consist of two ceilings – the original ceiling and a lower ceiling suspended from it. The lower ceiling was similar to what is commonly referred to as a "drop ceiling."
28. This "drop ceiling" was designed by the Consortium to control and direct airflow and to

- aesthetically conceal a series of fans intended to ventilate the tunnel.
29. Instead of constructing the ceiling using less weighty fiber panels or other safer material, the Consortium was negligent, grossly negligent and/or reckless in building the “drop ceiling” using cheaper 20-by-40-foot slabs of concrete that hung 40-feet above the traffic passing underneath. The Consortium selected such concrete slab construction, in part, because it was a cheaper and quicker alternative, despite knowledge by the Consortium that heavy concrete was a dangerous, risky and unnecessary choice, particularly when the slabs were not adequately anchored to the Tunnel’s original ceiling.
 30. The original design for the Tunnel provided for installing less weighty “drop ceiling” panels. However, between 1999 and 2000 the design was dramatically modified and, instead, called for the use of heavy concrete slabs. Although the I-90 Tunnel opened for public use in January 2003, construction continued as plans were constantly modified. In fact, construction continues to this day.
 31. The Big Dig Management Consortium chose to attach the series of three-ton concrete slabs of the “drop ceiling” to 40-foot-long steel bars or “hangers” suspended from the original concrete ceiling. Each group of eight hangers held as many as five concrete slabs weighing 22,500 lbs. in total, an average working load of about 3,000 lbs. per hanger. These massive steel bars were then fastened to the tunnel ceiling using short bolts, only 5/8-inch in diameter and 5½-inches in length, covered with construction glue or epoxy. This hanging scheme (“the anchoring method”) was entirely inadequate for such heavy ceiling panels and was negligently, grossly negligently and/or recklessly utilized both in the portion of the tunnel that collapsed, killing Milena and injuring Angel Del Valle, as well as in at least twenty other sections of the tunnel.
 32. With knowledge that massive amounts of weight, suspended by insufficient numbers of undersized bolts, hovered over travelers in the tunnel, the Consortium was nevertheless negligent, grossly negligent and/or reckless in failing to provide for any steel support beams in the original ceiling’s concrete. Such steel is customarily used in the industry to strengthen the capacities of connecting bolts. Without such reinforcement, the undersized bolts were left to support the entire weight of the concrete on their own.
 33. During the construction and evaluation of the Tunnel, the Consortium and, in particular the drop ceiling contractor, Modern Continental Construction Co., engaged defendant, SIGMA ENGINEERING INTERNATIONAL, INC., to provide engineering services that included, among other things, compiling and assessing information and data relating to the engineering and tolerances of the anchoring system and the drop ceiling. Such services were provided in a negligent and/or grossly negligent and/or reckless manner.
 34. During the course of construction and immediately following the opening of the Tunnel to the public in January 2003, the Big Dig Management Consortium, including and involving defendant CONAM (a/k/a “Staveley Services North America, Inc.”) in particular, used epoxy-bolt testing procedures that improperly differed from the specifi-

cations and procedures required by the construction contracts. Such inspections were conducted in an improper, negligent and/or grossly negligent and/or reckless manner.

35. The Big Dig Management Consortium knowingly approved such design errors and directed and/or authorized its employees, agents, subsidiaries and subcontractors to utilize improper and substandard construction and engineering methods and materials in the construction of the Tunnel.
36. As work on the Big Dig approached what was thought to be a conclusion, it should have been apparent to the Consortium that years of cost overruns, unsafe designs, inferior materials and substandard construction practices culminated in dangerous defects in the tunnel including, but not limited to, dangerously defective ceiling structures.
37. Even after work was thought to be at or near conclusion, the Consortium and/or the MTA, failed to properly inspect and identify the epoxy-bolts and anchoring mechanism for the drop ceiling when the Consortium and/or MTA engaged defendant, HNTB as an engineering consultant and safety inspector. At the direction of the Consortium and/or the MTA, HNTB conducted inspections of various aspects on the Tunnel Project, including tunnels utilizing the same defective epoxy-bolt anchoring mechanism that failed catastrophically in the I-90 Connector Tunnel, yet HNTB negligently and/or grossly negligently and/or recklessly failed to identify and /or report failing epoxy-bolts and anchoring system in the tunnel system.
38. On July 10, 2006, years of negligent and/or grossly negligent and/or reckless construction practices, ignored warnings, and use of inferior, inadequate and substandard materials, including but not limited to unsafe epoxy-bolts, improperly conducted engineering analyses and inspections and complete lack of oversight, culminated in the tragic death of Milena Del Valle and severe injuries to her husband, Angel Del Valle, and their family.

UNSAFE USE OF BOLTS

39. Under the direction and oversight of the Big Dig Management Consortium, tunnel contractors, subcontractors, agents, suppliers and others involved in the project, were negligent, grossly negligent and/or reckless in selecting and installing more than 1,500 unsafe and defective bolts in the Tunnel Project.
40. Under the direction and oversight of the Consortium, tunnel contractors, subcontractors, agents, suppliers and others involved in the project were negligent, grossly negligent and/or reckless in utilizing many bolts that failed standard pull tests used in the industry to determine the safe maximum amount of weight that can be applied to a bolt.
41. Under the direction and oversight of the Consortium, tunnel contractors, subcontractors, agents, suppliers and others involved in the project were negligent, grossly negligent and/or reckless in utilizing bolts that were only 5/8-inch in diameter and 5½ inches long

that were intended to support 40-foot-long steel hangers connected to massive three-ton slabs of concrete without any steel reinforcement or other means to help support, balance and distribute the weight.

42. Bolts used throughout the I-90 Tunnel were found unsafe because they could not support the excessive weight of the concrete slabs. Some installed bolts simply loosened and fell out of their holes. The Consortium knew or should have known that these bolts would not stand the test of time. The risk of failure was so high that Big Dig workers assigned to work above the ceiling were urged to use harnesses in case the ceiling gave way.
43. Despite their knowledge that the bolts were unable to carry the weight of the hangers and concrete slabs, the Big Dig Management Consortium negligently, grossly negligent and/or recklessly continued to use and install the unsafe and deficient bolts.
44. Under the direction and oversight of the Big Dig Management Consortium, tunnel contractors, subcontractors, agents, suppliers and others involved in the project were negligent, grossly negligent and/or reckless in causing or authorizing the drilling of bolt holes that were too deep, thereby allowing epoxy to fill into the excess space rather than bind to the bolt threads and concrete. In some cases, this resulted in bolts simply slipping out of their holes. The Consortium failed to provide for, supply or require proper drilling equipment which would have been equipped with stop-censors to ensure a precise depth for each hole. Instead, workers were caused or permitted to drill arbitrary bolt hole depths.
45. Under the direction and oversight of the Big Dig Management Consortium, tunnel contractors, subcontractors, agents, suppliers and/or others involved in the project were negligent, grossly negligent and/or reckless in causing or permitting bolts and tie-backs, neither of which were water resistant, to be exposed to elements such as rain and cold weather leading to rusting prior to use.
46. In disregard for public safety, the Big Dig Management Consortium, tunnel contractors, subcontractors, agents, suppliers and/or others involved in the project, in some instances consciously decided to forgo drilling certain bolt holes and, instead, opted simply to glue certain bolts to the top of the concrete slabs.

UNSAFE USE OF EPOXY

47. Epoxy glue, used to seal bolts in place in certain applications, has little tolerance for error and, therefore, specific standards in the industry outline the correct way to mix, apply and use epoxy glue. Yet, the Big Dig Management Consortium failed to ensure that the epoxy glue used in the Big Dig tunnels met these strict standards.
48. Under the direction of the Big Dig Management Consortium, tunnel contractors, subcontractors, agents, suppliers and/or others involved in the project, were negligent,

grossly negligent and/or reckless in disregarding and/or tolerating the disregard of proper protocols in the mixing and/or application of epoxy glues, especially during cold weather when the cold may adversely affect the curing time. The epoxy glue on the bolts at the accident site was brittle and cracked, suggesting improper mixing and/or application of epoxy glue in conjunction with the inadequate bolts.

49. Moreover, despite knowledge that the Big Dig tunnels suffered from chronic leaks, thus making it critical that such epoxy glues be able to withstand water, the Big Dig Management Consortium failed to properly protect the glue and bolt holes with a water sealant, leaving the epoxy susceptible to being degraded by water.
50. The Consortium was also well aware that industry standards mandated that surfaces held together with epoxy be completely clean and free of dust, dirt and grease. Nevertheless, the Consortium was negligent, grossly negligent and/or reckless in failing to ensure that tunnel contractors, subcontractors, agents, suppliers and/or others involved in the project were instructed and properly equipped to clean out dust from the drilled bolt holes in which epoxy was used.
51. The Consortium was negligent, grossly negligent and/or reckless in failing to ensure that tunnel contractors, subcontractors, agents, suppliers and/or others involved in the project were instructed and equipped to properly and evenly use and distribute epoxy glue in the bolt holes. Yet, some bolts were installed using too little epoxy and, even worse, others were installed using no epoxy at all. At least three bolts intended to secure one of the four, multi-ton concrete slabs that crushed Milena Del Valle to death apparently did not have any epoxy glue at all.
52. At a time when the Big Dig Management Consortium was directing and overseeing construction of the Tunnel, various bolts fell out or loosened because the bolts were negligently, grossly negligently and/or recklessly installed using duct tape and other grossly improper methods in lieu of properly mixed and applied epoxy glues.
53. Throughout the project, the Big Dig Management Consortium failed to replace, reseal, test, inspect, or properly maintain the epoxy glue on the bolts as required and necessary.

UNSAFE STEEL HANGERS

54. The collapse of the massive concrete panels that crushed Milena Del Valle began when one of the steel hangers in the ceiling design snapped, triggering a deadly cascade failure of nine other steel hangers. These failures, combined with the improper design and use of other inadequate materials, released 45,000 lbs. of concrete onto the Del Valles' car.
55. Forty-foot-long steel hangers were used to hold up 3,000 lbs. each of the concrete panels used to direct airflow and cover ventilation fans in the I-90 Tunnel. It was these steel hangers that were held in place using bolts affixed to the ceiling with epoxy glue.

56. The Big Dig Management Consortium was negligent, grossly negligent and/or reckless for instructing inspectors to test some hangers to a weight bearing capacity of only 3,250 lbs. In doing so, the Consortium was negligent, grossly negligent and/or reckless in failing to build in an appropriate margin of safety.
57. Given the magnitude of this project and the high volume of traffic expected in the tunnels, the Big Dig Management Consortium had a duty to provide a high margin of safety to the public and take all necessary and reasonable steps to ensure that the hangers and bolts would not fail and lead to a ceiling collapse causing injury or death to members of the public traveling below.
58. The Big Dig Management Consortium consciously and carelessly failed, disregarded and/or refused to follow and adhere to basic and critically important safety concepts, testing and inspection practices which resulted in the inevitable failure of the steel hangers. Such failures and reckless disregard for safety on the part of the Consortium exposed each and every driver through the tunnel to the traps and perils hidden in the ceiling structures, including the risk of being crushed in a tunnel ceiling collapse such as that which killed Milena Del Valle and injured her husband and their family.

COUNT I

WRONGFUL DEATH - NEGLIGENCE

59. Plaintiffs incorporate and reassert paragraphs 1 - 58 above as if set forth fully herein.
60. Each of the following defendants (against whom individual counts are hereby pled as “Count I(A),” “Count I(B),” etc.), independently and/or in concert or in joint ventures with other entities, owed a duty of reasonable care to Milena Del Valle and her husband, Angel Del Valle, as members of the public traveling through the I-90 Tunnel:

A. Bechtel Corp.	J. Powers Fasteners
B. Bechtel Infrastructure	K. Sika Corporation
C. Parsons Brinkerhoff	L. Newman Renner Colony, LLC
D. Bechtel / Parsons Brinkerhoff	M. Newman Associates, Inc.
E. the MTA	N. Renner Colony, LLC
F. Modern Continental	O. Sigma Engineering International
G. Walsh Construction	P. ConAm, Inc.
H. Gannett Flemming, Inc.	Q. HNTB Corporation
I. HDR Engineering	
61. As set forth above, each of these defendants, independently and/or in concert or in joint ventures with other entities, breached their respective duties of reasonable care owed to Milena Del Valle and, her husband, Angel Del Valle.

62. As a proximate result of each defendant's breach of duty, Milena Del Valle suffered grievous injuries of body and mind as well as pain and suffering which lead, ultimately, to her death. Her children and husband have been deprived of her love, services, protection, care, assistance, society, comfort, companionship, guidance, counsel and advice. Her children and husband have incurred funeral, burial and other expenses related to her death and her next of kin and estate have been deprived of the economic value of her capacity to earn money during the normal span of her life.

WHEREFORE, plaintiffs, Angel Del Valle and Raquel Ibarra Mora, Co-Administrators of the Estate of Milena Del Valle, pursuant to the Massachusetts Wrongful Death Act, Mass. Gen. L. c. 229 § 2, pray that judgment be entered against each defendant in an amount that will fairly and adequately compensate Milena Del Valle's next of kin (her husband, Angel and her children, Raquel, Caled and Jeremy) for her death and award all other recoverable damages together with interest, costs, attorneys' fees and such other relief as may be appropriate.

COUNT II

WRONGFUL DEATH - GROSS NEGLIGENCE, RECKLESSNESS, AND WILLFUL AND WANTON MISCONDUCT

63. Plaintiffs incorporate and reassert paragraphs 1 - 62 above as if set forth fully herein.

64. As set forth above, each of the following defendants (against whom individual counts are hereby pled as "Count II(A)," "Count II(B)," etc.), independently and/or in concert or in joint ventures with other entities, engaged in acts and/or omissions that constituted gross negligence and/or recklessness and/or willful and/or wanton misconduct in violation of their respective duties owed to Milena Del Valle:

- | | | | |
|----|-------------------------------|----|---------------------------------|
| A. | Bechtel Corp. | J. | Powers Fasteners |
| B. | Bechtel Infrastructure | K. | Sika Corporation |
| C. | Parsons Brinkerhoff | L. | Newman Renner Colony, LLC |
| D. | Bechtel / Parsons Brinkerhoff | M. | Newman Associates, Inc. |
| E. | the MTA | N. | Renner Colony, LLC |
| F. | Modern Continental | O. | Sigma Engineering International |
| G. | Walsh Construction | P. | ConAm, Inc. |
| H. | Gannett Flemming, Inc. | Q. | HNTB Corporation |
| I. | HDR | | |

65. As a proximate result of each defendant's grossly negligent and/or reckless and/or willful and/or wanton misconduct, Milena Del Valle suffered grievous injuries of body and mind as well as pain and suffering which led, ultimately, to her death.

WHEREFORE, plaintiffs, Angel Del Valle and Raquel Ibarra Mora, Co-Administrators of the Estate of Milena Del Valle, pursuant to the Massachusetts Wrongful Death Act, Mass.

Gen. L. c. 229, § 2, pray that judgment be entered against each defendant in an amount that will adequately punish and deter each defendant for its gross negligence and/or recklessness and/or willful and wanton misconduct, together with interest, attorneys' fees and costs and such other relief as the court deems just and appropriate.

COUNT III

SURVIVAL CLAIMS - PAIN AND SUFFERING

66. Plaintiffs incorporate and reassert paragraphs 1 - 65 above as if set forth fully herein.
67. As set forth above, the conduct of each of the following defendants (against whom individual counts are hereby pled as "Count I(A)," "Count I(B)," etc.), independently and/or in concert or in joint ventures with other entities, was negligent and/or grossly negligent and/or reckless and/or willful and/or wanton with respect to the safety of the plaintiffs and the traveling public in general.
- | | | | |
|----|-------------------------------|----|---------------------------------|
| A. | Bechtel Corp. | J. | Powers Fasteners |
| B. | Bechtel Infrastructure | K. | Sika Corporation |
| C. | Parsons Brinkerhoff | L. | Newman Renner Colony, LLC |
| D. | Bechtel / Parsons Brinkerhoff | M. | Newman Associates, Inc. |
| E. | the MTA | N. | Renner Colony, LLC |
| F. | Modern Continental | O. | Sigma Engineering International |
| G. | Walsh Construction | P. | ConAm, Inc. |
| H. | Gannett Flemming, Inc. | Q. | HNTB Corporation |
| I. | HDR | | |
68. As a proximate result of each of the defendants' misconduct, whether independently and/or in concert or in joint ventures with other entities, Milena Del Valle suffered grievous injuries of body and mind, including but not limited to conscious pain and suffering, and mental and emotional distress prior to her death.

WHEREFORE, plaintiffs, Angel Del Valle and Raquel Ibarra Mora, Co-Administrators of the Estate of Milena Del Valle, pray that judgment be entered against the defendants in an amount which will fairly and adequately compensate for the grievous injuries of body and mind, including but not limited to conscious pain and suffering, and mental and emotional distress and other damages sustained by Milena Del Valle prior to her death and that her Estate recover these, and all other, damages recoverable, together with interest, costs, attorneys' fees and such other relief as may be appropriate.

COUNT IV

BREACHES OF WARRANTIES

69. Plaintiffs incorporate and reassert paragraphs 1 - 68 above as if set forth fully herein.
70. Defendants POWERS FASTENERS and SIKA CORPORATION are merchants that designed, manufactured, marketed, distributed and sold products used in the construction of the Tunnel Project and, specifically, products used in constructing the anchoring mechanism of the ceiling that collapsed on and killed Milena Del Valle and injured Angel Del Valle.
71. In designing, manufacturing, marketing, distributing, selling and supporting such products, defendants POWERS and SIKA expressly and impliedly warranted that the products they provided were merchantable, safe and fit both for a particular purpose for which such products were intended and for general use in construction.
72. Defendants, NEWMAN RENNER COLONY, LLC and its predecessor companies, NEWMAN ASSOCIATES, INC. and RENNER COLONY, LLC, (collectively, "Newman Renner") and others in its chain of distribution, are merchants that engaged in the marketing, distribution, sale and support of products used in the construction of the Tunnel Project and, specifically, products used in constructing the epoxy-bolt anchoring mechanism of the ceiling that collapsed on and killed Milena Del Valle and injured Angel Del Valle.
73. In marketing, distributing, selling and supporting such products, defendant NEWMAN RENNER and its predecessors, subsidiaries, affiliates, assigns and others in its chain of distribution, expressly and impliedly warranted that the products it provided were merchantable, safe and fit both for a particular purpose for which such products were intended and for general use in construction.
74. Defendants POWERS, SIKA and NEWMAN RENNER and others in their chain of distribution had reason to know the particular purpose for which the construction materials they provided were required and that the plaintiffs and other members of the traveling public were relying on the defendants' skill and judgment in selecting and/or furnishing suitable materials. The products provided as described above, and the warnings, packaging and instructions which accompanied such products, were defective, deficient and substandard and, therefore, were not, in fact, merchantable, safe and fit as warranted by the defendants.
75. Defendants POWERS, SIKA and NEWMAN RENNER and others in their chain of distribution, therefore, breached the warranties of merchantability and of fitness for a particular purpose relating to the products they provided with respect to the plaintiffs' claims and the death of Milena Del Valle.
76. As the direct and proximate result of the defendants' breaches of warranties, Milena Del Valle suffered grievous injuries of body and mind as well as pain and suffering which led, ultimately, to her death and Angel Del Valle, individually, suffered grievous injuries

of body and mind.

WHEREFORE, plaintiffs, Angel Del Valle and Raquel Ibarra Mora, Co-Administrators of the Estate of Milena Del Valle, and Angel Del Valle individually, pray that judgment be entered against these defendants for their breaches of warranties in amounts which will fairly and adequately compensate for the death of Milena Del Valle and compensate Angel Del Valle for his individual injuries and, furthermore, award all other recoverable damages, together with interest, costs, attorneys' fees and such other relief as may be appropriate.

COUNT V

NEGLIGENCE CAUSING PERSONAL INJURY

77. Plaintiffs incorporate and reassert paragraphs 1 - 76 above as if set forth fully herein.
78. Each of the following defendants (against whom individual counts are hereby pled as "Count V(A)," "Count V(B)," etc.), independently and/or in concert or in joint ventures with other entities, owed a duty of reasonable care to Angel Del Valle as a member of the public traveling through the I-90 Tunnel:
- | | | | |
|----|-------------------------------|----|---------------------------------|
| A. | Bechtel Corp. | J. | Powers Fasteners |
| B. | Bechtel Infrastructure | K. | Sika Corporation |
| C. | Parsons Brinkerhoff | L. | Newman Renner Colony, LLC |
| D. | Bechtel / Parsons Brinkerhoff | M. | Newman Associates, Inc. |
| E. | the MTA | N. | Renner Colony, LLC |
| F. | Modern Continental | O. | Sigma Engineering International |
| G. | Walsh Construction | P. | ConAm, Inc. |
| H. | Gannett Flemming, Inc. | Q. | HNTB Corporation |
| I. | HDR | | |
79. As set forth above, each of these defendants breached their respective duties of reasonable care owed to Angel Del Valle.
80. As a proximate result of each defendants' breach of duty, Angel Del Valle suffered grievous injuries of body and mind as well as pain and suffering.

WHEREFORE, plaintiff, Angel Del Valle, individually, prays that judgment be entered against each such defendant in an amount which will fairly and adequately compensate him for his personal injuries and emotional distress and award all other recoverable damages, together with interest, costs, attorneys' fees and such other relief as may be appropriate.

JURY DEMAND

THE PLAINTIFFS HEREBY CLAIM A TRIAL BY JURY ON ALL CLAIMS AND DEFENSES SO TRIABLE.

Plaintiff Angel Del Valle, Individually and as Co-administrator of the Estate of Milena Del Valle, By His Attorneys,

Plaintiff Raquel Ibarra Mora, Co-administrator of the Estate of her mother Milena Del Valle, By Her Attorneys,

_____[original signed by]_____
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EXHIBIT B

ESTATE OF MILENA DEL VALLE, ET AL. V. BECHTEL CORP., ET AL.

Attempts to Stay or Delay Case Progress or Access to Discovery

1. 3/15/07 Defendant Powers Fasteners's Emergency Motion to Clarify or Reconsider Paragraph 7 of the Second Case Management Order and to Issue a Protective Order
2. 3/16/07 Defendant Modern Continental Construction Co.'s Emergency Motion to Suspend and Stay Second Case Management Order Pending Ruling on Emergency Motion of Powers Fasteners
3. 3/16/07 Interim Stipulation [on access to 3 million allegedly confidential documents] of all parties except defendant Powers Fasteners
4. 3/20/07 Defendant Massachusetts Turnpike Authority's Motion for Confidentiality / Non-Disclosure Order [of 3 million allegedly confidential documents]
5. 3/21/07 Emergency Motion of the Commonwealth of Massachusetts [through its Attorney General] to Intervene as a Party Defendant
6. 3/21/07 Emergency Motion of the Commonwealth of Massachusetts to Stay & for a Protective Order
7. 4/10/07 ORDER on Attorney General's Motion to Intervene and to Stay Depositions - Motion to Intervene is allowed. Motion to Stay Deposition Discovery is allowed (depositions will not begin before July 16, 2007).
8. 5/11/07 Defendant Newman Associates, Inc.'s Emergency Motion to extend time for its compliance with Court Order relating to Paragraph 7 of Second Case Management Order
9. 6/19/07 Opposition of Defendant Powers Fasteners, Inc. to Plaintiffs' Motion to Compel and [Powers'] Cross-Motion for a Protective Order
10. 7/18/07 Defendant Sika Corporation's Motion for Protective Order
11. 8/7/07 Defendant Gannett Fleming, Inc.'s Motion to Stay the Deposition of Former Employee Peter Falk
12. 8/7/07 Emergency Motion of Peter Falk for a Protective Order to Stay His Deposition Until After the Conclusion of the Attorney General's Criminal Investigation

13. 8/13/07 ORDER [denying Gannett Fleming & Peter Falk's Motions for Stay]
14. 20/5/07 Defendant Powers Fasteners's Motion for Protective Order Pending the Outcome of Criminal Proceedings
15. 10/10/07 Defendant Bechtel Corporation, Parsons Brinckerhoff Quade & Douglas, Inc., Bechtel/Parsons Brinckerhoff, Modern Continental Cosntruction Co., Gannett Fleming, Inc., Newman Renner Colony, LLC, Newman Associates, Inc., Renner Colony, LLC, Sigma Engineering International, Inc., Conam, Inc., HNTB Corporation, Bechtel Infrastructure Corp.'s Motion for Order Directing Powers Fasteners, Inc. to Disclose Grand Jury Materials [thereby preventing and/or delaying scheduled depositions]
16. 10/16/07 Court received letter from Special Asst. Atty. General Paul F. Ware, Jr.
17. 10/18/07 Emergency Motion of Deponent Ray Williamson for Protective Order
18. 10/17/07 Intervenor-Attorney General's [Further] Motion for Stay of Depositions
19. 10/24/07 ORDER denying Intervenor-Attorney General's Motion for Stay of Depositions
20. 10/26/07 MEMORANDUM AND ORDER on Defendants' Motion for an Order Directing Powers Fasteners to Disclose Grand Jury Materials AND on Phil Aikele's Motion for Order Directing Powers to Produce his Grand Jury Materials - both ALLOWED [depositions to proceed]
21. 10/26/07 MEMORANDUM AND ORDER on Defendant Powers Fasteners, Inc.'s Motion for a Protective Order Pending the Outcome of Criminal Proceedings AND on Emergency Motion of Ray Williamson for Protective Order - ALLOWED as to Williamson's depo, DEFERRED as to rest of motion.
22. 10/29/07 Emergency Motion of Deponent Jack Armour for Protective Order
23. 11/5/07 ORDER allowing Emergency Motion of Deponent Jack Armour
24. 11/16/07 Robert Steffy's Emergency Motion for Protective Order to Stay His November 29 Deposition or, in the alternative, Motion for a Continuance
25. 11/27/07 Court received letter from Special Asst. Atty. General Paul F. Ware, Jr.
26. 12/3/07 ORDER denying Robert Steffy's Emergency Motion

27. 12/6/07 United States' Emergency Motion for Leave to Intervene and to Stay Depositions Discovery
28. 12/28/07 ORDER on United States' Emergency Motion for Leave to Intervene for a Limited Purpose and on Motion to Stay Deposition Discovery - ALLOWED from 2/1/08 - 3/31/08 ONLY.
29. 1/10/08 Defendant United States of America's Emergency Motion to Clarify the Court's Order of December 28, 2007 and to Stay Barrett and Donahue Depositions
30. 1/14/08 Motion of Peter F. Donahue to Stay his Deposition for the Reasons Set Forth in the United States' January 10, 2008 Motion
31. 1/17/08 ORDER DENYING US Motion to Clarify Order and Stay Barrett and Donahue Depositions
32. 4/4/08 Defendant/Intervenor United States of America's Motion to Extend the Court's Order of December 28, 2007 to Stay Deposition Discovery Until May 30, 2008
33. 4/24/08 ORDER DENYING US Motion to Extend Stay on Discovery (after agreement between the parties to a schedule of depositions not including depositions to which the US objects)
34. 5/20/08 Defendant Sika Corporation's Motion for Protective Order [on various employee depositions and Rule 30(b)(6) deposition]
35. 5/28/08 MEMORANDUM AND ORDER on Sika's Motion for Protective Order - depositions will take place as scheduled in Boston, unless otherwise agreed, and joint statement will be submitted to Court by B/PB and Sika.

EXHIBIT C

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

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

ORDER FOR RELIEF FROM THE AUTOMATIC STAY

Angel Del Valle and Raquel Ibarra Mora, Co-Administrators of the Estate of Milena Del Valle, and Angel Del Valle, individually (“Plaintiffs”), having filed their Motion For Relief From The Automatic Stay (the “Motion”) pertaining to Civil Action No. 06-3654-BLS2 (the “State Court Action”) pending in the Suffolk County Superior Court (the “Superior Court”) against Modern Continental Construction Co., Inc. (the “Debtor”) and several other non-debtor defendants, the Court having reviewed the Motion and finding that notice of the Motion given by Plaintiffs was sufficient under the circumstances, good cause appearing, it is therefore

ORDERED that the Motion is hereby ALLOWED, and the automatic stay under 11 U.S.C. §362 (a) in this case is modified (i) allowing all discovery and all proceedings in the State Court Action relating to discovery to proceed until October 31, 2008, and (ii) allowing any and all actions to reach and implement settlements between the Plaintiffs and non-debtor defendants in the State Court Action to proceed until October 31, 2008; and it is further

ORDERED that a further hearing is set for _____, 2008, at __.m., to consider Plaintiffs’ request for relief from the stay to consider other relief requested in the Motion as it

may be amended and supplemented, with any amendments or supplements to the Motion to be filed by Plaintiffs by 4:30 p. m. on or before _____, 2008, and any objections thereto to be filed by 4:30 p. m. on _____, 2008; and it is further

ORDERED that this Order is effective immediately and is not subject to the ten day stay provided for in Federal Rule of Bankruptcy Procedure 4001 (a) (3).

Signed in said District this ____ day of _____, 2008.

Honorable William C. Hillman
U.S. Bankruptcy Judge