

**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 EXPEDITED HEARING
(Re: Motion for Relief from Automatic Stay)**

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, respectfully request the Court to set an expedited hearing on or about July 8, 2008, on part of their concurrently submitted Motion For Relief From The Automatic Stay (the “Motion”). The Motion requests 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 this motion, Plaintiffs state the following:

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

2. 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. On July 10, 2006, Milena Del Valle was killed while riding in a car through the I-90 Connector Tunnel when part of the ceiling collapsed and crushed her vehicle. Further pertinent background is set forth in the Motion.

3. In the State Court Action filed on or about August 20, 2006, Plaintiffs jointly asserted 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 to the Motion as Exhibit "A".

4. The State Court Action was specially assigned to the Honorable Stephen E. Neel who, over the past eighteen months, has held fourteen 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.

5. 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 later in July to allow time for consideration and action from this Court on this Motion. Likewise, Plaintiffs have postponed by agreement further action on motions relating in any way to the Debtor.

6. Plaintiffs seek an expedited hearing to allow them to continue with all pending discovery through October 31, 2008, the discovery deadline set by Judge Neel, and to allow all proceedings relating to discovery and to settlements between Plaintiffs and non-debtor defendants in the State Court Action to proceed. The Motion requests further relief to be granted by a further hearing prior to October 31, 2008 in accordance with amended or supplemental pleadings to be filed by Plaintiffs. By staging the Plaintiffs' relief in this way, material delay and increased costs will be avoided and the momentum of the State Court Action so vigorously maintained by Judge Neel will not be lost. The quest toward resolution and valuation of Plaintiffs' Claims, likely necessary to determine how the Debtor's assets will be distributed to all creditors, will be advanced for the benefit of all parties.

7. The following discovery has been scheduled through August 13, 2008 (as it may be modified, 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

8. As more fully explained in the Motion, the Debtor and its estate will not be prejudiced by proceeding with discovery because upon information and belief, its insurer has assumed responsibility for defending the State Court Action for the Debtor. As a result, the Debtor’s estate will not be depleted of monies needed to defend the State Court Action. *See 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). Additionally, settlements with non-debtor

defendants will reduce the size and complexity of the litigation for the benefit of the Superior Court and all parties.

WHEREFORE, Plaintiffs respectfully move the Court to schedule a hearing on or about July 8, 2008, to consider their request to obtain relief from the automatic stay in accordance with the proposed Order attached to the Motion 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

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