



amount of attorneys' fees and costs that may be added to a judgment it received in the State Court Action.

B. Relief from stay to proceed against a debtor with respect to prepetition litigation may only be allowed where (a) the debtor is a necessary party, (b) the debtor's costs are paid by the party seeking relief from the stay, and (c) any judgment is prohibited from being executed against the debtor. *See In re Catania*, 94 B.R. 250, 253 (Bankr. D. Mass. 1989).

C. The Motion for Relief fails to establish the criteria set forth in *Catania*. The Debtor does not oppose relief from the automatic stay with respect to the State Court Action so long as such relief is subject to the following provisions: (1) that any judgment, assessment or other recovery by ASCI against the Debtor arising from or related to the State Court Action shall be limited solely to the Debtor's insurer and any available insurance coverage of the Debtor, if any; and (2) that ASCI shall withdraw from the Claims Register in this case its proof of claim (Claim No. 55) and shall assert no claim or right of 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).

### **Responses to Specific Allegations**

In accordance with MLBR 4001-1(c) and in further support of the Debtor's opposition to the Motion for Relief, the Debtor responds to the specific allegations as follows:

1. The Debtor admits the allegations set forth in the first two sentences of paragraph 1 to the Motion for Relief. Further answering, the Debtor states that the allegations contained in the third sentence of paragraph 3 are based upon certain answers to special interrogatories propounded to the jury in the State Court Action, which are documents that speak for themselves, and the allegations concerning the same are therefore denied. The Debtor admits the

allegations contained in the fourth sentence of paragraph 1 to the Motion for Relief.

2. The Debtor admits the allegations contained in paragraph 2 to the Motion for Relief to the extent that the matter proceeded to trial on October 31, 2006. Further answering, the allegation that the jury found that the Debtor had wrongfully withheld \$150,000 from ASCI is based upon certain answers to special interrogatories propounded to the jury in the State Court Action, which are documents that speak for themselves, and the allegations concerning the same are therefore denied. Further answering, the Debtor admits the allegations contained in the second sentence of paragraph 2 to the Motion for Relief.

3. The Debtor admits the allegations set forth in the first sentence of paragraph 3 to the Motion for Relief. Further answering, the allegations set forth in the second sentence of paragraph 3 to the Motion for Relief are based upon a Court of Appeals opinion, which is a document that speaks for itself, and the allegations concerning the same are therefore denied. Further answering, the Debtor admits the allegations contained in the third sentence of paragraph 3 to the Motion for Relief.

4. The Debtor admits the allegations set forth in paragraph 4 to the Motion for Relief.

5. The Debtor is without sufficient information to form a belief as to the truth of the allegations contained in paragraph 5 of the Motion for Relief, and the allegations are therefore denied.

6. To the extent the allegations in paragraph 6 are not conclusions of law to which no response is required, the Debtor denies the same.

**Responses to Paragraphs without Enumeration**

7. The allegations contained in the first full paragraph of page 3 of the Motion for

Relief are conclusions of law to which no response is required. To the extent such allegations are not conclusions of law to which no response is required, the allegations are denied.

8. The allegations contained in the second full paragraph of page 3 of the Motion for Relief are conclusions of law to which no response is required. To the extent such allegations are not conclusions of law to which no response is required, the allegations are denied.

**(1) WHETHER RELIEF WOULD RESULT IN PARTIAL OR COMPLETE RESOLUTION OF THE ISSUES**

9. The Debtor admits the allegations contained in the first sentence of the first full paragraph on page 4 to the Motion for Relief. Further answering, the Debtor states that the allegations set forth in the second sentence of such paragraph are based upon a Court of Appeals opinion, which is a document that speaks for itself, and the allegations concerning the same are therefore denied. Further answering, the Debtor is without sufficient information to form a belief as to the truth of the allegations contained in the third sentence of such paragraph, and the allegations are therefore denied. Further answering, the Debtor states that the allegations contained in the fourth sentence of such paragraph are conclusions of law to which no response is required. To the extent such allegations are not conclusions of law to which no response is required, the allegations are denied.

**(2) LACK OF ANY CONNECTION WITH OR INTERFERENCE WITH THE BANKRUPTCY CASE**

10. The Debtor denies the allegations set forth in the second full paragraph on page 4 to the Motion for Relief. Further answering, the Debtor states that the Motion for Relief fails to establish the criteria set forth in *Catania*.

**(3) WHETHER LITIGATION IN ANOTHER FORUM WOULD PREJUDICE THE INTERESTS OF OTHER CREDITORS**

11. The Debtor is without sufficient information to form a belief as to the truth of the

allegations contained in the first sentence of the third full paragraph on page 4 to the Motion for Relief, and the allegations are therefore denied. Further answering, the Debtor states that the allegations contained in the second sentence of such paragraph are conclusions of law to which no response is required. To the extent such allegations are not conclusions of law to which no response is required, the allegations are denied.

**(4) THE INTERESTS OF JUDICIAL ECONOMY AND THE EXPEDITIOUS AND ECONOMICAL RESOLUTION OF LITIGATION**

12. The Debtor admits the allegations contained in the first sentence of the first full paragraph of page 5 to the Motion for Relief. The Debtor denies the allegations contained in the second and third sentences of such paragraph. The Debtor is without sufficient information to form a belief as to the truth of the allegations contained in the fourth and fifth sentences of such paragraph, and the allegations are therefore denied. Further answering, the Debtor states that the allegations contained in the sixth sentence of such paragraph are conclusions of law to which no response is required. To the extent such allegations are not conclusions of law to which no response is required, the allegations are denied.

**(5) WHETHER THE PARTIES ARE READY FOR TRIAL**

13. The Debtor states that the allegations contained in the first and second sentence of the second full paragraph of page 5 to the Motion for Relief are conclusions of law to which no response is required. To the extent such allegations are not conclusions of law to which no response is required, the allegations are denied. The Debtor is without sufficient information to form a belief as to the truth of the allegations contained in the third sentence of such paragraph, and the allegations are therefore denied.

**(6) IMPACT OF THE STAY ON THE PARTIES AND THE BALANCE OF HARMS**

14. The Debtor admits the allegations contained in the first sentence of the first full paragraph on page 6 to the Motion for Relief. is without sufficient information to form a belief as to the truth of the allegations contained in paragraph 5 of the Motion for Relief, and the allegations are therefore denied. Further answering, the Debtor states that the allegations contained in the second sentence of such paragraph are based upon certain answers to special interrogatories propounded to the jury in the State Court Action, which are documents that speak for themselves, and the allegations concerning the same are therefore denied.

15. The Debtor states that the allegations contained in the second full paragraph of page 6 to the Motion for Relief are conclusions of law to which no response is required. To the extent such allegations are not conclusions of law to which no response is required, the allegations are denied.

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**WHEREFORE**, the Debtor respectfully requests that this Court enter an Order: (a) limiting ASCI's relief from stay as more fully set forth in this limited objection; and (b) 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,

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