

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

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

**ORDER ON MOTION FOR (A) APPROVAL OF SETTLEMENT
RELATING TO ROUTE 3 PROJECT, AND (B) RELATED RELIEF**
[Re: Docket No. 537]

This matter having come before this Court on the *Motion For (A) Approval of Settlement Relating to Route 3 Project, And (B) Related Relief* (the “Motion to Approve”) [docket no. 537] filed by Modern Continental Construction Co., Inc. (the “Debtor”); and the Court having reviewed the Motion to Approve¹; and the Court having conducted a hearing on notice of the Motion to Approve; and the Court having determined that the legal and factual bases establish just cause for the relief granted in this order;

THIS COURT HEREBY FINDS THAT:

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. The Motion to Approve is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
- B. The Motion to Approve seeks the approval of a settlement agreement (the “Settlement Agreement”) concerning claims by and against the Debtor with respect to the Route 3 North Transportation Improvements project (the “Project”). The Settlement Agreement

¹ Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Motion to Approve.

provides, among other things, for the compromise of claims belonging to the Debtor's bankruptcy estate (the "Estate").

C. In the Motion to Approve, the Debtor seeks, among other things, the authority to assign its rights in the Subcontractor Warranties and the O&M Agreement to the Owner.

D. The Debtor has provided appropriate notice of the Motion to Approve, the Settlement Agreement and the compromises of claims described in the Settlement Agreement.

E. Any objections to the Motion to Approve have been withdrawn or are overruled.

F. The settlement and compromises of claims described in the Settlement Agreement fall well above the lowest point on the continuum of reasonableness.

G. Good and sufficient cause exists for the entry of this Order.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The notice of the Motion to Approve given by the Debtor is approved.

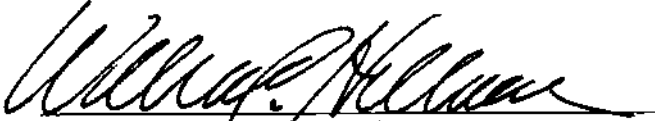
2. The Motion to Approve is granted.

3. The parties to the Settlement Agreement are authorized and directed to implement the terms of the Settlement Agreement and to sign such other documents that are necessary to effectuate the Settlement Agreement.

4. The Debtor is authorized to assign the Subcontractor Warranties and the O&M Agreement to the State Parties.

5. This Order, and the rights and responsibilities of each party to the Settlement Agreement shall remain effective and binding in all respects notwithstanding any future order converting or dismissing the Debtor's bankruptcy case.

6. Anything in this order, or in the Settlement Agreement or the Motion to Approve to the contrary notwithstanding, the Surety, as sureties for the Debtor, in connection with the Central Artery Tunnel project and/or the Project (hereinafter collectively the "Projects"), agree and stipulate with the Official Committee of Unsecured Creditors, for and on behalf of the unsecured creditors of the Debtor, that the failure of any subcontractor, supplier, or creditor of the Debtor that asserts a payment bond claim to object to the settlements between the Debtor and the owners in connection with the Projects shall not constitute a waiver or compromise of any claims pursuant to any payment bond, all of which bond claims are expressly reserved, nor shall such failure to object to such settlements form the basis for, or result in any estoppel whatsoever of such subcontractors, suppliers, or creditors of the Debtor in connection with the prosecution of any payment bond claims. By this stipulation, the Surety is not waiving and/or compromising any defenses, rights, set-offs and/or claims of any type whatsoever, all of which are expressly reserved, other than the right to contend that the failure to object constitutes a waiver or compromise of any such payment bond claim(s), or should be construed as an estoppel of any kind. The Surety further stipulates and agrees that Bankruptcy Court approval would not per se constitute a pay-if-paid defense to any subcontractor's claim.


Honorable William C. Hillman
UNITED STATES BANKRUPTCY JUDGE

Dated: December 18, 2008

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