



## **BACKGROUND**

3. 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”).

4. No trustee or examiner has been appointed, and no official committee of unsecured creditors has been appointed in this case. 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.

### **A. The History of the Debtor**

5. The Debtor is a closely-held Massachusetts corporation formed in 1967 to perform general contracting services. The Debtor’s first project was a sidewalk construction project in Peabody, Massachusetts. Over time, the Debtor’s operations substantially increased and it became 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. At the height of its operations, the Debtor employed four thousand two hundred (4,200) persons in twenty (20) states and had annual revenues of approximately \$1,100,000,000. The Debtor and/or its affiliates performed work across the United States, including projects in New England, New York, South Carolina, California, Nevada and Hawaii.

7. The scope of the Debtor’s construction expertise included heavy civil, marine, transportation, power, design/build and microtunneling projects. Some of the Debtor’s more prominent projects included the construction of the San Francisco-Oakland Bay Bridge Seismic

Retrofit, Back Bay Station and the Southwest corridor in Boston, MBTA Silver Line Immersed Tube Tunnels, Route 3 reconstruction from Route 128 to the New Hampshire border, Terminal E at Boston Logan Airport, the Deer Island Inter-Island Tunnel and a major portion of the CA/T Project.

**B. Downturn in Business Operations**

8. For the quarter ending December 31, 2001, the Debtor failed to meet certain financial covenants contained in its senior credit facility. The failure to meet these covenants, coupled with losses sustained on certain jobs and with respect to a real estate project located in downtown Boston, precipitated significant financial difficulties for the Debtor.

9. In early 2002, the Debtor began working with its senior lenders and noteholders in an effort to stabilize its financial situation. Despite its best efforts and intentions, the Debtor continued to incur significant losses on large construction jobs.

10. In the June 2003, due to ongoing job losses, the Debtor's primary bonding company, St. Paul Fire and Marine Insurance Company ("St. Paul")<sup>1</sup> joined the negotiations between the Debtor and its senior lenders. As a result of its financial situation, the Debtor was unable to procure bonds for any future work from and after early 2004. In its role as agent for the Lender (as defined below), St. Paul (hereinafter, the "Surety Lender Agent") began to advance loans to and make other financial accommodations for the Debtor and certain of its affiliates to permit the Debtor and certain of its affiliates to complete various bonded projects.

**C. Current Operations of the Debtor**

11. From 2003 to the present, the Debtor has continued to complete its open contracts while gradually winding down its operations.

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<sup>1</sup> St. Paul Fire and Marine Insurance Company has since merged with Travelers Insurance Company.

12. The Debtor's annual revenues for fiscal year 2003 were in excess of \$960,000,000, and for the fiscal year ending June 30, 2007, the Debtor's annual revenues were approximately \$92,000,000.

13. The Debtor currently has fifty-five (55) employees and operates in Massachusetts and New York.

14. As of the Petition Date, the Debtor is acting as general contractor on six (6) active projects. The Debtor's aggregate remaining contract values are approximately \$9,000,000, and the Debtor has accounts receivable and contract claims which, in the aggregate, have a value in excess of \$100,000,000.

**D. Bankruptcy and Orderly Wind-up of Affairs**

15. The filing of this bankruptcy petition was precipitated by the Debtor's failure to receive payment from Massachusetts Highway Department/Massachusetts Transportation Authority (the "Authority") for work previously performed on the CA/T Project, and for work that the Debtor continues to perform on CA/T Project. The Authority has not paid the Debtor for work completed after October 2007, and the Debtor has not been paid for significant work it performed due to the Authority's refusal to approve change orders. The Authority's refusal to pay amounts due under the Debtor's contracts impedes the Debtor's ability to complete the projects in an orderly manner, which the Debtor has otherwise been able to accomplish from 2004 to date, and threatens the Debtor's ability to keep subcontractors working on the CA/T Project.

16. The purpose of the bankruptcy filing is to permit the Debtor to continue the orderly completion of its remaining contracts and conclude the wind-up of its business while the

Debtor fulfills its obligations to its employees, project owners, subcontractors, vendors and suppliers.

**RETENTION OF H&K**

17. The Debtor seeks an order of this Court authorizing the employment of H&K as its bankruptcy counsel in this Chapter 11 case.

18. The Debtor has requested authority to employ H&K due to H&K's extensive experience representing debtors under and its knowledge of the Bankruptcy Code. The Debtor believes that H&K is well qualified to represent it in its Chapter 11 case.

19. The Debtor requires the retention of H&K to perform the legal services necessary to assist the Debtor in performing its duties as a debtor-in-possession. As requested by the Debtor, H&K will provide various legal services to the Debtor, including, without limitation, the following:

- (a) Advising the Debtor with respect to its rights, powers and duties as a debtor-in-possession in its Chapter 11 proceeding and the management and/or liquidation of its assets;
- (b) Advising the Debtor with respect to the development of a plan of reorganization or liquidation and any other matters relevant to the formulation and negotiation of a plan of reorganization or liquidation in this case;
- (c) Representing the Debtor at all hearings and matters pertaining to its affairs as debtor and debtor-in-possession;
- (d) Preparing on the Debtor's behalf all necessary and appropriate applications, motions, answers, orders, reports, pleadings and other documents, and review all financial and other reports filed in this Chapter 11 case;
- (e) Reviewing and analyzing the nature and validity of any liens asserted against the Debtor's property and advise the Debtor concerning the enforceability of such liens;

- (f) Advising the Debtor regarding its ability to initiate actions to collect and recover property for the benefit of the estate;
- (g) Advising and assist the Debtor in connection with any potential property dispositions;
- (h) Advising the Debtor concerning executory contract and unexpired lease assumptions, assignments and rejections and lease restructurings and recharacterizations;
- (i) Reviewing and analyzing various claims of the Debtor's creditors and the treatment of such claims and the preparation, filing or prosecution of any objections thereto;
- (j) Commencing and conducting any and all litigation necessary or appropriate to assert rights held by the Debtor, protect assets of the Debtor's Chapter 11 estate or otherwise further the goal of completing the Debtor's successful reorganization other than with respect to matters to which the Debtor retains special counsel; and
- (k) Performing all other legal services and provide all other necessary legal advice to the Debtor as a debtor-in-possession which may be necessary during the administration of this Chapter 11 case.

20. The Debtor submits that H&K has the requisite experience and bankruptcy expertise to provide the services required by the Debtor.

21. H&K will seek compensation based upon its normal and usual hourly billing rates, and will seek reimbursement of expenses. From time to time, H&K adjusts its usual hourly billing rates in the ordinary course of its business. In the event of such an adjustment, H&K will seek compensation at the adjusted hourly rate from and after the date of the adjustment.

22. H&K will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with the rendering of the legal services described above by category and nature of services rendered. H&K reserves its right to seek an enhancement of its fees or a lodestar award greater than its normal hourly time charges, subject to this Court's approval in accordance with applicable law.

23. Prior to the Petition Date, the Debtor provided H&K with a security retainer of \$62,426.89 (the “Retainer”) for services rendered or to be rendered in connection with its post-petition advice. See Affidavit at ¶ \_\_.<sup>2</sup> Subject to the Court’s approval, the Retainer will be held by H&K in its Client Funds Account as security during this case. The Retainer is not intended to be applied until all alternative sources of payment have been exhausted. H&K further requests authority to apply the Retainer to its allowed final compensation and expense reimbursement and return any unapplied portion to the Debtor. H&K is not owed any money by the Debtor on account of pre-petition services rendered to the Debtor.

24. During the case H&K requests that it receive compensation for services rendered to the Debtor upon approval of this Court in accordance with any applicable interim compensation procedures established by the Court. All compensation and expense reimbursement for H&K shall be subject to allowance by this Court upon appropriate application pursuant to Sections 330 and 331 of the Bankruptcy Code and any orders of this Court.

#### **DISINTERESTEDNESS OF H&K**

25. Contemporaneously with the filing of this Application, H&K has filed the Affidavit. The Affidavit includes a statement pursuant to Sections 329(a) and 504 of the Bankruptcy Code.

26. As set forth in greater detail in the Affidavit, neither H&K nor its shareholders or associates have any involvement with the Debtor, its affiliates, secured lenders, twenty largest general unsecured creditors, or any other parties in interest, their respective attorneys and

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<sup>2</sup> References to the “Murphy Affidavit at ¶ \_\_” are to the *Affidavit of Harold B. Murphy in Support of Application For Order Authorizing The Employment And Retention of Hanify & King, Professional Corporation as Counsel to The Debtor And Debtor-in-Possession.*

accountants, the United States Trustee, or any person employed in the Office of the United States Trustee, except as disclosed in the Affidavit.

27. To the best of the Debtor's knowledge, H&K and its shareholders and associates do not hold or represent any interest adverse to the Debtor's estate with respect to the matters on which H&K is to be employed, and H&K and its shareholders and associates are otherwise disinterested persons with respect to the Debtor as that term is defined in the Bankruptcy Code, except as may be provided herein and in the Affidavit.

28. Subject to any Orders of this Court and the applicable rules of bankruptcy procedure, the Debtor has agreed to pay H&K its fees incurred in the above-captioned proceedings. The Debtor has also agreed to reimburse H&K in full for its cash disbursements and for such expenses as H&K customarily bills to its clients.

**NO PRIOR REQUEST**

29. No prior request for the relief sought in this application has been made to this or any other court.

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**WHEREFORE**, the Debtor respectfully requests that this Court enter an Order (a) authorizing the retention of Hanify & King, Professional Corporation as counsel to the Debtor under the terms and conditions set forth in this application; 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: /s/ John H. Pastore  
John H. Pastore, as President of  
Modern Continental Construction Co., Inc.

Dated: July 1, 2008

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

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

**AFFIDAVIT OF HAROLD B. MURPHY IN SUPPORT  
OF APPLICATION FOR ORDER AUTHORIZING THE  
EMPLOYMENT AND RETENTION OF HANIFY & KING, PROFESSIONAL  
CORPORATION AS COUNSEL TO THE DEBTOR AND DEBTOR-IN-POSSESSION**

Pursuant to Fed. R. Bankr. P. 2014(a) and 2016, MLBR 2014-1, and 28 U.S.C. § 1746, I, Harold B. Murphy, hereby state as follows:

1. I am a shareholder of the law firm of Hanify & King, Professional Corporation, One Beacon Street, Boston, Massachusetts (“H&K”). I make this affidavit (the “Affidavit”) in support of the *Application for Order Authorizing the Employment and Retention of Hanify & King, Professional Corporation As Counsel to the Debtor and Debtor-in-Possession* (the “Application”). I am generally familiar with the business of H&K and have made inquiry concerning the facts set forth herein prior to making this Affidavit.

2. H&K maintains records of all of its clients, the matters on which it represents its clients, and the other parties which have a substantial role in such matters. H&K has reviewed such records and documents to determine H&K’s connections with the Debtor, and those entities listed by the Debtor as being either secured creditors or unsecured creditors. I have reviewed the list of attorneys who are known to represent or have entered appearances on behalf of the aforementioned entities to date and discussed that list with the associates in H&K’s bankruptcy

department. In addition, I caused an e-mail to be sent to all attorneys at H&K, which requested that I be alerted to any matter in which H&K was in a position adverse to the Debtor.

3. Based upon my review as described herein, in accordance with Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, neither I nor any shareholder or associate of H&K, insofar as I have been able to ascertain, has any connections or relationships with the Debtor, its creditors or any other parties-in-interest, or their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee except as disclosed or described herein including:

- (a) Kathleen R. Cruickshank, an associate at H&K, was formerly employed by the Office of the United States Trustee;
- (b) The Debtor has filed an application to employ Hinckley, Allen & Snyder LLP (“Hinckley Allen”), as their special counsel in this Chapter 11 case. Hinckley Allen has been retained in matters in which H&K has been or is involved, or in other cases in which H&K has represented other parties-in-interest, including but not limited to: In re Tools 4 Hire, et al., and In re Payton Construction Corp.;
- (c) NSTAR. H&K represents or has represented NSTAR and/or its affiliates which, according to the books and records of the Debtor, is a creditor of the Debtor. H&K currently represents NSTAR and/or its affiliates in bankruptcy related matters and various non-bankruptcy matters. Of the bankruptcy related cases, none is pending before any courts in the District of Massachusetts. H&K has not and will not represent NSTAR in connection with respect to the Debtor; and
- (d) The Aulson Company. H&K has represented The Aulson Company (“Aulson”), one of the Debtor’s twenty largest non-priority unsecured creditors, in the past. H&K did not represent Aulson with respect to its dealings with the Debtor. H&K has not and will not represent Aulson with respect to the Debtor or the Debtor’s bankruptcy proceeding.

Because of the size and diversity of H&K’s practice, it is possible that H&K may represent or may have represented other creditors, equity security holders, or parties in interest or their respective attorneys and accountants, but does not represent any such entity in connection with the Debtor. With respect to the parties listed above, H&K has not and will not represent such parties in any matters related to the Debtor’s bankruptcy case.

4. H&K does not represent, nor is it represented by, any other authorized professional specifically in connection with this case or on a regular basis or in connection with a substantial matter in another case.

5. The Debtor intends to retain various professionals during the pendency of this case. H&K will take steps not to unnecessarily duplicate the efforts of any other professional retained in this case. In that regard, H&K will coordinate with all other professionals retained in this case to ensure that H&K does not unnecessarily duplicate work being performed by other professionals.

6. Insofar as I have been able to ascertain, based on my review as described in paragraph two, H&K, the shareholders and associates thereof, and I do not hold or represent any interest adverse to that of the Debtor's estate. Notwithstanding the disclosures contained in paragraph three, I believe that I and each shareholder and associate of H&K is a "disinterested person" as that term is defined in 11 U.S.C. § 101(14). Furthermore, insofar as I have been able to ascertain, neither H&K, any shareholder or associate thereof, nor myself, is connected with any Bankruptcy Judge in the District of Massachusetts, or the United States Trustee or any person employed in the office of the United States Trustee, so as to render the appointment of H&K as counsel for the Debtor inappropriate under Rule 5002(b) of the Federal Rules of Bankruptcy Procedure.

7. H&K and I have conducted, and will continue to conduct, research into any relationships we may have with the Debtor and its creditors, any accountants, attorneys or other professionals of the foregoing, and any other parties interested in this case. Although H&K has undertaken, and will continue to undertake, an investigation to identify any contacts with the Debtor or parties-in-interest, it is possible that such contacts have not been revealed. To the

extent any such contacts are discovered, H&K will notify the Court by filing and serving a supplemental affidavit.

8. Any compensation, fee or allowance that may be claimed by me or by H&K will belong wholly to the law firm and will not be divided, shared or pooled, directly or indirectly, with any other person or firm.

9. The Debtor seeks to employ H&K at H&K's standard hourly rates and has provided H&K with a retainer because of the extensive services that may be required and the fact that the full extent of such services are not known at this time. No amounts are owed to H&K for any prepetition services rendered.

10. Prior to the Petition Date, the Debtor provided H&K with a security retainer of \$62,426.89 (the "Retainer") for services rendered or to be rendered in connection with its post-petition advice.

11. During the 90 days prior to the Petition Date, H&K received payments on account of pre-petition services rendered on the following dates and in the following amounts: (a) May 5, 2008 – \$8,106.36, (b) June 18, 2008 – \$44,745.18, and (c) June 23, 2008 – \$76,465.95. All of the aforesaid payments, with the exception of approximately \$8,854, were applied to invoices that were outstanding for approximately ninety (90) days or less. The payment of approximately \$8,854 was applied against invoices that were due at the end of 2007. H&K believes that there are meritorious defenses to the avoidance of the \$8,854 payment pursuant to Section 547 of the Bankruptcy Code. However, in the event that it is determined that the \$8,854 payment is avoidable, H&K will: (a) promptly return such funds to the Debtor's bankruptcy estate, and (b) waive any pre-petition claim under Section 502(h) arising from such avoidance.

12. I shall amend this statement immediately upon my learning that (A) any of the within representations are incorrect or (B) there is any change of circumstances relating thereto.

13. I have reviewed the provisions of MLBR 2016-1.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

/s/ Harold B. Murphy  
Harold B. Murphy (BBO #326610)

Dated: July1, 2008

