

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

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

**APPLICATION BY DEBTOR AND DEBTOR-IN-POSSESSION TO RETAIN  
HINCKLEY, ALLEN & SNYDER, LLP AS SPECIAL COUNSEL**

Pursuant to 11 U.S.C. § 327(e), Fed. R. Bankr. P. 2014 and MLBR 2014-1, Modern Continental Construction Co., Inc., the above-captioned debtor and debtor-in-possession (the “Debtor”), respectfully requests this Court to enter an order authorizing the Debtor to retain the law firm of Hinckley, Allen & Snyder LLP (“Hinckley Allen”) as special counsel to the Debtor in connection with (a) the prosecution of certain litigation currently pending before various state and federal courts both in the Commonwealth of Massachusetts and in other jurisdictions (collectively, the “Modern Litigation”), (b) any issues incident to, or related to, the Modern Litigation, including alternative dispute proceedings, (c) general corporate matters, (d) general employment matters, (e) general construction matters and (f) criminal defense matters (collectively, the “Special Counsel Matters”). In support of this application, the Debtor relies on the Affidavit of Paul F. O’Donnell, III (the “O’Donnell Affidavit”), attached to this application as Exhibit A. In further support of this application, the Debtor respectfully states as follows:

**JURISDICTION**

1. This Court has jurisdiction to consider and determine this application pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(A) and

(O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Section 327(e) of the Bankruptcy Code, Rule 2014 and 2016 of the Federal Rules of Bankruptcy Procedure and MLBR 2014-1(e).

### **BACKGROUND**

2. On June 23, 2008 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Massachusetts (the “Court”).

3. 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.

4. The Debtor is a closely-held Massachusetts corporation formed in 1967 by Lelio Marino and Kenneth Anderson engaged in the business of providing general contractor services for heavy civil and other types of construction projects.

5. The stock of the Debtor is owned by Modern Continental Construction Holding Co., Inc. (“MC Holding”). The stock in MC Holding is owned by Modern Continental Companies, Inc. (“MC Companies”). Seventy-five percent (75%) of the stock in MC Companies is held by a testamentary trust, controlled by Mr. Marino’s daughters, and the remaining twenty-five percent (25%) is owned by Mr. Anderson.

### **FINANCIAL DIFFICULTIES**

6. 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.

7. 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. For fiscal year ending June 30, 2003, the Debtor incurred losses in excess of \$100,000,000.

8. In June 2003, due to ongoing job losses, the Debtor's primary bonding company, St. Paul Fire and Marine Insurance Company ("St. Paul"), 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. In its role as surety, St. Paul began to finance the Debtor's operations in the summer of 2003, as described in more detail below.

9. On November 12, 2004, Mr. Marino passed away. Mr. Marino had been a driving force in the Debtor's business, and after his death, the Debtor began in earnest a plan to wind down its operations in an orderly fashion. The Debtor has been operating to complete its ongoing work since such time.

#### **CURRENT OPERATIONS**

10. The Debtor has fifty-five (55) employees and is acting as general contractor on six (6) active projects in Massachusetts and New York.

11. For the fiscal year ending June 30, 2007, the Debtor's annual revenues were approximately \$92,000,000.

#### **RETENTION OF HINCKLEY ALLEN**

12. The Debtor seeks an order of this Court, pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure,

authorizing the employment and retention of Hinckley Allen as its special counsel in connection with the Special Counsel Matters. Hinckley, Allen has served as the Debtor's primary outside counsel since the early 1970's and has provided the Debtor with a wide range of services from such date, including with respect to the Special Counsel Matters.

13. Under Section 327(e) of the Bankruptcy Code, a debtor-in-possession is authorized to employ, for specified special purposes, other than to represent the debtor-in-possession in conducting the case, attorneys that have represented the debtor, if in the best interest of the estate, and if such attorneys do not hold any interest adverse to the debtor-in-possession or its estate with respect to the matter on which such attorneys are employed. See 11 U.S.C. § 327(e). Under Section 328(a) of the Bankruptcy Code, an attorney retained under Section 327(e) may be employed on any reasonable terms and conditions, including on retainer or on an hourly basis. See 11 U.S.C. § 328(a).

14. Hinckley Allen has represented and is currently representing the Debtor and/or its non-debtor affiliates and the Debtor's sureties and insurance companies<sup>1</sup> in a variety of matters wholly unrelated to this bankruptcy case. As a result of its longstanding prior relationship with the Debtor, Hinckley Allen has acquired certain background and knowledge concerning the Debtor, its operations, its relationship with its lenders and sureties and facts and circumstances relating to the foregoing. The continued retention of Hinckley Allen will allow for legal services to be rendered to the Debtor in the most economical and expeditious manner because of the familiarity Hinckley Allen has with the Debtor's affairs and the expertise Hinckley Allen has with the Special Counsel Matters.

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<sup>1</sup> Hinckley Allen is representing the Debtor in an action brought by the City of Boston against the Debtor for damage allegedly occurring at the Boston Public Library (the "Library Case"). The Debtor has insurance coverage through Travelers Insurance Company for its work which relates to the Library Case, and Travelers is providing the Debtor's defense in the Library Case. Travelers tendered defense of the Library Case to Hinckley Allen.

15. Contemporaneously with the filing of this application, the Debtor has filed an application to employ the law firm of Hanify & King, Professional Corporation (“H&K”) as its bankruptcy counsel in this case on a general retainer. Hinckley Allen’s services are not related to the bankruptcy case and are consistent with the services rendered by Hinckley Allen pre-bankruptcy. Hinckley Allen will not duplicate the services rendered by H&K to the Debtor in conducting its Chapter 11 case.

16. The professional services that Hinckley Allen will render as Section 327(e) special counsel to the Debtor will relate solely to the Special Counsel Matters, including corporate counsel, advice regarding construction and employment issues, defense of criminal charges filed against the Debtor by the Office of the United State Attorney and any other charges, and all aspects of the Modern Litigation including prosecution and defense, discovery, motion practice, trial and any necessary appeals or executions on judgment. To the extent that the Debtor agrees to settle any matter included among the Special Counsel Matters, Hinckley Allen will prepare the necessary settlement documents and H&K will seek this Court’s approval of the same pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. Every effort will be taken to avoid duplicating services in this regard.

A. *Hinckley Allen Does Not Have an Interest Adverse to the Debtor or the Estate with Respect to Any Matter on Which It Is to Be Employed.*

17. The Debtor believes that the partners and associates of Hinckley Allen do not hold or represent any interest adverse to that of the estate with respect to the Special Counsel Matters. To the best of the Debtor’s knowledge, Hinckley Allen has not represented, nor does it now represent, any interest adverse to the Debtor with respect to the matters on which Hinckley Allen is to be employed, and Hinckley Allen, its partners and employees are otherwise disinterested persons with respect to the Debtor as that term is defined in the Bankruptcy Code,

except as may be provided in this application and in the O'Donnell Affidavit.

18. As set forth in greater detail in the O'Donnell Affidavit, Hinckley Allen's involvement with the Debtor, creditors or other interested parties to the Debtor include the following:

(a) Since the early 1970's, Hinckley Allen has served as the Debtor's general outside counsel in multiple matters wholly unrelated to this case. Most recently, Hinckley Allen has been engaged by the Debtor in connection with (i) a variety of pending litigation matters, (ii) ongoing negotiations with the Commonwealth of Massachusetts regarding the finalization and close-out of the projects the Debtor is performing on the "Big Dig" Central Artery/Tunnel Project in Boston, Massachusetts, (iii) negotiation with respect to, and, most recently, the defense of, charges brought by the Office of the United States Attorney, (iv) sale of assets, (v) employment matters, (vi) general corporate maintenance matters, and (vii) negotiations with the Debtor's sureties and lenders with respect to the sale of assets and the borrowing of money.

(b) Hinckley Allen has and is representing the Debtor's Affiliates (as that term is defined in the Bankruptcy Code) in connection with litigation matters and the sale of assets, as well as general construction matters and real estate matters.

(c) Certain sureties (the "Sureties") have issued various bonds on projects (the "Bonded Projects") for which the Debtor provided, or continues to provide, general contractor services. When claims arise with respect to the Bonded Projects (the "Bond Claim Cases"), the Sureties tender defense to the Debtor, and the Debtor is required to indemnify and defend the Sureties from and against any such claims pursuant to various agreements of indemnity by and among the Sureties and the Debtor (the "Indemnity Agreements"). Under the Indemnity Agreements, the Debtor is responsible for paying any costs, including legal fees, which the Sureties incur in connection with the Bond Claim Cases. To efficiently defend against claims on the Bonded Projects and minimize the legal fees incurred by the Debtor, Hinckley Allen has jointly defended the Debtor and the Sureties in numerous Bond Claim Cases for which the Sureties tendered defense to the Debtor. Hinckley Allen has entered appearances in the Bond Claim Cases on behalf of both the Debtor and the Sureties. Hinckley Allen does not represent the Sureties with respect to any matter for which the Sureties have not tendered defense to the Debtor under the Bonds. Further, Hinckley Allen's representation of the Sureties is limited to matters in the Bond Claim Cases for which the Debtor and the Sureties have a commonality of interests. The Sureties have separate counsel for any issues relating to defenses or claims unique to the Sureties.

From and after the Petition Date, the automatic stay operates to protect the Debtor from claims in the Bond Claim Cases, but the automatic stay does not apply to the

Sureties. Pursuant to the Indemnity Agreements, any liability imposed on the Sureties in the Bond Claim Cases will become the liability of the Debtor.

Subject to Court approval, Hinckley Allen will continue to represent the Sureties in the Bond Claim Cases. Hinckley Allen is most familiar with the very complex multi-party litigation that constitutes certain of the Bond Claim Cases. In the Bond Claim Cases, the Sureties would be liable only to the extent that liability were found against the Debtor. Therefore, the Sureties' defense and the Debtor's defense regarding the substance of the claims brought under the Bonds are identical. The Sureties (and thus the Debtor) would be prejudiced if counsel to the Debtor, who is most familiar with the defenses to the Bond Claims, did not continue to represent the Sureties in the Bond Claim Cases. If the Sureties have other defenses relating to their role as sureties, Hinckley Allen will not represent the Sureties in such capacity. Rather, Hinckley Allen's representation in the Bond Claim Cases will be limited to issues on which the interests of the Debtor and the Sureties are aligned. Hinckley Allen will not be in a position in which it might be in any way be enticed to act contrary to the interests of the Debtor.

The efforts of Hinckley Allen in the Bond Claim Cases will, if successful, benefit the Debtor's estate by minimizing the claims asserted against the Debtor. Further, requiring the Sureties to engage separate counsel to defend against the Bond Claim Cases would only increase the claims against the Debtor because the Debtor would be responsible for reimbursing the Sureties for all such legal fees and costs, which costs will be exacerbated by the need for the separate counsel to become familiar with the pending, complicated litigation with which Hinckley Allen has been intimately involved for (in some instances) years. As part of their overall extension of financing to the Debtor, the Sureties have agreed to pay the legal fees incurred by Hinckley Allen in the Bond Claim Cases, and the Debtor's estate will not be diminished by the continued defense of the Bond Claim Cases. Hinckley Allen's invoices for services on the Bond Claim Cases will be paid by St. Paul.

(d) Hinckley Allen represents St. Paul (and its parent company) on matters wholly unrelated to the Debtor or the Debtor's projects.

19. The Debtor seeks this Court's authority to retain Hinckley Allen as special counsel under Section 327(e) of the Code, not as general counsel. The Debtor believes that the items disclosed in paragraph 18 above do not disqualify Hinckley Allen from serving as special counsel under Section 327(e) for the matters described in this Application.

B. *Arrangement for Compensation and Reimbursement of Hinckley Allen.*

20. The Debtor seeks to employ Hinckley Allen at its standard hourly rates and under

a general retainer of \$52,907.63, previously paid by the Debtor, for purposes of representing the estate with respect to the Special Counsel Matters under Section 327(e) of the Code. Hinckley Allen's rates may change from time to time in accordance with its established billing practices and procedures. The Debtor also proposes to reimburse Hinckley Allen for its actual and necessary expenses.

21. Hinckley Allen understands that it must apply to the Court for compensation for professional services rendered and reimbursement of expenses incurred in connection with its role as Section 327(e) special counsel to the Debtor in accordance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, the Local Rules, the United States Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330, and any applicable orders of the Court.

22. The Debtor has provided notice of this application by serving a copy of it upon the United States Trustee, all creditors known to have a security interest in some or all of the Debtor's assets, all parties that have filed a notice of appearance and request for service of papers in this case, and the twenty largest general unsecured creditors of the Debtor as set forth in the list filed pursuant to Fed. R. Bankr. P. 1007(d), no creditors' committee having yet been appointed. The Debtor requests that this Court find such notice of this application be good and sufficient in the circumstances.

23. In support of this Application, Paul F. O'Donnell, III, Esq. has submitted an affidavit pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure and MLBR 2014-1.

**WHEREFORE**, the Debtor respectfully requests that this Court enter an Order (a) authorizing the Debtor to retain Hinckley, Allen & Snyder LLP as special counsel to the

Debtor for the purposes set forth herein; and (b) granting to the Debtor such other relief as the Court deems just and proper in the circumstances.

Respectfully submitted,

MODERN CONTINENTAL,  
CONSTRUCTION CO., INC.,

Dated: July 2, 2008

By: /s/ John H. Pastore  
John H. Pastore, as President of  
Modern Continental Construction Co., Inc.

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

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

**AFFIDAVIT OF PAUL F. O'DONNELL, III, ESQ. IN SUPPORT OF  
APPLICATION BY DEBTOR AND DEBTOR-IN-POSSESSION TO RETAIN  
HINCKLEY, ALLEN & SNYDER LLP AS SPECIAL COUNSEL**

Pursuant to Fed. R. Bankr. P. 2014(a) and 2016, and 28 U.S.C. § 1746, I, Paul F.

O'Donnell, III, hereby state as follows:

1. I am a partner of the law firm of Hinckley, Allen & Snyder LLP (“Hinckley Allen”), 28 State Street, Boston, Massachusetts 02109. I make this affidavit (the “Affidavit”) in support of the *Application by Debtor and Debtor-in-Possession to Retain Hinckley, Allen & Snyder LLP As Special Counsel* (the “Application”) filed by Modern Continental Construction Co., Inc., the debtor and debtor-in-possession in the above-captioned Chapter 11 case (the “Debtor”). I am generally familiar with the business of Hinckley Allen and have made inquiry concerning the facts set forth herein prior to making this Affidavit.

2. In connection with its representation of the Debtor in this matter, Hinckley Allen performed its customary review of client contacts and potential conflicts. Hinckley Allen 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. Hinckley Allen has reviewed such records

and documents to determine Hinckley Allen's connections with the Debtor and those entities listed by the Debtor as being creditors.

3. Based upon my review as described above, in accordance with Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), neither I nor any partner or associate of Hinckley Allen, 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 follows:

- (a) Since the early 1970's, Hinckley Allen has served as the Debtor's general outside counsel in multiple matters wholly unrelated to this case. Most recently, Hinckley Allen has been engaged by the Debtor in connection with (i) a variety of pending litigation matters, (ii) ongoing negotiations with the Commonwealth of Massachusetts regarding the finalization and close-out of the projects the Debtor is performing on the "Big Dig" Central Artery/Tunnel Project in Boston, Massachusetts, (iii) negotiation with respect to, and, most recently, the defense of, charges brought by the Office of the United States Attorney, (iv) sale of assets, (v) employment matters, (vi) general corporate maintenance matters, and (vii) negotiations with the Debtor's sureties and lenders with respect to the sale of assets and the borrowing of money.
- (b) Hinckley Allen has and is representing the Debtor's Affiliates (as that term is defined in the Bankruptcy Code) in connection with litigation matters and the sale of assets, as well as general construction matters and real estate matters.
- (c) Certain sureties (the "Sureties") have issued various bonds on projects (the "Bonded Projects") for which the Debtor provided, or continues to provide, general contractor services. When claims arise with respect to the Bonded Projects (the "Bond Claim Cases"), the Sureties tender defense to the Debtor, and the Debtor is required to indemnify and defend the Sureties from and against any such claims pursuant to various agreements of indemnity by and among the Sureties and the Debtor (the "Indemnity Agreements"). Under the Indemnity Agreements, the Debtor is responsible for paying any costs, including legal fees, which the Sureties incur in connection with the Bond Claim Cases. To efficiently defend against claims on the Bonded Projects and minimize the legal fees incurred by the Debtor, Hinckley Allen has jointly defended the Debtor and the Sureties in numerous Bond Claim Cases for which the Sureties tendered defense to the Debtor. Hinckley Allen has entered appearances in the Bond Claim Cases on behalf of both the Debtor and the Sureties. Hinckley Allen does not represent

the Sureties with respect to any matter for which the Sureties have not tendered defense to the Debtor under the Bonds. Further, Hinckley Allen's representation of the Sureties is limited to matters in the Bond Claim Cases for which the Debtor and the Sureties have a commonality of interests. The Sureties have separate counsel for any issues relating to defenses or claims unique to the Sureties.

From and after the Petition Date, the automatic stay operates to protect the Debtor from claims in the Bond Claim Cases, but the automatic stay does not apply to the Sureties. Pursuant to the Indemnity Agreements, any liability imposed on the Sureties in the Bond Claim Cases will become the liability of the Debtor.

Subject to Court approval, Hinckley Allen will continue to represent the Sureties in the Bond Claim Cases. Hinckley Allen is most familiar with the very complex multi-party litigation that constitutes certain of the Bond Claim Cases. In the Bond Claim Cases, the Sureties would be liable only to the extent that liability were found against the Debtor. Therefore, the Sureties' defense and the Debtor's defense regarding the substance of the claims brought under the Bonds are identical. The Sureties (and thus the Debtor) would be prejudiced if counsel to the Debtor, who is most familiar with the defenses to the Bond Claims, did not continue to represent the Sureties in the Bond Claim Cases. If the Sureties have other defenses relating to their role as sureties, Hinckley Allen will not represent the Sureties in such capacity. Rather, Hinckley Allen's representation in the Bond Claim Cases will be limited to issues on which the interests of the Debtor and the Sureties are aligned. Hinckley Allen will not be in a position in which it might be in any way be enticed to act contrary to the interests of the Debtor.

The efforts of Hinckley Allen in the Bond Claim Cases will, if successful, benefit the Debtor's estate by minimizing the claims asserted against the Debtor. Further, requiring the Sureties to engage separate counsel to defend against the Bond Claim Cases would only increase the claims against the Debtor because the Debtor would be responsible for reimbursing the Sureties for all such legal fees and costs, which costs will be exacerbated by the need for the separate counsel to become familiar with the pending, complicated litigation with which Hinckley Allen has been intimately involved for (in some instances) years. As part of their overall extension of financing to the Debtor, the Sureties have agreed to pay the legal fees incurred by Hinckley Allen in the Bond Claim Cases, and the Debtor's estate will not be diminished by the continued defense of the Bond Claim Cases. Hinckley Allen's invoices for services on the Bond Claim Cases will be paid by St. Paul.

(d) Hinckley Allen represents St. Paul (and its parent company) on matters wholly unrelated to the Debtor or the Debtor's projects.

4. Based upon my review as set forth in Paragraph 3, I am not presently aware of any current representation by Hinckley Allen of any creditors of the Debtor or other parties-in-

interest except as set forth above. It is possible that Hinckley Allen 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 estate. If retained, Hinckley Allen will not represent the Debtor's affiliates or any other parties-in-interest in any matters directly related to the Debtor's bankruptcy case.

5. Prior to the Petition Date, the Debtor provided Hinckley Allen with a security retainer of \$52,907.63 (the "Retainer") for services rendered or to be rendered in connection with its post-petition advice to the Debtor.

6. In the ninety (90) days prior to the Petition Date, Hinckley Allen received the following payments from the Debtor for legal services performed for the Debtor: (a) on May 1, 2008, payments of \$16,291.35 and \$128,553.13, (b) on June 13, 2008, \$191,459.11, and (c) on June 23, 2008, \$427,919.54. All of the aforesaid payments were applied to invoices that were outstanding for ninety (90) days or less.

7. Hinckley Allen 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 bankruptcy case.

8. Insofar as I have been able to ascertain, based on my review as described in Paragraph 2, Hinckley Allen, the partners and associates thereof, and I do not hold or represent any interest adverse to that of the estate with respect to the matters that are the subject of Hinckley Allen' proposed retention.

9. Insofar as I have been able to ascertain, neither Hinckley Allen, any shareholder or associate thereof, nor myself, is connected with any Bankruptcy Judge, or the United States Trustee or any person employed in the office of the United States Trustee, so as to render the

appointment of Hinckley Allen as special counsel for the Debtor inappropriate under Rule 5002(b) of the Federal Rules of Bankruptcy Procedure.

10. Hinckley Allen 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 Hinckley Allen 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, Hinckley Allen will notify the Court by filing and serving a supplemental affidavit.

11. Subject to approval of this Court and in compliance with applicable provisions of the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules and any orders of this Court, Hinckley Allen will seek compensation for its professional services on an hourly basis, plus reimbursement of actual, necessary expenses and other charges incurred by the firm. My current billable rate is \$440.00 per hour. The current billable rates for the other partners and associates of Hinckley Allen range from \$290.00 per hour to \$520.00 per hour. In the ordinary course of its business, Hinckley Allen adjusts its usual hourly billing rates. In the event of such an adjustment, Hinckley Allen will seek compensation at the adjusted hourly rate from and after the date of the adjustment.

12. Any compensation, fee or allowance which may be claimed by myself and Hinckley Allen will belong wholly to the law firm and will not be divided, shared or pooled, directly or indirectly, with any other person or firm.

13. 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.

14. 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.

Dated: July 2, 2008

/s/ Paul F. O'Donnell III  
Paul F. O'Donnell III, Esq.  
Hinckley, Allen & Snyder LLP  
28 State Street  
Boston, MA 02109  
Tel: (617) 345-9000  
Fax: (617) 345-9020

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

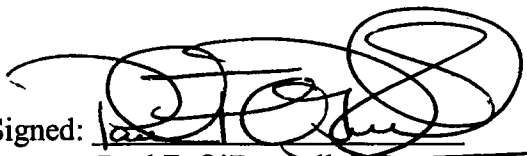
In re:	)	
	)	
MODERN CONTINENTAL	)	Chapter 11
CONSTRUCTION CO., INC.,	)	
	)	Case No. 08-14558 (WCH)
Debtor.	)	
	)	

**DECLARATION REGARDING ELECTRONIC FILING**

I, Paul F. O'Donnell, III, hereby declare under penalty of perjury that all of the information contained in the *Affidavit of Paul F. O'Donnell III, Esq. in Support of the Application by Debtor and Debtor-in-Possession to Retain Hinckley, Allen & Snyder LLP As Special Counsel* (the "Document"), filed electronically, is true and correct. I understand that this DECLARATION is to be filed with the Clerk of Court electronically concurrently with the electronic filing of the Document. I understand that failure to file this DECLARATION may cause the Document to be struck and any request contained or relying thereon to be denied, without further notice.

I further understand that pursuant to the Massachusetts Electronic Filing Local Rule (MEFLR)-7(a), all paper documents containing original signatures executed under the penalties of perjury and filed electronically with the Court are the property of the bankruptcy estate and shall be maintained by the authorized CM/ECF Registered User for a period of five (5) years after the closing of this case.

Dated: July 2, 2008

Signed:   
Paul F. O'Donnell, III