

4. Contrary to the express terms of the Settlement Agreement that payment was to be made by the State Parties to Modern without setoff, MTA has unjustifiably withheld \$3,691,899.01 of the payments that are due to Modern from the State Parties.

5. Modern has made demand upon the State Parties for full payment as due under the Settlement Agreement.

6. The State Parties have failed and refused to comply with the Settlement Agreement and are in breach of the Settlement Agreement by wrongfully and without any justification withholding the payments expressly due under the Settlement Agreement.

RELIEF REQUESTED AND BASIS FOR RELIEF

7. Modern requests that the Court consider the Motion to Compel on an expedited basis. MLBR 9013-1(g) authorizes expedited consideration of a motion “[i]f a movant seeks to have a motion considered by the Court earlier than seven (7) court days after the motion is filed” if the movant files a separate motion setting forth in detail “all facts and circumstances which necessitate” expedited consideration. MLBR 9013-1(g)(1).

8. Sufficient grounds exist to consider the Motion to Compel on an expedited basis. The terms of the Settlement Agreement approved by this Court, provide that “[w]ithin thirty days after the effective date of this Agreement [that is, December 29, 2008], the State Parties shall pay a total of four million dollars (\$4,000,000) to Travelers with such amount not subject to further offset” Despite the deadline set forth in the Settlement Agreement, as approved by this Court, the State Parties have unjustifiably failed and refused to pay the settlement payment in full. This unjustifiable delay, caused solely by the State Parties, has gone on for over two months. As a result, the State Parties will not be prejudiced by the relief requested in this

motion. Under these circumstances, cause exists for expedited consideration of the Motion to Compel.

9. Accordingly, Modern respectfully requests that this Court schedule a hearing on the Motion to Compel on an expedited basis.

WHEREFORE, Modern respectfully requests that this Court grant the relief requested in this motion, schedule the Motion to Compel on an expedited basis, and grant to Modern such other and further relief as the Court deems just and proper in the circumstances.

Respectfully submitted,

MODERN CONTINENTAL
CONSTRUCTION CO., INC.,

By its attorneys,

/s/ Charles R. Bennett, Jr.

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