

3. On July 2, 2008, the Office of the United States Trustee appointed an official committee of unsecured creditors (the “Committee”). The Committee has retained counsel.

4. On April 6, 2009, the Fund filed the *Motion for Allowance of a Late Filing of Proof of Claim* (the “Motion”) seeking an order authorizing the late filing of a proof of claim by the Fund in the aggregate amount of \$5,268.04, consisting of (a) a priority unsecured claim under 11 U.S.C. § 507(a)(5) in the amount of \$4,331.17 and (b) a general unsecured claim in the amount of \$936.87, in the form attached to the Motion as Exhibit B (the “Claim”).

5. The Debtor and the Fund subsequently entered into negotiations to resolve any issues with respect to the Motion, as distinct from the Claim, resulting in the form of Stipulation and Order filed contemporaneously with this motion.

6. Under the proposed Stipulation and Order, the Fund would be authorized to file the Claim, which will be deemed to be filed in a timely manner if the Claim is filed with the Clerk of this Court on or within ten (10) days after the entry of the proposed Stipulation and Order as an Order of the Court. The proposed Stipulation and Order also provides that any and all of the Debtor’s defenses or counterclaims with respect to the Claim, whether at law or in equity, are preserved.

7. The proposed Stipulation and Order should be entered as an Order of this Court because it is fair and reasonable in light of the circumstances set forth in the Motion. The proposed Stipulation and Order authorizes the filing of the Claim while reserving all of the Debtor’s defenses or counterclaims with respect to the Claim. Accordingly, the proposed Stipulation and Order strikes a fair and reasonable balance of the Movants’ respective interests with respect to the Motion.

8. The Movants submit that no party in interest will be prejudiced by the relief requested in this motion.

WHEREFORE, the Movants request that the Court enter an order: (a) granting the relief requested in this motion, (b) entering the proposed Stipulation and Order as an Order of the Court, and (c) granting to the Movants 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/ Christian J. Urbano

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Dated: April 16, 2009

* Pursuant to ECF Rule 8(b)(2), I, Christian J. Urbano, represent that Attorney Campbell has authorized me to attach her electronic signature to this motion.