

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:)	Chapter 11
)	Case No.: 08-14558 (WCH)
Modern Continental Construction Co., Inc.)	
)	
Debtor)	
)	

**MOTION OF DETROY FULMORE II FOR ORDER COMPELLING
EXAMINATION PURSUANT TO FED. R. BANKR. P. 2004**

To the Honorable William C. Hillman, United States Bankruptcy Judge:

Detroy Fulmore II, a party-in-interest and potential creditor of the Debtor, (“Holder”) Modern Continental Construction Co., Inc. (the “Debtor”), hereby moves pursuant to Fed. R. Bankr. P. 2004 for the entry of an order compelling the production of documents by the persons and entities named herein for examination by counsel to the Holder.

In support of the within motion, the Holder respectfully states as follows:

Background and Procedural History

1. On June 23, 2008 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Bankruptcy Code. Since the Petition Date, the Debtor has continued in the possession of its assets, and in the management of its business as a debtor-in-possession, pursuant to Bankruptcy Code §§ 1107 and 1108.
2. There is presently a civil action pending in the Supreme Court of New York, Orange County, captioned *Detroy Fulmore II and Mary Davis v. Modern Continental Construction Co., Inc., Modern Continental Construction Co. of New York, Inc., Pedro Valentin, Dorothea Scouras and I. Karathanassis (Index No. 2002-8406)* (the “Civil Action”).
3. The Civil Action is one for serious and permanent personal injuries



sustained by Detroy Fulmore, II who was injured in an automobile accident caused by an employee of Modern and who was in the course of his employment with Modern.

4. At the time of the accident, Holder contends that Modern was insured under a policy of insurance issued by Zurich insurance. At this time, Zurich is currently denying coverage in this case maintaining that Modern had a million dollar self-insured retention policy at the time of the accident. Holder's state court counsel has spoken with a number of attorneys representing Modern who have stated that in fact this case should be covered by Zurich. However, they are unwilling to provide Holder with the documentation to prove this fact due to the bankruptcy filing and the automatic stay. Holder now seeks relief to commence limited discovery in order to determine if in fact insurance coverage exists for the claims and damages sought in the Civil Action.

Jurisdiction and Venue

5. This Court has jurisdiction to hear and determine this motion pursuant to 28 U.S.C. §§ 157 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The predicated for the relief requested herein is Fed. R. Bankr. P. 2004.
6. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409

Relief Requested

7. By the instant motion, the Holder seeks an Order compelling the production of documents by the Debtor.
8. Debtor attaches as Exhibit A the requested documents from the Debtor, but reserves the right to supplement and amend this request.

Basis for the Relief Requested

9. Rule 2004 of the Federal Rules of Bankruptcy Procedure states “the court may order the examination of any entity”. Fed. R. Bankr. P. 2004(a).
10. Holder seeks to obtain documents from the Debtor in order to determine whether or not insurance coverage exists in the Civil Action.
11. Base upon the foregoing, the Court should grant the within motion and authorize the production of documents and examination of the Debtor.

Compliance with MLBR 9013-1(b)

12. As set forth above, Holder’s state court counsel has requested the documents from the Debtor’s bankruptcy and state court counsel, but all have been unwilling to provide the requested documents to Holder.

WHEREFORE, the Holder respectfully requests:

1. Grant this Motion in all respects compelling the production of documents by the Debtor; and
2. Grant such other and further relief as this Court deems just and proper.

Respectfully Submitted,
Detroy Fulmore II
By his attorney,

/s/ John M. McAuliffe
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Dated: May 12, 2009

Certificate of Service Page 4 of 4
CERTIFICATE OF NOTICE

District/off: 0101-1
Case: 08-14558

User: jregan
Form ID: pdf012

Page 1 of 1
Total Served: 9

Date Rcvd: May 22, 2009

The following entities were served by first class mail on May 24, 2009.

db +Modern Continental Construction Co., Inc, 250 Milton Street, Dedham, MA 02026-2928
 aty Christian J. Urbano, Hanify & King, P.C., One Beacon Street, 21st Floor,
 Boston, MA 02108-3107
 aty +Christopher M. Condon, Hanify & King, P.C., One Beacon Street, Boston, MA 02108-3131
 aty +D. Ethan Jeffery, Hanify & King PC, One Beacon Street, Boston, MA 02108-3131
 aty +Harold B. Murphy, Hanify & King, P. C., One Beacon Street, 21st Floor,
 Boston, MA 02108-3107
 aty +Jennifer V. Doran, Hinckley, Allen & Snyder LLP, 28 State Street, Boston, MA 02109-1776
 aty +John M. McAuliffe, McAuliffe & Associates, P.C., 430 Lexington Street,
 Newton, MA 02466-1916
 aty +Natalie B. Sawyer, Hanify & King, P.C., One Beacon Street, 21st Floor,
 Boston, MA 02108-3107
 aty +Paul F. O'Donnell, III, Hinckley, Allen and Snyder LLP, 28 State Street,
 Boston, MA 02109-1776

The following entities were served by electronic transmission on May 22, 2009.

db +E-mail/Text: jbruce@moderncontinental.com
 Modern Continental Construction Co., Inc, 250 Milton Street, Dedham, MA 02026-2928
 TOTAL: 1

***** BYPASSED RECIPIENTS *****

NONE. TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 24, 2009

Signature:

