

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

|                               |   |                                 |
|-------------------------------|---|---------------------------------|
| <b>In re:</b>                 | ) | <b>Chapter 11</b>               |
|                               | ) |                                 |
| <b>Conseco Finance Corp.,</b> | ) | <b>Case No. 02 B49675</b>       |
|                               | ) | <b>Honorable Carol A. Doyle</b> |
| <b>Debtor.</b>                | ) |                                 |
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|                               | ) |                                 |

**ORDER APPROVING (I) DISCOVERY PROTOCOL, (II) OMNIBUS  
HEARING DATES, (III) NOTICE PROCEDURES, (IV) CASE  
MANAGEMENT PROCEDURES AND (V) MEDIATION PROCEDURES  
FOR PREFERENCE ACTIONS**

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This matter coming before the Court upon the Motion (the “**Motion**”) of the Plan Administrator, on behalf of the Post-Consummation Estate for the Finance Company Debtors (the “**CFC Estate**”)<sup>1</sup> for entry of an order, pursuant to Sections 102(a), 105(a) and 547(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (2004) (the “**Bankruptcy Code**”), Rules 7026, 7029, 9006(c) and 9007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 101, 402, 1000 and 9060-1(a) of the Bankruptcy Rules for the United States District Court and the United States Bankruptcy Court for the Northern District of Illinois (the “**Local Rules**”), approving (i) discovery protocol, (ii) omnibus hearing dates, (iii) notice procedures, and (iv) other case management procedures, and (v) mediation procedures set forth herein, for those adversary proceedings seeking avoidance and recovery of preference payments pursuant to Sections 547 and 550 of the Bankruptcy Code; adequate notice having been

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<sup>1</sup> The post consummation estate for Conseco Finance Corp. (the “**CFC Estate**”) is the liquidating trust that holds in trust for distribution to creditors certain assets of the entities referred to as the “Finance Company Debtors” in the Finance Company Debtors’ Sixth Amended Joint Liquidating Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (the “**Plan**”). Capitalized terms not otherwise defined herein shall have the meaning ascribed in the Motion or the Plan.

provided; the Court having been advised on the premises; and there being cause for the relief requested in the Motion:

**IT IS HEREBY ORDERED** that:

1. The Pre-Trial Procedures contained in this Order shall apply to all Preference Actions, but shall not apply to Pending Preference Actions, as defined in the Motion. The Pre-Trial Procedures shall also not apply to Conseco Finance Servicing Corp. v. Chipman, Adv. No. 03-03742.

**A. Omnibus Procedures for Chapter 11 Cases Not Applicable**

2. The First Amended Notice, Case Management and Administrative Procedures, approved by this Court on January 14, 2004 in the Chapter 11 case In re Conseco, Inc., et al., Case No. 02-49672 (jointly administered with the above-captioned Chapter 11 case) are not applicable to the Preference Actions. Procedures applicable to the Preference Actions shall be limited to those procedures contained in this Order (including Mediation Procedures below) and, for issues not addressed in this Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and standing orders of this Court.

**B. Discovery Protocol**

**(1) Continued Adversary Proceedings**

3. Each Preference Action shall automatically be deemed a “**Continued Adversary Proceeding**” during the twenty-eight (28) calendar day period following the defendant’s deadline to answer or otherwise plead.

4. For all Continued Adversary Proceedings (and for all Mediation Adversary Proceedings (defined below), the Court hereby suspends the requirements of: (i) initial disclosures under Rule 26(a)(1) of the Federal Rules of Civil Procedure (the “**Federal Rules**”) and (ii) discovery conferences and reports under Federal Rule 26(f).

5. The parties to a Continued Adversary Proceeding shall be authorized, but not required, to engage in the informal exchange of information to facilitate settlement. The parties shall be prohibited from serving formal discovery requests including, but not limited to, requests for production of documents, interrogatories or requests for admissions (“**Discovery Requests**”). Pursuant to Rule 408 of the Federal Rules of Evidence, any information exchanged by parties pursuant to such settlement discussions shall be inadmissible at any hearing or in any Filing (defined below) in a Preference Action.

6. The CFC Estate shall be authorized to extend the Defendants’ time to answer or otherwise plead in response to the Complaint filed in connection with a Continued Adversary Proceeding without obtaining further approval from the Court.

7. The CFC Estate shall be authorized to seek the entry of a default judgment in any Preference Action where the defendant(s) to the Preference Action have not (i) timely answered or otherwise responded to the Adversary Complaint in accordance with the Bankruptcy Rules or (ii) received an extension of the time period to file such answer or response.

8. The CFC Estate shall inform the Court of the status of the Continued Adversary Proceedings on or before each Status Hearing Date.

9. Any Preference Action in which the parties have not reached a settlement within twenty-eight (28) calendar days after the deadline to file an answer shall, without leave of the Court or consent of the parties, become a “**Mediation Adversary Proceeding.**”

(2) **Mediation Adversary Proceedings**

10. All Mediation Adversary Proceedings shall automatically upon attaining this status and without further action by the parties or the Court, be referred to mandatory mediation, and mediated pursuant to certain “**Mediation Procedures**” attached to the Motion as **Exhibit A.**

11. The CFC Estate shall have discretion to select a qualified mediator from the list maintained by this Court pursuant to Local Rule 1004 to serve as the mediator (the “**Mediator**”) in the Mediation Adversary Proceedings. Within thirty (30) days of entry of this Order, the CFC Estate will file a notice designating the Mediator.

(3) **Disputed Adversary Proceedings**

12. Upon conclusion by the Mediator that any Mediation Adversary Proceeding cannot be resolved through the Mediation Procedures, such Preference Action shall become a “**Disputed Adversary Proceeding.**”

13. The parties to a Disputed Adversary Proceeding shall conduct a conference pursuant to Rule 26(f) of the Federal Rules of Civil Procedure within fourteen (14) calendar days after the date on which a Preference Action becomes a Disputed Adversary Proceeding.

14. The Court shall continue to waive the requirement that the parties to a Disputed Adversary Proceeding file a Rule 26(f) discovery report with the Court prior to serving Discovery Requests or Rule 26(a)(1) disclosures (the “**Initial Disclosures**”).

15. The parties to the Disputed Adversary Proceedings shall be required to exchange their Initial Disclosures within seven (7) calendar days after the above deadline for a Rule 26(f) conference (i.e., within twenty-one (21) calendar days after the date on which it becomes a Disputed Adversary Proceeding (the “**Initial Disclosure Date**”)).

16. The parties shall complete all written and oral fact discovery within four (4) months of the Initial Disclosure Date (the “**Discovery Cut-Off Date**”), without prejudice to any party to a Disputed Adversary Proceeding to request an extension of the Discovery Cut-Off Date. If Discovery Requests are made by any party to a Disputed Adversary Proceeding, the party on whom such Discovery Requests are served will have thirty (30) days to respond to such Discovery Requests, without prejudice to that party’s right to seek extensions of that deadline.

17. All discovery regarding expert testimony shall be completed within thirty (30) days after the Discovery Cut-Off Date (the “**Expert Deadline**”), without prejudice to any party to a Disputed Adversary Proceeding to request an extension of the Expert Deadline.

18. Disputed Adversary Proceedings shall be set for a pretrial status hearing (the “**Pretrial Status Hearing**”) on the first Status Hearing Date (as defined below) that is at least seven (7) calendar days after the Expert Deadline. Unless otherwise authorized by the Court, for good cause shown, all parties to the Disputed Adversary Proceeding shall be required to personally appear at the Pretrial Status Hearing by and through their appointed counsel.

### **C. Status Hearings**

19. The Court shall hold bi-monthly omnibus status hearings (the “**Status Hearing Dates**”) for all of the Preference Actions. Unless otherwise provided by separate order entered by this Court, the CFC Estate will inform the Court of the status of each Preference Action on every Status Hearing Date through the Preference Status Chart (as defined below).

20. All motions, applications and other filings (collectively “**Filings**”) in a Preference Action shall be served on all counsel of record in the Preference Action in accordance with the Bankruptcy the Bankruptcy Rules, the Local Rules and any applicable standing orders of the Court. By mutual consent of the parties to a Preference Action, such parties shall also be permitted to service notice of filings by electronic transmission (“**e-mail**”). Service on any other person shall not be required except as otherwise ordered by the Court.

21. Without leave of the Court or consent of all parties, a party making a Filing shall be limited in its Filing or any memorandum in support thereof to twenty-five (25) double-spaced pages with a twelve (12)-point font.

22. Any party seeking to schedule a hearing in connection with any Filing be required to schedule the same to accommodate the following briefing schedule: Any party opposing a

motion or other Filing shall then have twenty-eight (28) days from the date of service of such Filing to file a memorandum in support of its position and to serve such memorandum on all parties to the Preference Action. This memorandum shall also be limited to twenty-five (25) double-spaced pages, with a twelve (12)-point font. The moving party shall then have fourteen (14) days to file any reply memorandum supporting its motion and serve such memorandum on all parties to the Preference Action. A reply memorandum shall be no more than fifteen (15) double-spaced pages in length, with a twelve (12)-point font. The hearing on the motion shall take place at the next omnibus hearing following this briefing schedule. Nothing in these procedures shall prevent the parties to a Preference Action from agreeing to a different briefing schedule or changes in a briefing schedule with respect to a Filing. Also, nothing in these procedures shall prevent a party making a Filing from seeking leave of the Court to present the Filing pursuant to a different briefing schedule.

#### **D. Notice Procedures**

23. If a party to a Preference Action wishes to receive notice from the CFC Estate of filings of the Preference Status Chart (as defined below) or electronic notice of any other filing by the CFC Estate pertaining to that Preference Action or to all Preference Actions, the party shall be required to submit a request to counsel to the CFC Estate for such notification, identifying any e-mail address to which such notices shall be sent.

24. Any entity submitting a Filing shall serve a notice of such Filing (a “**Notice of Filing**”) in accordance with the procedures contained in this Motion. Such Notice of Filing shall include the title of the Filing and the date and time of any Status Hearing Date (or other hearing date as authorized by the Court) at which the Court will consider the Filing. This Order shall not prejudice the rights of any party to seek the entry of an order (i) limiting or expanding notice of,

and hearings related to, such Filings upon a showing of good cause or (ii) enlarging or reducing any time period under Bankruptcy Rule 9006(b) or (c).

25. Service of any Filing shall be made on all parties to a Preference Action, by hand delivery, overnight delivery or e-mail. Filings shall be served only on parties to a Preference Action, and not on other persons entitled to receive notice of filings made in the above-captioned Chapter 11 case.

26. Prior to each Status Hearing Date, the CFC Estate shall send to the Court a chart (the “**Preference Status Chart**”), including an agenda of Filings and other matters to be considered by the Court on the Status Hearing Date. The CFC Estate will file the Preference Status Chart in the above-captioned Chapter 11 Case and deliver a copy of the Preference Status Chart to chambers by 4:00 p.m. on the day that is two (2) business days prior to the applicable Status Hearing Date. The CFC Estate shall not be required to file the Preference Status Chart in each of the Preference Actions. However, the CFC Estate shall provide e-mail notification, to all of the parties to the Preference Actions, of each filing of the Preference Status Chart. It shall be the obligation of each party to carefully review the Preference Status Chart as updated by the CFC Estate to ensure that the information set forth therein is accurate, and to inform the CFC Estate of any disagreement with such information.

27. In addition to delivering the Preference Status Chart to the Court, the CFC Estate shall also post the Preference Status Chart on the following URL: <http://www.bmccorp.net/cfc> (the “**Website**”). The Preference Status Chart will be updated two (2) business days prior to every Status Hearing Date. Where (i) no Filing seeking affirmative relief against a particular Defendant has been filed or (ii) the Court has not scheduled the particular Preference Action for a pretrial conference, trial or hearing requiring the appearance of all parties, neither that

Defendant nor its attorney need attend the Status Hearing Date. Therefore, a defendant named in the Preference Actions need not attend Status Hearing Dates that are simply status conferences, with no particular relevance to that defendant.

28. The Preference Status Chart posted on the Website shall serve as notice to the Defendants of the Status Hearing Dates and no further notice of such dates shall be given.

29. The CFC Estate shall be authorized, but not required, to update the Preference Status Chart more frequently than the monthly updates required above. However, except as required above, the CFC Estate will not be required to serve notices of updates to the Preference Status Chart on parties to the Preference Actions.

30. The CFC Estate shall serve a copy of the Motion and this Order on all defendants against which the CFC Estate files subsequent Preference Actions after the date of the Motion (the “**Subsequent Preference Defendants**”). A Subsequent Preference Defendant will then have an opportunity to file any objection to this Motion, which objection must be filed no later than the deadline for a subsequent Defendant’s answer or other pleading in response to the CFC Estate’s complaint initiating a Preference Action. Any Subsequent Preference Defendant should send a Notice of Filing pertaining to such objection pursuant to the procedures discussed above, scheduling consideration of the objection for the applicable Status Hearing Date.

#### **E. Settlement of Preference Actions**

31. The CFC Estate shall be authorized to enter into agreements settling the Preference Actions without leave of the Court. The parties to a Preference Action shall file a stipulation of dismissal, or the Plan Administrator shall file a notice of voluntary dismissal of a Preference Action, upon reaching a settlement whose terms include such dismissal.



**F. Continuance of Omnibus Objections to Claims Filed Pursuant to Section 502(d) of the Bankruptcy Code, for Consideration by the Court Concurrent with the Preference Actions**

32. Adjudication of the 502(d) Objections (as defined in the Motion) shall be continued with respect to all of the claims of parties that are named as defendants in the Preference Actions, and the 502(d) Objections shall be considered by this Court concurrently with the Preference Actions, with respect to the claims of the corresponding Preference Action defendants.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Carol A. Doyle  
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Name of Presiding Judge: The Honorable Carole A. Doyle

Case No. 02-49675

Date: October 27, 2004

Title of Cause Conseco Finance Corp.,

Brief Statement of Motion **MOTION OF THE POST-CONSUMMATION ESTATE OF THE CONSECO FINANCE COMPANY DEBTORS FOR ENTRY OF AN ORDER APPROVING (I) DISCOVERY PROTOCOL, (II) OMNIBUS HEARING DATES, (III) NOTICE PROCEDURES, (IV) CASE MANAGEMENT PROCEDURES AND (V) MEDIATION PROCEDURES FOR PREFERENCE ACTIONS**

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel Nancy A. Mitchell, Nancy A. Peterman and Robert W. Lannan,  
Greenberg Traurig, LLP, 77 West Wacker Drive, Suite 2500, Chicago, IL 60601

Representing CFC Post-Consummation Estate

Names and Addresses of other counsel entitled to notice and names of parties they represent Official Core Group, 2002 Service Lists and all Affected Parties

Reserve space below for notations by the Courtroom Deputy