

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

In re:)	Chapter 11
)	
Conseco Finance Corp.,)	Case No. 02 B49675
)	Honorable Carol A. Doyle
Debtor.)	
)	
)	
)	

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

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**”)¹ 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 provided; the Court having been advised on the premises; and there being cause for the relief requested in the Motion:

¹ 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.

IT IS HEREBY ORDERED as follows:

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**”). Information exchanged by parties pursuant to such settlement discussions shall be subject to any applicable limitations under Rule 408 of the Federal Rules of Evidence.

6. The parties to a Preference Action shall be authorized to extend, by consent, 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. Subject to exceptions below, 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.**”

10. Upon a notice of agreement filed by all parties to a Preference Action with the Court or provided by such parties to the Mediator (defined below), a Preference Action shall continue to be a Continued Adversary Proceeding beyond this deadline, until such time as any party to the Preference Action, acting singularly or jointly, files a notice (a “**Mediation Notice**”) with the Court that the Preference Action shall become a Mediation Adversary Proceeding. Upon the filing of a Mediation Notice by any party to a Continued Adversary Proceeding, the Continued Adversary Proceeding shall become a Mediation Adversary Proceeding.

11. Upon a timely notice (the “**Opt-Out Notice**”) by any party to a Preference Action, filed with the Court and served on all other parties to the Preference Action, expressing an intent to opt out of the Mediation Procedures below, the Preference Action shall become a Disputed Adversary Proceeding. A defendant in a Preference Action must file and serve an Opt-Out Notice within fourteen (14) calendar days after the defendant receives service of this Order, as provided on Paragraph 33 of this Order.

(2) **Mediation Adversary Proceedings**

12. 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**, and such other procedures as the Mediator (defined below) may choose to follow.

13. The CFC Estate shall have discretion to select one or more qualified mediators (each a “**Mediator**”) in the Mediation Adversary Proceedings. Within thirty (30) days of entry of this Order, the CFC Estate will file a notice (the “**Mediator Designation Notice**”) identifying one or more Mediators. The CFC Estate shall file with the Court a notice identifying the Mediator(s), with an affidavit from each Mediator setting forth the Mediator’s qualifications, the fees and expenses to be charged and any connections to the above-captioned Chapter 11 case. A defendant in a Preference Action shall have fourteen (14) calendar days from the date of filing of the Mediator Designation Notice to file an objection to appointment of any Mediator. The objection shall be scheduled for the following Status Hearing Date (defined below).

(3) **Disputed Adversary Proceedings**

14. 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.**”

15. 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.

16. 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**”).

17. 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**”)).

18. 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.

19. 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.

20. 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. Omnibus Status and Motion Hearings

21. The Court shall hold monthly hearings for all of the Preference Actions. Every other month, the Court shall hold status hearings (the “**Status Hearing Dates**”). During months between Status Hearing Dates, the Court shall hold omnibus hearings for motions in any of the Preference Actions (the “**Motion Hearing Dates**”). 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).

22. All motions 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 (which orders shall *not* include the January 14, 4004 order, entered in the Chapter 11 case captioned In re Conseco, Inc., et al., Case No, 02-49672, approving certain notice, case management and administrative procedures). By mutual consent of the parties to a Preference Action, such parties shall also be permitted to service of notices of filings by electronic transmission (“**e-mail**”). Service on any other person shall not be required except as otherwise ordered by the Court.

23. Any motion shall automatically and without court order be scheduled to be heard at the next Motion Hearing Date that is at least twenty-one (21) calendar days after the date of filing of such motion. The filing deadline for any response to a motion shall be seven (7) calendar days before the next Motion Hearing Date.

24. Without leave of the Court or consent of all parties, a party filing a motion or a response to a motion shall be limited in its motion or response, or any memorandum in support thereof, to twenty-five (25) double-spaced pages with a twelve (12)-point font. A party filing a reply brief in support of a motion shall be limited to ten (10 double-spaced pages with a twelve (12)-point font.

25. 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 motion. Also, nothing in these procedures shall prevent a party making a motion from seeking leave of the Court to present the motion pursuant to a different briefing schedule, or from filing an emergency motion.

D. Notice Procedures

26. 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 or mailing address to which such notices shall be sent.

27. Any entity submitting a motion shall serve a notice of such motion (a “**Notice of Motion**”) in accordance with the procedures contained in this Motion. Such Notice of Motion shall include the title of the motion and the date and time of the Motion Hearing Date (or other hearing date as authorized by the Court) at which the Court will consider the motion, as well as the deadline for objecting to the motion. 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 motion upon a showing of good cause or (ii) enlarging or reducing any time period under Bankruptcy Rule 9006(b) or (c).

28. Service of any motion shall be made on all parties to a Preference Action, by hand delivery, facsimile, overnight delivery e-mail, or U.S. Mail. Motions 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.

29. Prior to each Status Hearing Date, the CFC Estate shall send to the Court a chart (the “**Preference Status Chart**”), including an agenda of motions 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.

30. 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 motion 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.

31. 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.

32. 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.

33. Within seven (7) days of entry of this Order, the CFC Estate shall serve a copy of this Order on all defendants in Preference Actions that have been filed as of the date of entry of this Order. The CFC Estate shall also 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**”), with the summons and complaint served in such Preference Actions.

34. 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 for Notices of Motions, scheduling consideration of the objection for the applicable Motion Hearing Date.

E. Settlement of Preference Actions

35. 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

36. 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

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

In re:)	Chapter 11
)	
Conseco Finance Corp.,)	Case No. 02 B49675
)	Honorable Carol A. Doyle
Debtor.)	
)	

**MEDIATION PROCEDURES FOR CERTAIN ACTIONS FOR AVOIDANCE AND
RECOVERY OF PREFERENCE PAYMENTS PURSUANT TO
SECTIONS 547 AND 530 OF THE BANKRUPTCY CODE**

These Mediation Procedures are designed to facilitate efficient and inexpensive settlement of the Mediation Adversary Proceedings, as defined in the 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 Action (the “**Motion**”).¹ If you are a defendant in a Preference Action in the above-captioned Chapter 11 case, it is very important that you read and comply with the procedures set forth below. Your failure to do so may result in the entry of a default judgment against you in the Preference Action. *You should consult with an attorney about the contents of this document.*

1. Definitions

“Bankruptcy Case” means the above-captioned Chapter 11 case.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Illinois.

“Chapter 5 Claims” mean any and all claims arising under Sections 547 or 550 of the Bankruptcy Code.

¹ Capitalized terms not otherwise defined herein shall have the same meanings given to them in the Motion or the Finance Company Debtors’ Sixth Amended Joint Liquidating Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (the “**Plan**”).

“Defendant(s)” means parties against whom Preference Actions have been commenced.

“Defenses” means all legal or equitable defenses to the Chapter 5 Claims that the Defendants are entitled to raise under applicable law.

“Mediator” means a qualified mediator selected by the CFC Estate.

“Mediation Procedures” mean these Mediation Procedures, as approved by the Bankruptcy Court.

“Mediator’s Protocol” means the document prepared and served by the Mediator upon the CFC Estate and the Defendants setting forth the place and time that the mediations will be conducted with an accompanying schedule reflecting the times each Defendant shall appear for its respective mediation, together with any additional procedures and dates for the submission of position papers, if any, by the parties to the Mediator.

2. Mediator.

The Mediator shall serve, upon the CFC Estate and all Defendants, the Mediator’s Protocol, setting forth the place and time that the mediations will be conducted with an accompanying schedule reflecting the times each Defendant shall appear for its respective mediation, together with any additional procedures and the dates for the submission of position papers by the parties to the Mediator.

3. Costs of Mediation.

The CFC Estate and the defendant shall each be responsible for half of the cost of mediation of a Mediation Adversary Proceeding. In an effort to share the cost of mediating each Mediation Adversary Proceeding equally by the Estate and the Defendant, not later than fourteen (14) calendar days after a Preference Action becomes a Mediation Adversary Proceeding (the **“Fee Deadline”**), each Defendant shall deliver to Counsel for the CFC Estate a sum (the **“Defendant Funds”**) in an amount to be specified in the Mediator Designation Notice (as defined in the Order Approving (i) Discovery Protocol, (ii) Omnibus Hearing Dates, (iii) Notice Procedures, (iv) Case Management Procedures and (v) Mediation Procedures for Preference Actions). The Defendant Funds shall be made payable to “Greenberg Traurig, LLP Mediation Escrow Account” (the **“Mediation Account”**). The CFC Estate shall, likewise, deposit in the Mediation Account the same sum for each Mediation Adversary Proceeding (the **“Plaintiff Funds”**, together with the Defendant Funds, the **“Funds”**) that will be the subject of mediation by the Fee Deadline.

The Funds shall be deemed earned by the Mediator upon deposit into the Mediation Account, and the Funds are non-refundable.

On a date set forth in the Mediation Protocol, and after receipt of an invoice from the Mediator, Counsel for the CFC Estate shall forward all Funds in the Mediation Account to the Mediator, To the extent the Mediator’s fees and expenses exceed the amount of the Funds, the balance shall be paid as a cost of administering the CFC Estate.

4. Conduct of Mediation.

Consistent with the Mediation Procedures and the order directing mediation as entered by the Bankruptcy Court, the Mediator shall handle all Mediation Adversary Proceedings in his or her discretion. In all cases, the procedures used by the Mediator shall be reasonable and practical under the existing circumstances.

Any party may be represented by legal counsel, although the participation of legal counsel shall not be required for the conduct of the mediation.

Materials exchanged by the parties or disclosed to the Mediator pursuant to the Mediation Procedures or the Mediation Protocol, as well as communications by the Mediator, shall be subject to any applicable limitations of Rule 408 of the Federal Rules of Evidence.

The Mediator shall work with each opposing party to reach a settlement of the Mediation Adversary Proceeding mutually acceptable to the parties.

**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