

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

In re: ) Chapter 11  
 )  
Conseco Finance Corp., ) Case No. 02-49675  
 ) Honorable Carol A. Doyle  
 Debtor. )  
 ) Hearing Date: March 25, 2010 at 10:00 a.m.

NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

**PLEASE TAKE NOTICE THAT on March 25, 2010 at 10:00 a.m.**, the undersigned shall appear before the Honorable Carol A. Doyle, or any judge sitting in her stead, Courtroom 742, at the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, and then and there present the **Plan Administrator’s Motion for Entry of an Order Extending the Term of the Post-Consummation Estate** a copy of which is hereby served upon you.

Dated: March 23, 2010

Respectfully submitted,

PLAN ADMINISTRATOR, ON BEHALF OF  
THE POST-CONSUMMATION ESTATE

By: /s/ Nancy A. Peterman  
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, Nancy A. Peterman, an attorney, hereby certify that on the 23rd day of March, 2010, I caused to be served by CM/ECF Notification and Facsimile delivery, as indicated, a true and correct copy of the **Plan Administrator's Motion for Entry of an Order Extending the Term of the Post-Consummation Estate** upon each of the parties identified below.

/s/ Nancy A. Peterman

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CHI 59,363,356v1 3-23-10

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

**In re:** ) **Chapter 11**  
 )  
**Conseco Finance Corp.,** ) **Case No. 02-49675**  
 ) **Honorable Carol A. Doyle**  
**Debtor.** )  
 ) **Hearing Date: March 25, 2010 at 10:00 a.m.**

**PLAN ADMINISTRATOR'S MOTION FOR ENTRY OF ORDER  
EXTENDING TERM OF THE POST-CONSUMMATION ESTATE**

Bridge Associates, LLC, in its capacity as plan administrator (the "Plan Administrator") for the post-consummation estate of Conseco Finance Corp. and its affiliated debtors (the "Post-Consummation Estate"), files this motion (the "Motion") for entry of an Order extending the term of the Post-Consummation Estate in order to make a final distribution to creditors of funds remaining in the Post-Consummation Estate to the earlier of (a) the date on which all actions to complete the administration of the Post-Consummation Estate are complete and (b) June 30, 2010 (the "New Termination Date"). In support thereof, the Plan Administrator respectfully states as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334.
2. Venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. It is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).
3. The bases for the relief sought herein are sections 105(a) and 1142 of 11 U.S.C. §§ 101 *et al.* (the "Bankruptcy Code") and Articles XII.H and XIII.6 of the Plan.

### **Background**

4. On December 17, 2002, Conseco Finance Corp. (“CFC”) and Conseco Finance Servicing Corp. (“CFSC,” and together with CFC, the “CFC Debtors”) each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. *See In re Conseco Finance Corp., et al.*, Case No. 02-49675 (Jointly Administered), Bankr. N.D. Ill. 2002. Subsequently, certain other affiliates of the CFC Debtors also filed petitions for relief under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”).

5. On September 9, 2003, the Court entered the *Order Confirming Finance Company Debtors’ Sixth Amended Joint Liquidating Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* (the “Confirmation Order”).<sup>1</sup> The Plan became effective on September 15, 2003 (the “Effective Date”).

6. On the Effective Date, the Post-Consummation Estate was established for the benefit of the Holders of Allowed Claims entitled to distributions under the Plan. The Post-Consummation Estate is the liquidating trust that holds the assets of the Finance Company Debtors in trust for distribution to creditors.

7. On the Effective Date, the Plan Administrator was appointed to administer the Post-Consummation Estate on behalf of the creditors.

8. On March 18, 2008, the Court entered the *Order Extending Term of CFC Estate*, which extended the term of the Post-Consummation Estate from September 15, 2008, the original termination date under the Plan, until June 18, 2009. [Docket No. 3473]

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<sup>1</sup> Capitalized terms used herein but not otherwise defined shall have those meanings assigned to them in the Plan.

9. On June 16, 2009, the Court entered the *Order Extending Term of CFC Estate* which further extended the term of the Post-Consummation Estate from June 18, 2009 until March 31, 2010. [Docket No. 3503].

10. On August 25, 2009, the Plan Administrator filed its *Motion to Establish Disputed Claims Reserve With Respect to Claims Asserted by Martha Bronson*. [Docket No. 3538]. This Court granted the relief sought therein on September 8, 2009. [Docket No. 3541].

11. To date, the Plan Administrator has distributed approximately \$285.7 million to the Holders of Allowed Claims resulting in a recovery by such Holders of Allowed Claims of approximately 40.7%. The Plan Administrator is holding approximately \$61,000 in the disputed claims reserve created pursuant to this Court's September 8, 2009 order in addition to other amounts necessary to cover the costs of administering the assets of the Post-Consummation Estate.

12. On March 18, 2010, this Court entered the *Order Granting Plan Administrator's Motion, on Behalf of the CFC Post-Consummation Estate, for Entry of an Order (A) Pursuant to Bankruptcy Rules 2002(a)(3), 9019 and Section 105(a) of the Bankruptcy Code, Approving Compromise and Settlement With Respect to Claims Asserted Against CFC Post-Consummation Estate by Martha Bronson, and (B) Approving the Shortened and Limited Notice of the Motion* (the "9019 Order"). [Docket No. 3582]. Pursuant to the 9019 Order, the Plan Administrator entered into a settlement agreement with Martha Bronson ("Bronson"), fully and finally resolving her alleged claims against the Post-Consummation Estate and requiring Bronson to withdraw her appeal of the Confirmation Order (the "Appeal").

13. Upon payment of the settlement amount set forth in the agreement approved by the 9019 Order (the "Settlement Agreement") and satisfaction of all other obligations under the

Settlement Agreement, the Plan Administrator, on behalf of the Post-Consummation Estate, intends to seek to close the Post-Consummation Estate.

14. Pursuant to Article XII.H of the Plan:

The Post-Consummation Estate will terminate as soon as practicable, but in no event later than the fifth (5th) anniversary of the Effective Date; *provided, however*, that, on or prior to the date six (6) months prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Post-Consummation Estate for a finite period, if such an extension is necessary to liquidate the Post-Consummation Estate Assets. Notwithstanding the foregoing, multiple extensions can be obtained so long as the Bankruptcy Court approval is obtained at least six (6) months prior to the expiration of each extended term; *provided, however*, that the Plan Administrator receives an opinion of counsel or a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Post-Consummation Estate as a grantor trust for federal income tax purposes.

Plan, Article XII.H.

15. Contrary to the terms of the Plan, the Internal Revenue Service rules applicable to bankruptcy liquidating trusts require that “each extension [of a trust instrument] be approved by the court within 6 months of the beginning of the extended term.” Rev. Proc. 94-45, 1994-2 C.B. 684, Section 3.06. Therefore, the Plan Administrator believes that the Plan contains a drafting error and is filing this Motion in compliance with the deadlines established by the Internal Revenue Service rules governing the Post-Consummation Estate.

**Relief Requested**

16. The Plan Administrator, on behalf of the Post-Consummation Estate, requests an extension of the term of the Post-Consummation Estate to the New Termination Date in order to allow the Plan Administrator to take all actions required under the Settlement Agreement and

complete the wind-down of the Post-Consummation Estate, including the disbursement of any remaining funds and the filing of final tax returns.

17. In accordance with the terms of the Plan, the Plan Administrator previously received an opinion of counsel that an extension of the Post-Consummation Estate would not adversely affect the status of the Post-Consummation Estate as a grantor trust for federal income tax purposes in connection with the extension of the termination date of the Post-Consummation Estate to and including March 31, 2010. Given this prior opinion, the costs associated with obtaining another tax opinion and the limited nature of the requested extension hereunder, the Plan Administrator requests that this Court waive the requirement for a tax opinion in connection with the New Termination Date.

**Basis For Relief Requested**

18. As stated above, the Internal Revenue Service rules applicable to bankruptcy liquidating trusts requires that “[t]he trust instrument must require that each extension be approved by the court within 6 months of the beginning of the extended term.” Rev. Proc. 94-45, 1994-2 C.B. 684, Section 3.06. Therefore, the Plan Administrator is requesting approval of the New Termination Date within such required time frame under the applicable Internal Revenue Service rules.<sup>2</sup>

19. Given the recent resolution of the only outstanding contested matter in this case, the Plan Administrator is fully prepared to begin the process of winding-down. However, the Post-Consummation Estate must remain open through the New Termination Date in order to take all of the action required under the Settlement Agreement, which includes dismissing the Appeal,

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<sup>2</sup> The Plan requires a party in interest to request an extension of the term of the Post-Consummation Estate at least six (6) months before the current term expires. Therefore, the deadline under the Plan for parties in interest to request an extension of the term of the Post-Consummation Estate passed on September 30, 2009. Given



making the required payments on behalf of Bronson, and numerous other matters, including without limitation making final distributions, closing the case and preparing and filing final tax returns. Given the limited nature of the duties to be performed by the Plan Administrator on behalf of the Post-Consummation Estate, the limited time frame of the New Termination Date, the prior favorable opinion and the cost to the estate of obtaining another tax opinion, the Plan Administrator requests that this Court waive the requirement of obtaining a tax opinion in connection with the New Termination Date.

20. Section 1142 of the Bankruptcy Code provides that “an entity organized... for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court.” 11 U.S.C. § 1142(a). Moreover, “[t]he court may direct the debtor or any other necessary party... to perform any... act... that is necessary for the consummation of the plan.” 11 U.S.C. § 1142(b). Section 105(a) of the Bankruptcy Code confers broad powers upon the Court to implement the bankruptcy process: “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

21. The Plan specifically provides the Court the authority to extend the term of the Post-Consummation Estate upon request of a party in interest. Plan, Article XII.H (authorizing extension of Post-Consummation Estate term upon request by party in interest). Likewise, the Plan provides that the Bankruptcy Court retains jurisdiction to “enter such orders as may be necessary or appropriate to implement or consummate the provisions hereof and... the Post-Consummation Estate Agreements.” Plan, Article XIII.6 (retaining jurisdiction of Bankruptcy Court to carry out terms of the Plan and Post-Consummation Estate Agreements); *see also* Plan,

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that this deadline is in contravention of applicable Internal Revenue Service rules, the Plan Administrator has instead complied with the deadlines established under such Internal Revenue Service rules.

Article XIII.4 (retaining jurisdiction of Bankruptcy Court to ensure that distributions to creditors are accomplished pursuant to terms of the Plan).

22. Put simply, the duration of the Post-Consummation Estate's existence must be extended until the New Termination Date in order to allow the Plan Administrator, on behalf of the Post-Consummation Estate, to effectively carry out its obligations under the Settlement Agreement and the Plan. Moreover, to minimize the expense to the estate, given the prior favorable tax opinion and given the limited nature of the extension, the Plan Administrator requests that this Court waive the requirement to obtain another tax opinion in connection with the New Termination Date.

23. Accordingly, the Plan Administrator, on behalf of the Post-Consummation Estate, respectfully submits that proper cause exists for this Court to exercise its authority to extend the term of the Post-Consummation Estate to the New Termination Date and waive the requirement for a tax opinion.

**Notice and No Prior Request**

24. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) counsel to the CFC Debtors; and (c) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Plan Administrator submits that, in light of the nature of the relief requested, no other or further notice need be given.

25. No prior request for the relief sought herein has been made to this or any other court, other than the Plan Administrator's prior motions seeking extension of the term of the Post-Consummation Estate.

**WHEREFORE**, the Post-Consummation Estate respectfully requests that this Court enter an Order (a) extending the term of the Post-Consummation Estate to and including the New Termination Date, (b) waiving the requirement for a tax opinion and (c) granting such other and further relief deemed appropriate under the circumstances.

Dated: March 23, 2010

Respectfully submitted,

THE PLAN ADMINISTRATOR, ON  
BEHALF OF THE POST-CONSUMMATION  
ESTATE

By: \_\_\_\_\_  
One of Its Attorneys

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

In re:  CONSECO FINANCE CORP., <i>et al.</i> ,  Debtors.	Chapter 11  Case No. 02 B 49675 (Jointly Administered)  Honorable Carol A. Doyle
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**ORDER EXTENDING TERM OF POST-CONSUMMATION ESTATE**

Upon the *Plan Administrator's Motion for Entry of Order Extending Term of the Post-Consummation Estate* (the "Motion");<sup>1</sup> and it appearing that the relief requested is proper; and sufficient notice of the Motion having been given; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157; and it appearing that venue of this proceeding and this Motion is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED that the Motion is granted and the term of the Post-Consummation Estate is extended until to the earlier of (a) the date on which all actions to complete the administration of the Post-Consummation Estate are complete and (b) June 30, 2010; and it is further

ORDERED that based upon the circumstances, the Plan's requirement of a tax opinion in connection with the New Termination Date is hereby waived; and it is further

ORDERED that, notwithstanding the possible applicability of Rules 6004(g), 7062 or 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that all time periods set forth in this Order shall be calculated in accordance with Rule 9006(a) of the Bankruptcy Rules; and it is further

ORDERED that the Court shall retain jurisdiction over any and all disputes arising under or otherwise relating to the construction, performance and enforcement of the terms and conditions of this Order.

Chicago, Illinois

Dated: \_\_\_\_\_, 2010

SO ORDERED.

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HONORABLE CAROL A. DOYLE  
UNITED STATES BANKRUPTCY JUDGE

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.