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

In re: ) Chapter 11  
)  
Conseco, Inc., et al.,<sup>1</sup> )  
)  
Debtors. ) Case No. 02 B49672  
) Honorable Carol A. Doyle  
) (Jointly Administered)  
)

**ORDER PURSUANT TO 11 U.S.C. §§ 105(A), 363, AND 1146(C)  
AND FED. R. BANKR. P. 2002 AND 6004 AUTHORIZING AND  
APPROVING: (I) ASSET PURCHASE AGREEMENT WITH  
ATM CORPORATION OF AMERICA AND (II) SALE OF  
CERTAIN OF THE DEBTORS' ASSETS FREE AND  
CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors in the above-captioned chapter 11 cases, for entry of an order (this "Order") under 11 U.S.C. §§ 363 and 1146(c) and Fed. R. Bankr. P. 2002 and 6004 (i) approving and authorizing that certain Asset Purchase Agreement by and among Conseco Finance Servicing Corp. and ATM Corporation of America (the "Buyer") dated as of March 31, 2003 (the "Purchase Agreement"), a copy of which is annexed hereto as Exhibit A, and (ii) authorizing Conseco Finance Servicing Corp. (the "Seller") to sell (the "Sale") its equity interest (the "Purchased Assets") in Convergent Lending Services LLC

<sup>1</sup> The Debtors are the following entities: (i) Conseco, Inc., CIHC, Incorporated, CTIHC, Inc., Partners Health Group, Inc., (collectively the "Holding Company Debtors"), (ii) Conseco Finance Corp. and Conseco Finance Servicing Corp (the "CFC Debtors" and together with the Holding Company Debtors, the "Initial Debtors") and (iii) Conseco Finance Corp. - Alabama, Conseco Finance Credit Corp., Conseco Finance Consumer Discount Company, Conseco Finance Canada Holding Company, Conseco Finance Canada Company, Conseco Finance Loan Company, Rice Park Properties Corporation, Landmark Manufactured Housing, Inc., Conseco Finance Net Interest Margin Finance Corp. I, Conseco Finance Net Interest Margin Finance Corp. II, Green Tree Finance Corp. - Two, Conseco Agency of Nevada, Inc., Conseco Agency of New York, Inc., Green Tree Floorplan Funding Corp., Conseco Agency, Inc., Conseco Agency of Alabama, Inc., Conseco Agency of Kentucky, Inc., and Crum-Reed General Agency, Inc. (collectively, the "CFC Subsidiary Debtors", together with the Initial Debtors, the "Debtors").

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or the Purchase Agreement, as the case may be.

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("Convergent") to Buyer and/or its affiliates under the terms set forth in the Purchase Agreement free and clear of all liens, liabilities, Interests (as defined herein) and Claims (as defined herein), and exempt under 11 U.S.C. § 1146(c) from any stamp, transfer, sales, recording or similar tax; and adequate and sufficient notice of the Purchase Agreement and all transactions contemplated thereunder and in this Order having been given to all parties in interest in these cases; and all interested parties having been afforded an opportunity to be heard with respect to the Motion and all relief related thereto; and the Court having reviewed and considered the Motion and the objections thereto, if any; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

FOUND AND DETERMINED, THAT:<sup>3</sup>

A. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Motion are sections 105(a), 363 and 1146(c) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (as amended, the "Bankruptcy Code") and Fed.R.Bankr.P. 2002 and 6004.

C. As evidenced by the affidavits of service filed with this Court: (i) due, proper, timely, adequate and sufficient notice of the Motion has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code, Fed.R.Bankr.P. 2002, 6004 and 9014, and all other provisions of the Bankruptcy Rules and/or the Local Bankruptcy Rules governing the

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

transactions that are the subject of the Motion and; (ii) such notice was good, sufficient and appropriate under the circumstances; and (iii) no other or further notice of the Motion is or shall be required.

D. A reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein has been afforded to the following interested persons or entities: (a) the U.S. Trustee, (b) the Securities and Exchange Commission, (c) all federal and state governmental tax entities, (d) the Core Group, as defined in the current Case Management Procedures, (e) the 2002 List, as defined in the current Case Management Procedures, and (f) counsel to Buyer, CFN, and GE, to the extent they do not appear on the 2002 List. Such notice is adequate and appropriate under the circumstances and in light of the nature of the relief requested, no further notice is required.

E. Seller may sell the Purchased Assets free and clear of all Interests, as defined in paragraph M below because each entity with a security interest in any Purchased Assets to be transferred on the Closing: (i) has consented to the Sale or is deemed to have consented to the Sale; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such interest; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

F. Good and sufficient reasons for approval of the Sale to Buyer under the terms of the Purchase Agreement have been articulated. The relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

G. The Debtors have demonstrated both: (a) good, sufficient and sound business purposes and justification; and (b) compelling circumstances for the Sale other than in

the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code, in that, among other things: (i) given the cost associated with maintaining Convergent, the immediate consummation of the Sale is necessary and appropriate to maximize the value of the Debtors' estates; (ii) the Sale will provide the means for the Debtors to maximize distributions to creditors and enable the successful confirmation of a plan of reorganization; and (iii) absent consummation of the Sale, the Debtors may be forced to divert their limited resources to maintaining ownership of Convergent at a loss of approximately \$400,000 per month.

H. Seller has full corporate power and authority to execute the Purchase Agreement, and all other documents contemplated thereby and to consummate the transactions contemplated by the Purchase Agreement. The Purchase Agreement and all of the transactions contemplated thereby have been duly and validly authorized by all necessary corporate action. No consents or approvals, other than the consent and approval of this Court and those expressly provided for in the Purchase Agreement, are required for Seller to consummate the Sale, except as may be otherwise provided under the terms of this Order.

I. The Purchase Agreement was negotiated, proposed and entered into by Seller and Buyer without collusion and in good faith. Buyer is not an "insider" of any of the Debtors, as that term is defined in section 101 of the Bankruptcy Code. Neither the Debtors nor Buyer have engaged in any conduct that would cause or permit the Purchase Agreement (or the transactions contemplated thereby) to be avoided or Buyer to be subjected to any claim under section 363(n) of the Bankruptcy Code.

J. Buyer is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

K. The consideration provided by Buyer pursuant to the Purchase Agreement: (i) is fair and reasonable; (ii) is the only offer for the Purchased Assets; (iii) will provide a greater recovery for the Debtors' estates than would be provided by any other practical, available alternative; and (iv) constitutes reasonably equivalent value and fair consideration for the Purchased Assets.

L. The Purchase Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code and/or under the laws of the United States, any state, territory, possession, or the District of Columbia.

M. The transfer of the Purchased Assets to Buyer pursuant to the Purchase Agreement will be a legal, valid, and effective transfer of the Purchased Assets, and vests with or will vest in Buyer all right, title, and interest of Seller in the Purchased Assets free and clear of liens, mortgages, security interests, conditional sales or other title retention agreements, pledges, claims, judgments, demands, encumbrances including, without limitation, claims, and encumbrances: (i) that purport to give to any party a right or option to effect any forfeiture, modification or termination of the Debtors' or Buyer's interests in the Purchased Assets; or (ii) in respect of taxes, easements, restrictions, rights of first refusal, charges or interests of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership (collectively, the "Interests"), with all such Interests to attach to the Debtors' interest, if any, in the proceeds of the Sale (the "Sale Proceeds") in order of priority, subject to any rights, claims and defenses of the Debtors or other parties in interest on behalf of the Debtors with respect thereto.

N. Neither Buyer nor its affiliates, successors or assigns, as a result of any action taken in connection with the purchase of the Purchased Assets: (a) is a successor to any of

the Debtors; (b) has, *de facto* or otherwise, merged with or into any of the Debtors; or (c) is a continuation or substantial continuation of any of the Debtors or any enterprise of the Debtors.

O. The Sale must be approved and consummated promptly in order to preserve the viability of the Debtors' businesses as going concerns, to maximize the value of the Debtors' estates and to position the Debtors to emerge from chapter 11. The Sale is in contemplation of a plan of reorganization and, accordingly, is a transfer pursuant to section 1146(c) of the Bankruptcy Code, which shall not be taxed under any law imposing a stamp, recording, transfer or similar tax, *provided, however*, that the foregoing finding shall not apply with respect to any taxes owed to the State of Illinois; *provided further, however*, that the Debtors reserve all rights to seek a separate order applying the finding contained in this paragraph to any taxes that otherwise would be owed to the State of Illinois.

P. Buyer has consented to this form of Order, notwithstanding any inconsistencies between this Order and the "Sale Order" defined in the Purchase Agreement.

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted in its entirety.
2. Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits with prejudice.

**Approval of the Purchase Agreement**

3. Subject to the approval of CFCN, the Purchase Agreement and all of the terms and conditions thereof and transactions contemplated thereby are approved in all respects.

4. Pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, the CFC Debtors are authorized to consummate the Sale, pursuant to and in accordance with the terms and conditions of the Purchase Agreement.

5. Seller is (i) authorized to execute, deliver, perform under, consummate and implement, the Purchase Agreement (subject to the applicable closing conditions set forth in the Purchase Agreement), collectively with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, and (ii) authorized to take all further actions as may be requested by Buyer for the purpose of transferring the Purchased Assets to Buyer or as may be necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement. Buyer shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Purchase Agreement or any other Sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence.

#### **Transfer of Purchased Assets**

6. Except as expressly permitted or otherwise specifically provided for in the Purchase Agreement or this Order, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to Buyer and, as of the Closing, shall be free and clear of: (a) all Interests; and (b) all debts arising under, relating to, or in connection with any acts of the Debtors, claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these cases, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, claims and encumbrances: (i) that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of any of Seller's or Buyer's interests in the Purchased Assets, or any similar rights, or (ii) in respect of taxes, easements, restrictions, rights of first refusal, charges or interests of

any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership) (collectively, "Claims") with all the Interests and Claims to attach to the Debtors' interest in the Sale Proceeds, in the order of their priority, with the same validity, force and effect which they now have against the Purchased Assets, subject to any rights, claims and defenses the Debtors or any other parties in interest on behalf of the Debtors may possess with respect thereto. The Debtors shall apply the Sale Proceeds: first, to the lenders pursuant to the "Final Order: (i) Authorizing Debtors in Possession to Enter Into Post-Petition Credit Agreement Pursuant to Section 364 of the Bankruptcy Code, (ii) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, and (iii) Granting Adequate Protection Pursuant to Sections 363 and 364 of the Bankruptcy Code," dated January 14, 2003 (the "Final DIP Order"); and second, the Debtors shall place a sufficient amount of the remaining sale proceeds in escrow to satisfy the Claims of parties asserting liens in the Purchased Assets, such Claims to be determined after notice and an opportunity to object by the CFC Committee; *provided, however*, that the Debtors will not be obligated to pay interest to any holder of a Claim pending allowance of such Claim other than such interest (if any) accrued in the escrow.

7. Except as expressly permitted by the Purchase Agreement, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade and other creditors, holding Interests or Claims of any kind or nature whatsoever against Seller or in the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Debtors'



businesses prior to the Closing or the transfer of the Purchased Assets to Buyer, shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing against Buyer, its property, its successors and assigns, its affiliates or the Purchased Assets, such persons' or entities' Interests or Claims. Following the Closing, no holder of an Interest in or Claim against the Debtors shall interfere with Buyer's title to or use and enjoyment of the Purchased Assets based on or related to such Interests or Claims, and all such Claims and Interests, if any, shall be, and hereby are channeled, transferred and attached solely and exclusively to the Sale Proceeds.

8. The transfer of the Purchased Assets to Buyer pursuant to the Purchase Agreement shall not result in: (i) Buyer having any liability or responsibility for any claim against the Debtors or against an insider of the Debtors; or (ii) Buyer having any liability or responsibility to the Debtors except pursuant to the Purchase Agreement and this Order.

9. Buyer shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Purchased Assets other than as expressly set forth in the Purchase Agreement or this Order. Without limiting the effect or scope of the foregoing, the transfer of the Purchased Assets from Seller to Buyer does not and will not subject the Buyer or its affiliates, successors or assigns or their respective properties (including the Purchased Assets) to any liability for claims (as that term is defined in section 101(5) of the Bankruptcy Code) against the Debtors or the Purchased Assets by reason of such transfer under the laws of the United States or any state, territory or possession thereof applicable to such transactions. Neither Buyer nor its affiliates, successors or assigns shall be deemed, as a result of any action taken in connection with the purchase of the Purchased Assets to: (a) be a successor to Debtors; (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be a

continuation or substantial continuation of the Debtors or any enterprise of the Debtors. Neither the Buyer nor its affiliates, successors or assigns is acquiring or assuming any liability, warranty or other obligation of the Debtors, including, without limitation, any tax incurred but unpaid by the Debtors prior to the Closing, including, but not limited to, any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, fixed or audited, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, except as otherwise expressly provided in the Purchase Agreement or this Order.

10. The transfer of the Purchased Assets to Buyer pursuant to the Purchase Agreement constitutes a legal, valid and effective transfer of the Purchased Assets, and shall vest Buyer with all right, title and interest of Seller in and to the Purchased Assets free and clear of all Claims and Interests of any kind or nature whatsoever.

11. On the Closing, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets or a bill of sale transferring good and marketable title in the Purchased Assets to Buyer. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

12. Subject to the occurrence of the Closing, this Order: (a) is and shall be effective as a determination that all Interests and Claims of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected; and (b) shall be binding upon and shall govern the acts of all entities, including without limitation all

filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

13. The transactions contemplated by the Purchase Agreement, and the execution, delivery and/or recordation of any and all documents or instruments necessary or desirable to consummate the transactions contemplated by the Purchase Agreement shall be, and hereby are, exempt from the imposition and payment of all recording, stamp, transfer or any other similar taxes, pursuant to section 1146(c) of the Bankruptcy Code; *provided, however*, that the foregoing exemption shall not apply to any taxes owed to the State of Illinois; *provided further, however*, that the Debtors reserve all rights to file a separate motion seeking an order exempting, pursuant to section 1146(c) of the Bankruptcy Code, any taxes that otherwise would be owed to the State of Illinois but for section 1146(c) of the Bankruptcy Code.

#### **Additional Provisions**

14. Upon the granting of this Order, with respect to the Purchase Agreement, Buyer shall be entitled to protection under section 363(m) of the Bankruptcy Code. The transactions contemplated by the Purchase Agreement are undertaken by the Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to Buyer, unless such authorization is duly stayed pending such appeal.

15. No liability shall attach to or remain with the Purchased Assets on account of any liability, including without limitation, a tax liability, existing as of the Closing for which the Debtors are jointly and/or severally liable.

16. This Court retains jurisdiction to enforce and implement the terms and provisions of this Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to: (a) compel delivery of the Purchased Assets to the Buyer; (b) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein; and (c) interpret, implement and enforce the provisions of this Order.

17. All entities who are presently, or on the Closing may be, in possession of some or all of the Purchased Assets are hereby directed to surrender possession of the Purchased Assets either to: (i) the Debtors prior to the Closing, for subsequent transfer to Buyer on the Closing; or (ii) to Buyer on and after the Closing.

18. Each of Debtors' creditors is authorized and directed on or before the Closing to execute such documents and take all other actions as may be necessary to release its Interests in or Claims against the Purchased Assets, if any, as such Interests or Claims may have been recorded or otherwise exist.

19. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing Claims against or Interests with respect to the Debtors and/or the Purchased Assets shall not have delivered to the Debtors and Buyer prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Claims or Interests

which such person or entity has with respect to the Debtors and/or the Purchased Assets or otherwise, then: (i) Seller is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets; and (ii) Buyer is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims or Interests in the Purchased Assets as of the Closing, of any kind or nature whatsoever.

20. The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, Buyer and its respective affiliates, successors and assigns, and any affected third parties, including, but not limited to, all persons asserting a Claim against or Interest in the Purchased Assets, notwithstanding any subsequent appointment of any trustee(s) for the Debtors under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

21. All persons who hold Claims against or Interests in the Debtors are forever barred, estopped and permanently enjoined from asserting or prosecuting any claims or causes of action against Buyer, its affiliates, or any of its respective officers, directors, employees, attorneys or advisors, arising out of or in connection with the Sale.

22. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

23. Nothing contained in any chapter 11 plan confirmed in these cases or any order confirming any such plan or in any other order in these cases (including any order entered after any conversion of these cases to cases under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Purchase Agreement or this Order.

24. The Debtors possess the right to proceeds from the Sale, and the purchase price pursuant to the CFN Sale Order will be adjusted by \$400,000 to reflect the fact that Convergent is no longer among the assets acquired pursuant to the CFN Sale Order. In all other respects, however, the CFN Sale Order shall remain in full force and effect.

25. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

26. Notwithstanding anything in this Order to the contrary, any provision of this Order or the Purchase Agreement, neither Buyer nor any successor or assign thereof shall be entitled to vote to accept or reject a plan of reorganization.

27. Notwithstanding the provisions of Fed.R.Bankr.P. 6004(g) and Rule 62(a) of the Federal Rules of Civil Procedure, this Order shall not be stayed for ten (10) days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof.

Dated: Chicago, Illinois

April 14, 2003



THE HONORABLE CAROL A. DOYLE  
UNITED STATES BANKRUPTCY JUDGE