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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Lloyd's, LandAmerica Strike \$38M Deal In E&O Coverage Row

By **Martin Bricketto**

Law360, New York (January 26, 2012, 5:49 PM ET) -- The trustee liquidating a LandAmerica Financial Group Inc. subsidiary asked a Virginia bankruptcy court on Thursday to approve a nearly \$38 million settlement with Lloyd's of London underwriters over errors and omissions insurance policy claims.

Gerard A. McHale Jr., liquidation trustee for LandAmerica 1031 Exchange Services Inc., said the settlement is a good alternative to a protracted legal battle for insurance coverage against the claims of 1031 exchange customers and government investigations. Those claims hinge on LES's use of auction rate securities and the companies' liquidity before they went under.

Since the debtors' approved plan of reorganization went into effect in December 2009, two trusts — one for parent company LFG and another for subsidiary LES — have been liquidating the company in Chapter 11 and trying to get back money for hundreds of creditors.

"Taking into account the substantial costs and delay that the trusts likely would incur to litigate their coverage claims against underwriters, the trusts do not believe that they would be significantly better off financially if they successfully litigated their claims, or settled them in the midst of litigation at a later date," the settlement motion said.

The trusts pointed to more \$13 million in defense costs related to the claims and investigations for which they were seeking coverage and had argued that they were owed full payment of the policies' \$50 million aggregate limit.

Lloyd's had contended that it has already made payments for more than \$7 million, among other arguments.

Ninety percent of the first \$10 million in net proceeds from the policies will be allocated to the LES trust, while 10 percent will go to the LFG trust, according to the motion. The remaining money will go to the LES trust.

In September, U.S. Bankruptcy Judge Kevin Huennkens approved a \$9 million settlement between McHale and E&O insurer Illinois Union Insurance Co. At the time, the trustee's counsel described the deal as a building block to continue pursuing recoveries under the Lloyd's policies.

With the Illinois Union agreement, recoveries for many of the creditors of LandAmerica 1031 Exchange Services Inc. were expected be 70 percent, following previous settlements, including a \$14.3 million settlement with SunTrust Banks Inc. in June and a \$95.5 million

deal with a second bank in October.

In splitting up recovery duties, McHale went after E&O policies for the negligence of employees and officers. LFG liquidation trustee Bruce H. Matson is pursuing claims against directors and officers and their policies.

To that end, Matson sued LandAmerica's executives in June, claiming they should have anticipated liquidity problems with a subsidiary's auction rate securities.

Matson alleges that for months after the \$330 billion auction rate securities market froze in February 2008, LandAmerica's directors and officers "remained ostrichlike, with their heads buried in the sand, as the crisis worsened through neglect and unexamined missteps."

Attorneys for the parties did not immediately return requests for comment on Thursday.

McHale is represented by Jonathan L. Flaxer and Michael S. Devorkin of Golenbock Eiseman Assor Bell & Peskoe LLP and Dennis T. Lewandowski of Kaufman & Canoles PC. Co-counsel for McHale on insurance matters is Richard Shore of Gilbert LLP.

The Lloyd's underwriters are represented by attorneys with Sedgwick LLP.

The case is In re: LandAmerica Financial Group Inc. et al., case number 3:08-bk-35994, in the U.S. Bankruptcy Court for the Eastern District of Virginia.

--Additional reporting by Hilary Russ. Editing by Kat Laskowski.
