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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

AZ CORP COMMISSION  
DOCKET CONTROL

2015 APR 28 PM 3 41

IN THE MATTER OF:  
CONCORDIA FINANCING COMPANY, LTD,  
a/k/a "CONCORDIA FINANCE,"  
ER FINANCIAL & ADVISORY SERVICES, LLC,  
LANCE MICHAEL BERSCH, and  
DAVID JOHN WANZEK and LINDA WANZEK,  
husband and wife.  
Respondents.

DOCKET NO. S-20906A-14-0063

Arizona Corporation Commission

DOCKETED

APR 28 2015

DOCKETED BY [Signature]

**THIRTEENTH  
PROCEDURAL ORDER**  
**(Sets Telephonic Status Conference)**

BY THE COMMISSION:

On February 27, 2014, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Order for Other Affirmative Action ("Notice") against Concordia Financing Company, Ltd, a/k/a Concordia Finance ("Concordia"), ER Financial & Advisory Services, LLC ("ER"), Lance Michael Bersch, and David John Wanzek and Linda Wanzek, husband and wife (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of investment contracts and promissory notes within or from Arizona.

The spouse of David John Wanzek, Linda Wanzek ("Respondent Spouse"), is joined in the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability of the marital community.

The Respondents were duly served with copies of the Notice.

1 On March 6, 2014, Respondents ER, Lance Michael Bersch and David John Wanzek filed a  
2 Request for Hearing. On March 14, 2014, Respondent Linda Wanzek filed a Request for Hearing.

3 On March 17, 2014, by Procedural Order, a pre-hearing conference was scheduled for April  
4 10, 2014.

5 On March 26, 2014, Respondent Concordia filed a Request for Hearing.

6 On March 27, 2014, by Procedural Order, the pre-hearing conference scheduled for April 10,  
7 2014, was affirmed, with notice issued to Respondent Concordia.

8 On April 4, 2014, Respondents ER, Lance Michael Bersch, David John Wanzek, and Linda  
9 Wanzek (collectively the "ER Respondents") filed a Motion to Dismiss and Answer ("Motion").

10 On April 9, 2014, Respondent Concordia filed an Answer.

11 On April 10, 2014, at the pre-hearing conference, the parties appeared through counsel and  
12 requested oral argument regarding the Motion to Dismiss. The parties further proposed a schedule  
13 for filing motions prior to oral argument.

14 On April 15, 2014, by Procedural Order, oral argument and a status conference were  
15 scheduled to commence on May 21, 2014. It was further ordered that Respondent Concordia shall  
16 file any Motion to Dismiss by April 25, 2014, the Division shall file its Response to the Motions to  
17 Dismiss by May 9, 2014, and the Respondents shall file any Reply by May 16, 2014.

18 On April 25, 2014, Respondent Concordia filed its Joinder to Motion to Dismiss of  
19 Respondents ER Financial & Advisory Services, LLC, Lance Michael Bersh, David John Wanzek  
20 and Linda Wanzek.

21 On May 5, 2014, Respondents ER, Lance Michael Bersch, David John Wanzek, and Linda  
22 Wanzek filed Acknowledgments of Possible Conflicts.

23 On May 9, 2014, the Division filed its Response to Motion to Dismiss by All Respondents  
24 ("Response").

25 On May 16, 2014, Respondents ER, Lance Michael Bersch, David John Wanzek, and Linda  
26 Wanzek filed their Reply in Support of Motion to Dismiss ("Reply").

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1 On May 21, 2014, oral argument and a status conference were held. The parties appeared  
2 through counsel and oral argument was presented. The Motion was taken under advisement and a  
3 schedule was proposed for the parties to submit supplemental citations.

4 On May 22, 2014, the Division filed its Supplemental Citation of Authorities.

5 On May 29, 2014, Respondents Concordia, ER, Lance Michael Bersch, David John Wanzek,  
6 and Linda Wanzek filed their Joint Supplemental Citation of Authorities.

7 On August 13, 2014, by Procedural Order, it was found that the Respondents had not  
8 established dismissal to be appropriate and that it was necessary and proper to proceed with the  
9 Respondents' request for a hearing. Accordingly, a prehearing conference was scheduled on  
10 September 2, 2014.

11 On September 2, 2014, a pre-hearing conference was held. The parties appeared through  
12 counsel. The scheduling of a hearing was discussed. Counsel for the ER Respondents stated they  
13 would be filing a special action regarding the motion to dismiss. Counsel for the ER Respondents  
14 requested that part of the hearing be held in the Lake Havasu area to accommodate witnesses for the  
15 ER Respondents. This request was denied. After much discussion, a commencement date for the  
16 hearing was agreed to by the parties.

17 On September 2, 2014, by Procedural Order, a hearing was scheduled to commence on May  
18 11, 2015.

19 On January 5, 2015, the Division filed a Motion to Quash Discovery Demands by the ER  
20 Respondents. The Division asserted that on November 24, 2014, the Division was served by the ER  
21 Respondents with a "First Request for Production of Documents," a "First Set of Non-Uniform  
22 Interrogatories," a "First Set of Requests for Admissions," a "Notice of 30(b)(6) Deposition," and a  
23 "Notice of Deposition of Gary R. Clapper." The Division contended that the discovery demands by  
24 the ER Respondents should be quashed because: discovery in this proceeding is governed by the  
25 Administrative Procedure Act and the Commission's Rules, not the Arizona Rules of Civil  
26 Procedure; the ER Respondents have not demonstrated a reasonable need for the information they  
27 demand; the discovery demands include information and documents that are privileged and/or made  
28 confidential by statute; and the discovery demands are unreasonably overbroad, unduly burdensome

1 and oppressive.

2 On January 26, 2015, by Procedural Order, the Division's Motion to Quash Discovery  
3 Demands was granted. In light of the ER Respondents' efforts to obtain discovery, the parties'  
4 exchange of witness lists and copies of exhibits was accelerated.

5 Later that day, the ER Respondents filed a Response to the Division's Motion to Quash. The  
6 ER Respondents contended that: the Commission's Rules allow for broad discovery; discovery is not  
7 barred by either the Administrative Procedure Act or statutory confidentiality; the ER Respondents  
8 have a reasonable need for, and a constitutional right to, discovery; the requested documents are not  
9 privileged or work product; and the discovery is not burdensome. The ER Respondents also  
10 requested oral argument on the matter.

11 On January 27, 2015, by Procedural Order, oral argument was scheduled to be held on  
12 February 11, 2015. Later that day, the Division filed a Notice of Intent to File Reply in Support of  
13 Motion to Quash Discovery Demands by the ER Respondents.

14 On February 3, 2015, the Division filed its Reply in Support of Motion to Quash Discovery  
15 Demands by the ER Respondents. The Division argued that: the ER Respondents have not properly  
16 sought discovery as provided under the Administrative Procedure Act and the Commission's rules;  
17 the Arizona Rules of Civil Procedure do not apply to discovery in this proceeding; prior procedural  
18 orders and Commission decisions cited by the ER Respondents can be distinguished or otherwise fail  
19 to support ordering the discovery sought; the ER Respondents have not demonstrated a reasonable  
20 need for the discovery sought; many of the documents sought are protected work product; and the  
21 discovery sought is confidential under A.R.S. § 44-2042(A).

22 On February 5, 2015, the Division filed a Notice of Errata Regarding its Reply in Support of  
23 Motion to Quash Discovery Demands by the ER Respondents.

24 On February 10, 2015, ER Respondents filed a Motion to Compel seeking discovery from  
25 Respondent Concordia and requesting oral argument. The ER Respondents contend that the  
26 Commission's rules allow broad discovery; their requests for production of documents are specific  
27 and not overbroad or burdensome; Concordia is the custodian of its own records; and a subpoena is  
28 not required as Concordia is a party to this proceeding. The ER Respondents further attached an

1 affidavit from Respondent David John Wanzek responding to Concordia's communicated demand for  
2 a sworn statement as to the ER Respondents' claims that they returned files to Concordia and that Mr.  
3 Bersch and Mr. Wanzek were privy to attorney-client communications between Concordia and its  
4 counsel.

5 On that same day, counsel for ER Respondents filed a Notice of Change of Law Firm and  
6 Notice of Association with Counsel.

7 On February 11, 2015, oral argument was held. The parties appeared through counsel. The  
8 Division and the ER Respondents presented oral argument in favor of their respective positions on  
9 the ER Respondents' requests for discovery. In light of the approaching commencement date of the  
10 hearing, the presiding Administrative Law Judge ruled from the bench, finding that while the  
11 Administrative Procedure Act applies, fairness dictates that in this case the Division more promptly  
12 provide the Respondents with certain documents in its possession. Though the prior order quashing  
13 the ER Respondents' discovery requests was affirmed, the Division was directed to disclose to the  
14 Respondents, by February 26, 2015, the contracts it intends to submit as evidence of the 446 alleged  
15 investments. The Division contended that it may not have contracts for all 446 of the alleged  
16 investments and that the time required for redaction of this many documents might make it difficult  
17 to meet the disclosure deadline. The Administrative Law Judge directed the Division to prioritize  
18 those contracts involving the ER Respondents and permitted the Division to disclose by March 12,  
19 2015, any contracts which, after a good faith effort, are not ready by February 26, 2015.  
20 Additionally, the Division was directed to disclose the transcript from the examination under oath of  
21 Respondent Lance Michael Bersch, and the exhibits used therein, by February 26, 2015. The  
22 documents ordered to be disclosed by February 26, 2015, are all documents Division counsel stated  
23 he planned to use at hearing and, therefore, would have been subject to disclosure by the March 12,  
24 2015 scheduled exchange of exhibits and witness lists.

25 On February 13, 2015, by Procedural Order, the Division was directed to disclose documents  
26 to the Respondents as set forth at by the Administrative Law Judge at oral argument on February 11,  
27 2015.

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1 On February 17, 2015, the ER Respondents filed an Application for Administrative Subpoena  
2 requesting a subpoena for the deposition of anticipated Division witness Gary R. Clapper. The ER  
3 Respondents also filed an Application for Administrative Subpoena requesting a subpoena for the  
4 deposition of an Expert Accounting Witness to be designated by the Securities Division.

5 On March 6, 2015, the ER Respondents filed a Notice of Filing Affidavits of Service.

6 On March 9, 2015, by Procedural Order, a telephonic status conference was scheduled to  
7 convene on March 16, 2015. The purpose of the status conference was to address whether the ER  
8 Respondents continued to seek the production of further documents from Respondent Concordia in  
9 light of the upcoming deadline for disclosure of exhibits and witness lists.

10 On March 11, 2015, Respondent Concordia filed its Motion to Extend Time to Exchange List  
11 of Witnesses and Exhibits. Respondent Concordia requested an extension of the deadline to  
12 exchange its List of Witnesses and Exhibits to March 20, 2015, based upon counsel for Concordia's  
13 upcoming depositions and injunction hearings in matters unrelated to this case. In the motion,  
14 counsel for Concordia noted that counsel for the ER Respondents had been contacted and would not  
15 agree to an extension.

16 On March 12, 2015, the ER Respondents filed a Response in Opposition to Motion to Extend  
17 Time to Exchange List of Witnesses and Exhibits. The ER Respondents opposed the motion for the  
18 stated reasons that the hearing is imminent and the information is necessary for their defense.

19 Later on March 12, 2015, Respondent Concordia filed its List of Witnesses and Exhibits. The  
20 ER Respondents also filed a Notice of Service of List of Witnesses and Exhibits.

21 On March 16, 2015, a telephonic status conference was held. The parties appeared through  
22 counsel. The ER Respondents clarified which documents they continued to seek from Concordia.  
23 Counsel for Concordia indicated the Respondents may be able to resolve the issue among themselves  
24 within a couple weeks as Concordia needed time to prepare financial statements and ready board  
25 minutes for disclosure. The Respondents agreed to work toward resolving the discovery issues raised  
26 in the ER Respondents' Motion to Compel pending another status conference, and they further agreed  
27 to include the Division in the discovery process.

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1 It was further determined at the status conference that Concordia's Motion to Extend Time to  
2 Exchange List of Witnesses and Exhibits had been rendered moot by Concordia's filing of a List of  
3 Witnesses and Exhibits, though Concordia may supplement its exhibits and witness lists based upon  
4 ongoing discovery. Also discussed was the Division's intent to amend the Notice of Opportunity to  
5 include Linda Wanzek as a participant, as opposed to being joined solely for determining the liability  
6 of the marital community. The Division agreed to file a motion to amend the Notice of Opportunity.  
7 The Division also stated its intent to file a motion to quash the scheduled depositions of Gary Clapper  
8 and an expert accounting witness. A schedule was determined for motion practice and oral argument  
9 on the motion to quash.

10 On March 18, 2015, by Procedural Order, oral argument was scheduled for April 2, 2015, to  
11 address the issue of the Division's motion to quash. A status conference regarding Concordia's  
12 production of discovery was set for the same time.

13 On March 20, 2015, the Division filed a Motion to Quash Subpoenas, or in the Alternative,  
14 Motion for a Procedural Order Limiting the Scope of Subpoenas. The Division contended that the  
15 subpoenas should be quashed as they did not comply with the Administrative Procedure Act and the  
16 Respondents now have the documents and information they claim they needed. In the alternative, the  
17 Division argued that the scope of the depositions should be limited to only that information the ER  
18 Respondents specifically identified in their Applications for Subpoenas.

19 On March 27, 2015, the ER Respondents filed a Response to the Securities Division's Motion  
20 to Quash Subpoenas. The ER Respondents contended that the subpoenas complied with the  
21 Commission's rules and the Administrative Procedure Act, that the ER Respondents have a  
22 reasonable need for the depositions, and that the scope of the depositions should not be limited.

23 On that same day, the ER Respondents also filed a copy of a letter sent to counsel for the  
24 Division. The letter was identified as an objection to the Division's investigative subpoenas for  
25 Respondents David and Linda Wanzek. The ER Respondents noted that the Division has contended  
26 in the past that an Administrative Law Judge lacks the power to quash an investigative subpoena.  
27 However, the ER Respondents stated they filed a copy of the letter as a record of their objections.

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1 On April 1, 2015, the Division filed its Reply in Support of Motion to Quash Subpoenas, or in  
2 the Alternative, Motion for a Procedural Order Limiting the Scope of Subpoenas. The Division  
3 argued that the subpoenas should be quashed because there is no finding in the record that the ER  
4 Respondents have demonstrated a reasonable need for the deposition testimony, the applications for  
5 subpoena were deficient and misleading as the ER Respondents have now identified additional  
6 matters for discovery beyond those stated in the applications, and the ER Respondents have received  
7 all the documents and information they claimed to need. In the alternative, the Division argued that  
8 the scope of the subpoenas should be limited based upon: the matters for which the ER Respondents  
9 have established a reasonable need pursuant to the Administrative Procedure Act; the Division's  
10 deliberative process and attorney-client privileges; and the Securities Act's confidentiality statute,  
11 A.R.S. § 44-2042(A).

12 On April 2, 2015, a status conference and oral argument were held. The parties appeared  
13 through counsel. Counsel for the Respondents stated that Respondent Concordia is in the process of  
14 preparing requested documents for disclosure to the ER Respondents. Respondent Concordia  
15 asserted that some documents are likely in the possession of the Division, having been obtained from  
16 the State of California following proceedings conducted there, and could be more easily obtained  
17 from the Division. The Division asserted that the Securities Act's confidentiality statute applied, but  
18 noted that it would make available supporting documentation used by the Division's accountant in  
19 creating his Financial Data Summary.

20 The Division and the ER Respondents presented oral argument in favor of their respective  
21 positions on the Division's Motion to Quash Subpoenas, or in the Alternative, Motion for a  
22 Procedural Order Limiting the Scope of Subpoenas. Having considered the written and oral  
23 arguments presented by the parties, as well as the statutes, rules and other authority cited therein, the  
24 presiding Administrative Law Judge ruled from the bench and quashed the two subpoenas pursuant to  
25 A.A.C. R14-3-109(O). The Administrative Law Judge found that the Administrative Procedure Act  
26 applies and therefore, the ER Respondents must establish reasonable need for the information sought  
27 in the depositions. In finding that the ER Respondents did not have reasonable need to proceed with  
28 the depositions, the Administrative Law Judge noted: the numerous documents disclosed by the

1 Division as exhibits subsequent to the issuance of the subpoenas; the forthcoming disclosure by the  
2 Division of the documents used by the accountant; the effect of these disclosed documents upon any  
3 current reasonable need for the depositions regarding those six areas specifically identified in the ER  
4 Respondents' Application for Subpoenas; and the schedule of the hearing, which will allow the ER  
5 Respondents additional time before presenting their case, thereby overcoming any surprise that may  
6 arise during the Division's presentation of its case in chief.

7       On April 3, 2015, by Procedural Order, the two subpoenas commanding attendance of the  
8 Division witnesses for depositions were quashed, as decided at the April 2, 2015 status conference.  
9 The Division was ordered to disclose by April 15, 2015, the supporting documentation relied upon by  
10 the Division's accountant in creating his Financial Data Summary. The Respondents were further  
11 ordered to continue to work toward resolving outstanding discovery issues arising from the ER  
12 Respondents' Motion to Compel.

13       On April 17, 2015, the ER Respondents filed a Motion to Continue Hearing. The reason for  
14 seeking a continuance was due to health conditions of Respondent Lance Michael Bersch. The ER  
15 Respondents requested that a status conference be set in about six months with the ER Respondents  
16 to file a status report at least 21 days before the status conference.

17       On April 22, 2015, by Procedural Order, a status conference was scheduled for April 28,  
18 2015, to address the ER Respondents' Motion to Continue Hearing.

19       On April 24, 2015, Respondent Concordia filed its Response to Motion to Continue.  
20 Respondent Concordia had no objection to the continuance requested by the ER Respondents.

21       On April 24, 2015, the Division filed a Motion for Leave to File Amended Notice of  
22 Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order  
23 for Administrative Penalties, and Order for Other Affirmative Action. The Division seeks leave to  
24 amend its Notice of Opportunity for Hearing to provide greater detailed factual allegations and to  
25 expound upon the fraud allegations from the original Notice.

26       Also on April 24, 2015, the Division filed its Response to the Motion to Continue Hearing.  
27 The Division contends that the ER Respondents' Motion to Continue should be denied as the ER  
28 Respondents have failed to provide sufficient information to justify a postponement due to illness.

1 However, the Division proposes a three month continuance of the hearing if leave is granted to  
2 amend the Notice of Opportunity.

3 On April 28, 2015, a telephonic status conference was held. The parties appeared through  
4 counsel. The ER Respondents' Motion to Continue and the Division's Motion for Leave to File  
5 Amended Notice were both discussed. It was also noted that a hearing was scheduled to convene in  
6 Superior Court on April 29, 2015, regarding a Motion to Stay Administrative Hearing filed by  
7 Respondents Bersch, Wanzek and Mrs. Wanzek, pursuant to their Notice of Appeal of the final  
8 judgment in the special action. A schedule was set for the filing of motions which would be  
9 addressed at a future status conference. The parties also agreed to vacate the currently scheduled  
10 hearing date.

11 Accordingly, a status conference shall be held to address the pending motions and the  
12 scheduling of a new date for hearing.

13 IT IS THEREFORE ORDERED that a telephonic status conference shall be scheduled for  
14 **May 7, 2015, at 10:00 a.m.**

15 IT IS FURTHER ORDERED that on the date of and at least five minutes before the time set  
16 for the status conference, the parties shall call 1 (888) 450-5996, passcode 457395#, from a landline  
17 telephone, to participate telephonically in the status conference.

18 IT IS FURTHER ORDERED that **the ER Respondents shall file a Response to the**  
19 **Division's Motion for Leave to File Amended Notice of Opportunity for Hearing by May 4,**  
20 **2014.** Also by May 4, 2014, the ER Respondents shall file additional information regarding Mr.  
21 Bersch's health and prognosis as pertains to their Motion to Continue.

22 IT IS FURTHER ORDERED that **any Response by Respondent Concordia to the**  
23 **Division's Motion for Leave to File Amended Notice of Opportunity for Hearing shall be filed**  
24 **by May 5, 2014.**

25 IT IS FURTHER ORDERED that **the Division shall file a Reply regarding its Motion for**  
26 **Leave to File Amended Notice of Opportunity for Hearing by May 6, 2014.** Also by May 6,  
27 2014, the Division may file a response to additional information from the ER Respondents regarding  
28 Mr. Bersch's health and prognosis as pertains to their Motion to Continue.

1 IT IS FURTHER ORDERED that the hearing scheduled to commence on May 11, 2015, at  
2 10:00 a.m., is vacated.

3 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
4 Communications) is in effect and shall remain in effect until the Commission's Decision in this  
5 matter is final and non-appealable.

6 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
7 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
8 *pro hac vice*.

9 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance  
10 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
11 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances  
12 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
13 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
14 Administrative Law Judge or the Commission.

15 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,  
16 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
17 ruling at hearing.

18 DATED this 28<sup>TH</sup> day of April, 2015.

19  
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21 \_\_\_\_\_  
22 MARK PRENY  
23 ADMINISTRATIVE LAW JUDGE

23 Copies of the foregoing mailed/delivered  
24 this 28 day of April, 2015, to:

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