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Re: I/M of the Purported Last Will and Testament of
Lucy B. Pietlock, deceased; C.A. Nos. 552-N and 582-N
Date Submitted: July 27, 2005

Dear Counsel:

The above-referenced actions involve challenges to the will of Lucy B. Pietlock. Robert J. Pietlock ("Robert"), the Petitioner in Civil Action No. 582-N, has reached a settlement with his brothers, Respondents Donald J. Pietlock ("Donald") and Stanley J. Pietlock ("Stanley"). Susan Pietlock Small ("Susan"),

the Petitioner in Civil Action No. 552-N, continues with her action. Robert seeks to dismiss Civil Action No. 582-N and to be allowed to withdraw his appearance in Civil Action No. 552-N. Those motions are granted, in accordance with the Court's teleconference with counsel on July 27, 2005, but subject to certain conditions described below.

Susan served written discovery requests upon Robert before he moved to withdraw. Under the Court's power to condition withdrawal based on the circumstances, Robert's responses to those discovery requests, as limited below, will be required as a condition for allowing his withdrawal as a party.[1]

I turn to Robert's substantive objections to the scope of Susan's written discovery.

1. Robert entered into a settlement agreement to resolve Civil Action No. 582-N with Donald and Stanley. The settlement agreement provides that it is to remain confidential, and, for that reason, the other parties all object to Susan's

[1] *See* Ct. Ch. R. 41(a)(2) (authorizing dismissal "upon such terms and conditions that the Court deems proper"); *Richmont Cap. Partners I, L.P. v. J.R. Invs. Corp*., 2004 WL 1152295 (Del. Ch. May 20, 2004). I acknowledge that Susan served discovery requests upon Robert after learning that he had decided not to pursue his claim.

access to it.[2] The settlement agreement, which was submitted for *in camera* inspection, generally sets forth the terms of the settlement between Robert and his brothers, addresses a third-party claim of the estate, has a confidentiality provision, and includes a few pages of standard terms.

Parties to litigation do not have an absolute right to deny access to the terms of their settlement to the non-settling parties.[3] Instead, it is necessary for the Court to balance the interests of the parties, in terms of both facilitating the settlement of litigation, on the one hand, and allowing access to admissible evidence or information that may lead to the discovery of admissible evidence, on the other hand.[4] To the extent that the settlement agreement may contain information regarding claims of the estate against third parties, the disclosure of which could prejudice the pursuit of those claims, such concerns can be addressed by limiting access to the settlement agreement. Thus, the settlement agreement shall be produced to counsel for Susan. He may share the settlement agreement with other

[2] They do not dispute a limited disclosure of the settlement amount.
[3] *See, e.g.*, *Council of Unit Owners of Sea Colony East v. Carl M. Freeman Assocs.*, 1990 WL 128185 (Del. Super. Sept. 5, 1990); *DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 684-85 (D. Kan. 2004).
[4] Donald and Stanley have not argued that disclosure of the settlement agreement would prejudice them in defending against Susan's claims by, for example, revealing litigation strategy.

attorneys in his firm, his staff, Susan, and any experts that may be retained. All who gain access to the settlement agreement in accordance with this letter opinion shall be precluded from disclosing the terms of the settlement agreement to others.[5]

2. With respect to the balance of Robert's concerns about the scope of his obligation to respond to Susan's written discovery requests, instead of an item-by-item canvassing of the various disputes, a few general observations should provide counsel with sufficient guidance:

A. Those discovery requests inquiring about what Robert intended to do at trial are now moot in light of his departure as a party from the litigation.

B. Those discovery requests inquiring into the nature of his settlement with his brothers are sufficiently answered with the production of the settlement agreement.

C. Robert expresses a concern that answering interrogatories might "dredge up negative feelings between parties who have resolved their differences." This, presumably, would result from how Robert might answer the interrogatories

[5] The settlement agreement's relevance to the matters pending before this Court may be limited, but, in light of the standards for discovery that govern the Court's exercise of its discretion, production of the settlement agreement is the appropriate course to follow. *See generally* Ct. Ch. R. 26.

seeking to elicit factual information from him. That, however, is an insufficient reason for not responding to discovery requests. The pertinent question is whether he has information that is relevant or might lead to the discovery of admissible evidence. Furthermore, there is nothing to suggest that the information which is generally sought is otherwise objectionable.[6]

In sum, Robert's withdrawal from Civil Action No. 552-N is conditioned upon his answering those written discovery requests which are designed to gather from him factual information relating to the pending claims. If his knowledge is limited, perhaps because of his residence in Colorado, then his responses to those discovery requests will also likely be limited.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-NC

[6] Robert has not shown that compliance with the discovery requests would subject him to "annoyance, embarrassment, oppression or undue burden or expense." Ct. Ch. R. 26(c).