

IN THE DISTRICT COURT OF OKLAHOMA ~~FILED IN THE DISTRICT COURT~~
 STATE OF OKLAHOMA OKLAHOMA COUNTY, OKLA.

FEB 18 2003

Oklahoma Department of Securities,)
 ex rel. Irving L. Faught, Administrator,)
)
 Plaintiff,)
 vs.)
 Accelerated Benefits Corporation, a Florida)
 corporation, et al.,)
)
 Defendants.)

PATRICIA PRESLEY, COURT CLERK
 By _____
 Deputy

Case No.: CJ-99-2500-66
 Judge Daniel Owens

**APPLICATION FOR INSTRUCTIONS FROM THE
 COURT REGARDING DISBURSEMENT OF PROCEEDS
FROM SALE OF CONSERVATORSHIP ASSETS**

Conservator Tom Moran respectfully requests that this Court provide him with instructions regarding the disbursement of the future proceeds from the sale of Conservatorship Assets. In support thereof Conservator would show the Court as follows:

1. This matter involves a fraud action brought by the Oklahoma Department of Securities (the "Department") against Defendant, Accelerated Benefits Corporation ("ABC"), American Title Company of Orlando ("ATCO") and three Oklahoma brokers who offered and sold investments in life settlement policies (the "Viaticals") on ABC's behalf.
2. ABC entered into contracts (the "Purchase Agreements") with individual investors (the "ABC Investors"), whereby, in exchange for a monetary payment by an ABC Investor, ABC agreed to pay to the ABC Investor a specified amount upon the maturity of a given Viatical.
3. On January 29, 2001, the Court held a non-jury trial of Defendants. On March 13, 2001, the Court adopted Findings of Fact and Conclusions of Law (the "Findings"), which among other things: (i) enumerated the misstatements and omissions of material facts Defendants made to

the ABC Investors in connection with the offer and sale of the Viaticals; and (ii) stated that Defendants committed fraud in the sale of such securities.

4. The facts misrepresented by Defendants included, without limitation, those relating to the "guaranteed payment of premiums" on the life insurance policies underlying the Viaticals.

5. At the conclusion of the trial the District Court entered an Order of Permanent Injunction against the Defendants.

6. Under the Purchase Agreements, after their initial investment the ABC Investors were not required to advance any additional funds for the payment of future premiums on the Viaticals. However, beginning in April, 2001, ABC unilaterally began billing ABC Investors for premiums on Viaticals in which the viator had exceeded his/her life expectancy.

7. The Department sought an injunction to prevent ABC from billing ABC Investors in Oklahoma for premiums on the Viaticals. On May 10, 2001, the Court granted the injunction sought by the Department and on June 15, 2001, sustained the Department's motion for an order directing ABC to return to the Oklahoma ABC Investors premium payments it had collected from them.¹

8. On February 6, 2002, the Court appointed Tom Moran as Conservator of certain assets of Defendant ABC and its agents, including ATCO and David Piercefield (the "Conservatorship Assets").

9. The Conservatorship Order gives the Conservator the direction and authority to:
- a. [T]ake custody, possession and control of the Conservatorship Assets as they are transferred to the Conservator;
 - b. [M]anage all Conservatorship Assets pending further action

¹ ABC has never provided any document evidencing its compliance with the Court's Order to repay the Oklahoma ABC Investors for premiums collected prior to the appointment of the Conservator.

by the Court including, but not limited to, the evaluation of the Policies, and to take necessary steps to protect the ABC Investors' interests including, but not limited to, the liquidation or sale of the Policies to institutional buyers and the assessment to ABC Investors of the future premium payments; . . .

* * *

- e. Make such payments and disbursements as may be necessary and advisable for the preservation of the Conservatorship Assets and as may be necessary and advisable in discharging his duties as Conservator including, but not limited to, the timely payment of all premiums for Policies that have not yet matured;
- f. Monitor the viators of the Policies by tracking the location of the viators and periodically checking the health of the viators;
- g. Receive notice of the death of viators, file death claims on the viators, and collect the proceeds paid on the Policies as such mature;
- h. Disburse to each ABC Investor his proportionate share of the proceeds, after deducting premiums advanced, paid in matured Policies; . . .

* * *

- m. Exercise those powers necessary to implement the Conservator's conclusions with regard to the disposition of the Conservatorship pursuant to the orders and directives of the Court.

10. Following his appointment, and with the Court's consent, the Conservator began billing the ABC Investors for their proportionate share of premiums on the Viaticals.

11. Approximately 55% of the ABC Investors billed by the Conservator paid their share of the premiums. The remaining 45% were either unwilling or unable to pay their share of the

premiums.²

12. On October 25, 2002, the Conservator filed his Motion for Order Approving Sale of Conservatorship Assets (the "Motion to Sell"). Following a hearing on the Motion to Sell, the Court entered its order on December 23, 2002, approving the sale of the Conservatorship Assets.

13. During the course of the hearing on the Conservator's Motion, the Court was asked by the Conservator to approve a plan for the distribution of the proceeds from the sale of the Conservatorship Assets.

14. The Conservator's Motion to Sell sought the Court's approval: (i) to use the proceeds from the sale to first repay those ABC Investors who advanced premiums billed by the Conservator; and (ii) thereafter to distribute the balance of the sale proceeds to the ABC Investors on a pro rata basis.

15. The Conservator believes that equity requires that the ABC Investors who have advanced funds for premiums during the Conservatorship be repaid prior to any distribution made to all investors, and that failure to do so will result in the unjust enrichment of those non-paying ABC Investors.

16. Further, since ABC's billing of the ABC Investors for premiums prior to the Order Appointing Conservator and Transferring Assets dated February 6, 2002 was a violation of the purchase agreements between ABC and the ABC Investors, and not authorized by the Court, ABC should be ordered to reimburse the ABC Investors for all such funds collected prior to the inception

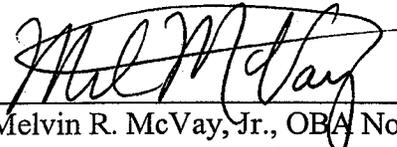
² From February 6, 2002 through November 1, 2002, ABC was responsible for paying all premium shortfalls. Following November 1, 2002, the Conservator began paying the shortfalls from funds comprising a part of the Conservatorship Assets.

of the Conservatorship on February 6, 2002.

17. ABC should not be allowed to benefit from its default under the purchase agreements at the expense of the ABC Investors. Under the purchase agreements, ABC warranted to the ABC Investors that they would not have to pay any amounts beyond their investments in order to keep the Viaticals in force. ABC should not be relieved of its liability simply because it did not properly escrow the premium funds, failed to escrow sufficient funds³, and/or did not properly estimate the life expectancies of the viators.

WHEREFORE, premises considered, Conservator Tom Moran respectfully requests the Court issue to him instructions regarding the distribution of proceeds resulting from the sale of Conservatorship Assets. Further, Conservator Tom Moran respectfully requests that the Court order ABC to repay investors for premium funds which were collected prior to the Conservatorship.

Respectfully submitted,



Melvin R. McVay, Jr., OBA No. 6096

Thomas P. Manning, OBA No. 16117

PHILLIPS McFALL McCAFFREY

McVAY & MURRAH, P.C.

Twelfth Floor, One Leadership Square

211 North Robinson

Oklahoma City, Oklahoma 73102

Telephone: (405) 235-4100

Facsimile: (405) 235-4133

ATTORNEYS FOR CONSERVATOR,
TOM MORAN

³ Despite the fact that some Viaticals have still not exceeded their life expectancies, ABC has represented to the Conservator that no escrow funds exist for payment of premiums on those Viaticals. Nor has ABC properly accounted to the Conservator for the funds that should have been escrowed under any of the Viaticals

CERTIFICATE OF MAILING

The undersigned certifies that on the 18th day of February, 2003, a true and correct copy of the foregoing was mailed via First Class Mail, postage prepaid, to the following:

Patricia A. Labarthe, Esq.
Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Oklahoma City, OK 73102
Attorney for Plaintiff

James Slayton, Esq.
4808 Classen Blvd
Oklahoma City, OK 73118

-and -

Dino E. Viera, Esq.
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
100 North Broadway Avenue, Suite 1700
Oklahoma City, Oklahoma 73102
Attorney for Defendants,
Accelerated Benefits Corporation and
American Title Company of Orlando

Jon W. McLanahan, Esq.
4205 McCauley Blvd, Suite 385
Oklahoma City, OK 73120-8347
Attorneys for Robert D. Stone and
Larry W. Hanks

Robert A. Nance, Esq.
Riggs, Abney, Neal, Turpen,
Orbison and Lewis
5801 Broadway Extension, Suite 101
Oklahoma City, OK 73118
Attorney for Lawrence Deziel

Jeff Hartmann, Esq.
Angela Ables, Esq.
Kerr, Irvine, Rhodes & Ables
201 Roberts S. Kerr, Suite 600
Oklahoma City, OK 73102
Attorneys for Life Alliance, L.L.C.

Rebecca A. Farris, Esq.
Helms & Underwood
2500 First National Center
120 North Robinson
Oklahoma City, OK 73102
Attorney for John C. Hinkle and
Wanda B. Hinkle

Nabeel Hamameh, Esq
800 N. Old Woodward Avenue, Suite 102
Birmingham, MI 48002
(248) 258-5658
Facsimile (248) 203-6907
Attorney for Infinity Capital Services, Inc.