

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

NOV 22 2002

PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

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

Case No. CJ-99-2500-66

**CONSERVATOR'S APPLICATION FOR ORDER ALLOWING
CONSERVATOR TO USE PREMIUM REIMBURSEMENT
PROCEEDS TO PAY CONSERVATORSHIP EXPENSES**

Conservator, Tom Moran ("Conservator"), hereby respectfully applies to the Court for an Order allowing the Conservator to use premium reimbursement proceeds to pay Conservatorship expenses, including but not limited to, premium shortfalls, Conservator's fees, and attorney's fees. In support of this application, the Conservator states as follows:

1. The core litigation underlying this matter was a fraud action brought by the Oklahoma Department of Securities against Defendants, Accelerated Benefits Corporation ("ABC"), American Title Company of Orlando ("ATCO"), C. Keith LaMonda and David S. Piercefield (collectively "Defendants"), and three Oklahoma residents (the "Oklahoma Defendants") who offered and sold investments in life settlement policies ("Viaticals") on Defendants' behalf. On December 17, 1999, the District Court entered an agreed order and judgment finding that the Oklahoma Defendants, acting as unregistered broker-dealers or agents, had sold unregistered

securities in and from Oklahoma.

2. Thereafter, the District Court held a non-jury trial of Defendants and 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 investors in connection with the offer and sale of the Viaticals; and (ii) stated that Defendants committed fraud in the sale of such securities.

3. The facts misrepresented by the Defendants in the sale of the viaticals included, without limitation, those relating to the "guaranteed payment of premiums" on the life insurance policies underlying the Viaticals. In fact, the Defendants set aside funds for the payment of such premiums according to a formula based on Petitioners' estimates of the Viator's life expectancies, which proved very inaccurate resulting in premium shortfalls.

4. On February 6, 2002, the Court entered its Order Appointing Conservator and Transferring Assets (the "Conservatorship Order") and appointed Tom Moran as Conservator. The Conservatorship Order transferred certain assets of ABC and its agents, including LaMonda, ATCO and Piercefield, (the "Conservatorship Assets"), including:

- a. All life insurance policies owned or held beneficially, directly or indirectly, by or for the benefit of ABC and/or ABC Investors, that were purchased prior to October 1, 2000 (the "Policies");
- b. All assets of ABC necessary to accomplish the objectives of the Conservatorship, including, but not limited to, computer hardware, databases, software, ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee, filing cabinets, office supplies, the lease to office space at 105 East Robinson Street, Suite 320, Orlando, Florida, and telephone systems;

- c. All premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from the Policies have been deposited; and
- d. The right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies.

See Exhibit "A", Conservatorship Order (emphasis added).

5. The Conservator was further given the direction and authority to accomplish the following:

- a. To take custody, possession and control of the Conservatorship Assets as they are transferred to the Conservator;
- b. To manage all Conservatorship Assets pending further action 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;
- c. Receive and collect any and all sums of money due or owing on the Policies to ABC or its agents;
- d. Seek the return of any cash, bond or guarantee on deposit with any regulatory agency or other entity on behalf of ABC or its agents;
- 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;

* * *

See Exhibit "A", Conservatorship Order (emphasis added).

6. The Court has specifically found that payment of premium shortfalls is an expense of the Conservatorship, as contemplated by the language of the Conservatorship Order. *See Exhibit "B", Transcript of September 27, 2002 hearing, p. 33.*

7. During the course of the Conservatorship, ABC has advanced funds for the payment of premiums.

8. Investors have been billed for premiums on the policies. Some investor premiums were collected prior to ABC advancing premiums and were available for use when the premiums came due. However, these investor funds were not used by ABC and ATCO because they could not properly account for their use and insure that each investor's premium was used only for the purpose for which it was collected. The Court has previously ruled that if investor funds were available for payment of specific premiums at the time that ABC advanced premiums, ABC would be entitled to reimbursement for those amounts at some future date. *See Exhibit "B", Transcript of September 27, 2002 hearing, pp. 37, 39.*

9. The Conservator has in his possession cash assets which are comprised of funds collected from investors for payment of premiums. These cash assets consist of the following: 1) Investor funds collected for payment of future premiums¹; 2) Investor funds which were collected for payment of current premiums which were not used by ABC and ATCO; and 3) Investor funds which represent reimbursement for premiums which were previously advanced by ABC, and collected after the premiums were paid (the "Premium Reimbursement Proceeds").

10. The Premium Reimbursement Proceeds are Conservatorship Assets as defined by the

¹ Investors have been billed for annual premiums. However, premiums are being paid monthly. Therefore, if the investor paid an annual premium of \$120.00, only \$10.00 would be used each month for payment of the premium on the specific policy for which it was collected.

Conservatorship Order and the Conservator has exercised his duty under the Conservatorship Order to collect funds which were "due and owing on the Policies to ABC or its agents."

11. The Conservator has no source of income from the Conservatorship Assets or other Conservatorship Assets with which to pay future premium shortfalls or current Conservatorship expenses.

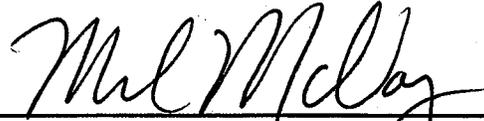
12. The Conservator seeks permission from the Court to use the Premium Reimbursement Proceeds for payment of premium shortfalls and the Conservatorship expenses approved by the Court.

13. The Premium Reimbursement Proceeds which Conservator seeks to use do not include any monies collected from investors for payment of future premiums. All monies collected from investors for payment of future premiums will be used only for the specific purpose for which they were collected.

14. If the Court does not allow the use of the Premium Reimbursement Proceeds, the Conservator will not be able to pay current or ongoing expenses, including future premium shortfalls and current payroll, and his ability to continue to perform his duties as Conservator will be severely jeopardized.

WHEREFORE, premises considered, Conservator, Tom Moran, respectfully requests this Court enter an Order allowing the Conservator to use the Premium Reimbursement Proceeds for the payment of Conservatorship expenses, including but not limited to, premium shortfalls, Conservator's fees, and attorney's fees.

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

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Telephone: (405) 235-4100

Facsimile: (405) 235-4562

ATTORNEYS FOR CONSERVATOR,

TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 22nd day of November, 2002, a true and correct copy of the foregoing Application was hand-delivered, to

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

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,
American Title Company of Orlando,
C. Keith LaMonda and
David S. Piercefield

A handwritten signature in black ink, appearing to read "Mark McKay", is written over a horizontal line.

copy

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

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

FEB - 7 2002
PATRICIA PRESLEY, COURT CLERK
~~By~~
~~DEPUTY~~

Case No. CJ-99-2500-66

ORDER APPOINTING CONSERVATOR AND TRANSFERRING ASSETS

This matter came on for hearing this 6th day of February, 2002, before the undersigned judge of the Oklahoma County District Court, State of Oklahoma, on the joint application of Plaintiff Oklahoma Department of Securities ("Department") and Defendant Accelerated Benefits Corporation ("ABC"), for this Order Appointing Conservator and Transferring Assets ("Conservatorship Order"). The Court, having reviewed all of the evidence offered, and being advised that the parties agree to the entry of this Conservatorship Order, finds that the following order should be entered in lieu of a judgment for restitution and in order to prevent potential irreparable loss, damage or injury to purchasers of interests in the right to receive the proceeds from the viatical and/or life settlement policies effectuated by ABC Purchase Request Agreements ("ABC Investors").

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Tom Moran of Oklahoma City, Oklahoma, ("Conservator") be and is hereby appointed Conservator of the following assets of ABC or its agents, including American Title Company of Orlando and David Piercefield ("Conservatorship Assets"):



1. all life insurance policies owned or held beneficially, directly or indirectly, by or for the benefit of ABC and/or the ABC Investors, that were purchased from the date of inception of ABC through September 30, 2000 ("Policies");

2. all assets of ABC necessary to accomplish the objectives of the Conservatorship listed below including, but not limited to, computer hardware, databases, software, ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee, filing cabinets, office supplies, the lease to office space at 105 East Robinson Street, Suite 320, Orlando, Florida 32801, and telephone systems;

3. all premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from Policies have been deposited; and

4. the right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies.

IT IS FURTHER ORDERED that the Conservator is given directions and authority to accomplish the following:

1. to take custody, possession and control of the Conservatorship Assets as they are transferred to Conservator;

2. to manage all Conservatorship Assets pending further action by this Court including, but not limited to, the evaluation of the Policies, and to take the 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 future premium payments;

3. to receive and collect any and all sums of money due or owing on the Policies to ABC or its agents whether the same are due or shall hereinafter become due and payable;

4. to seek the return of any cash, bond or guarantee on deposit with any regulatory agency or other entity on behalf of ABC or its agents;

5. to 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;

6. to monitor the viators of the Policies by tracking the location of the viators and periodically checking the health of the viators;

7. to receive notice of the death of viators, file death claims on the viators, and collect the proceeds paid on the Policies as such mature;

8. to disburse to each ABC Investor his proportionate share of the proceeds paid on matured Policies, which amount may be reduced by the total amount of any premium payments advanced by ABC or the Conservator on behalf of such ABC Investor;

9. to establish open communication with ABC Investors with proper disclosure of available options and consequences including, but not limited to, notice to ABC Investors of this Conservatorship Order within thirty (30) days of the entry of this Order;

10. to retain and employ attorneys, accountants, computer consultants and other persons as may be advisable or necessary to the exercise of the duties of the Conservator. Conservator may immediately retain or employ such persons, and compensate such persons, all subject to application to and approval by the Court;

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11. to open and inspect any and all mail and/or deliveries if same relate to the existence, location, identity and/or collection, preservation, maintenance or operation of Conservatorship Assets, and to notify any insurance company or third party administrator and the United States Postal Service to effect the forward delivery of any mail related to the Conservatorship Assets to a mail depository under the control of the Conservator;

12. to institute, prosecute, defend, intervene in or become party to such actions or proceedings in any state court, federal court or United States bankruptcy court as may in the Conservator's opinion be necessary or proper for the protection, maintenance and preservation of the Conservatorship Assets, or the carrying out of the terms of this Conservatorship Order; and

13. to exercise those powers necessary to implement his conclusions with regard to disposition of this Conservatorship pursuant to the orders and directives of this Court.

IT IS FURTHER ORDERED that ABC and its agents, including American Title Company of Orlando and David Piercefield, shall immediately begin the process of transferring the ownership and beneficial rights to the Conservatorship Assets to the Conservator until all Conservatorship Assets have been transferred. The transfer process shall conclude within ninety (90) days of the execution of this Order. If for any reason any Conservatorship Asset has not been transferred on or before end of the ninety (90) day period, ABC and/or its agents, including American Title Company of Orlando and David Piercefield, shall provide a list to the Conservator of the Conservatorship Assets that have not been transferred and the reasons therefor.

IT IS FURTHER ORDERED that this order supercedes the order of this Court dated May 10, 2001, that prohibited the assessment or collection of future premium payments from ABC Investors.

IT IS FURTHER ORDERED that ABC pay and maintain all office expenses, salaries, and other costs of the Conservatorship until at least seventy-five percent (75%) of all Conservatorship Assets have been transferred to the Conservator.

IT IS FURTHER ORDERED that all persons and entities, including ABC, its subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further including any banks or financial institutions, wherever chartered or located, life insurance companies, federal and state agencies, viators, viatical settlement providers, and viatical settlement brokers who receive actual notice of this Conservatorship Order, by personal service, facsimile transmission or otherwise, shall promptly deliver and surrender to the Conservator:

1. all Conservatorship Assets in the possession of or under the control of any one or more of them; and
2. all books and records of any kind pertaining to the Conservatorship Assets, to the ABC Investors, or to the viators whose lives are insured by the Policies.

IT IS FURTHER ORDERED that all persons and entities, including ABC, its subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further including any banks or financial institutions, wherever chartered or located, life insurance companies, federal and state agencies, viators, viatical settlement providers, and viatical settlement brokers who receive actual notice of this Conservatorship Order, by personal service, facsimile transmission or otherwise, fully cooperate with and assist the Conservator and that they take no action, directly or indirectly, to hinder or obstruct the

Conservator in the conduct of his duties or to interfere in any manner, directly or indirectly, with the custody, possession or control exercised by said Conservator.

IT IS FURTHER ORDERED that the Conservator is authorized, without breaching the peace, to enter and secure any premises under the control of ABC or its agents, wherever located or situated, in order to take possession, custody or control of, or to identify the location or existence of, any Conservatorship Assets.

IT IS FURTHER ORDERED that the Conservator may apply to the Court for compensation, from time to time, in a reasonable sum to be determined by the Court and from such sources as approved by the Court and for reimbursement for reasonable expenses incurred in connection with his duties as Conservator. The fees and expenses of the Conservator shall have priority over any other claims made against ABC. The Conservator shall not be required to give any bond. The Oklahoma Department of Securities shall have the authority to seek removal of the Conservator for cause and upon approval of this Court.

IT IS FURTHER ORDERED that except by leave of Court during the pendency of this Conservatorship, all creditors and other persons seeking money, damages or other relief from ABC or its agents, including American Title Company of Orlando and David Piercefield, and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees, are hereby stayed and restrained from doing any act or thing whatsoever to interfere with ABC or its agents, including American Title Company of Orlando and David Piercefield, in the orderly transfer of the Conservatorship assets or the Conservator or to the possession of or management by the Conservator of the Conservatorship Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over ABC. This

Conservatorship Order shall not stay or restrain any pending or future action whatsoever by any government agency or any representative on behalf of any government.

IT IS FURTHER ORDERED that any Conservatorship Assets remaining at the conclusion of the Conservatorship shall be transferred to ABC.

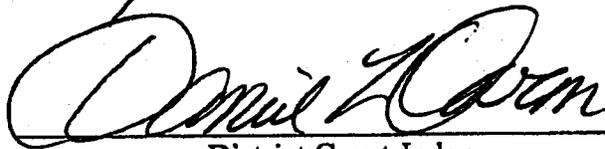
IT IS FURTHER ORDERED that ABC and its agents, including American Title Company of Orlando and David Piercefield, be held harmless from any and all liability, costs and damages arising in connection with each Conservatorship Asset after each such asset has been transferred to the Conservator.

IT IS FURTHER ORDERED that the Conservator be held harmless from any and all liability, costs and damages arising from acts of ABC and its agents, including American Title Company of Orlando and David Piercefield, before Conservatorship Assets have been transferred to the Conservator.

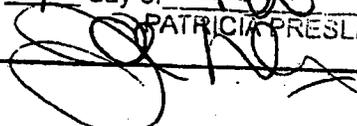
IT IS FURTHER ORDERED that the Conservator may rely on applicable exclusions or exemptions from registration under the Act in connection with the offer and/or sale of securities to institutional buyers in and/or from the state of Oklahoma.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over this matter and ABC for all purposes.

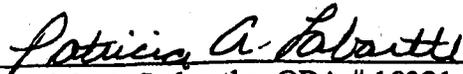
Dated this 6th day of February, 2002.

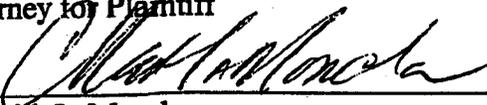


District Court Judge

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office of Oklahoma County, Okla., this 7 day of Feb, 2002.
By  PATRICIA PRESLEY, Court Clerk Deputy

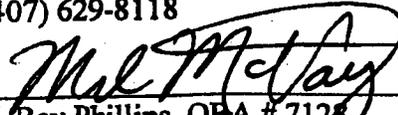
2- 5-02; 1:59PM; 1280755 # 8/ 6
Approved as to form and substance:


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Attorneys for Conservator

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF)
SECURITIES, ex rel., IRVING L.)
FRAUGHT, ADMINISTRATOR,)
)
Plaintiff,)
)
vs.) CASE NO. CJ-99-2500
)
ACCELERATED BENEFITS CORPORATION,)
a Florida corporation, et al.,)
)
Defendant.)

COPY

* * * * *

SEVENTH JUDICIAL DISTRICT OF OKLAHOMA

MOTION HEARING

TRANSCRIPT OF PROCEEDINGS

HAD ON THE

27TH DAY OF SEPTEMBER, 2002

BEFORE THE HONORABLE DANIEL L. OWENS

DISTRICT JUDGE

* * * * *

Reported By:

Cynthia Kay Jones, RMR
Official Court Reporter
321 W. Park, Room 304
Oklahoma City, Oklahoma 73102
(405) 713-1149



1 those documents and that's the FBI and that causes a problem .
2 well.

3 MR. MANNING: We did not get ATCO's records. We
4 got ABC's records. ATCO has records-- whatever records they
5 have they still have. That's correct.

6 MR. VIERA: Someone at the back of the room said
7 that.

8 THE COURT: Yeah. And here's where we're at.
9 I'm being asked to construe the order this Court has signed
10 relating to the payment and I believe the order is clear on its
11 face as to what the intent was.

12 Until 75 percent of those assets are transferred to the
13 conservatorship ABC is to pay the expenses which would include
14 premium payment. But I think the other part of that is, there
15 should be some funds left which ABC will be reimbursed.

16 My concern is, I can't understand ATCO sitting there with
17 400,000 in cash and there ever being a shortfall. Poor
18 accounting is not an excuse. Not for me. Because we have
19 investors who are relying on these premium payments to be made
20 to make sure these policies remain in full force and affect as
21 well as Mr. LaMonda, although he is a portion of this and has
22 been put into a conservatorship, has a right to expect a proper
23 accounting of these funds.

24 Evidently it was his choice to deal with ATCO knowing
25 their abilities to do certain things and their reputation for

1 won't be a conservatorship expense. If we can all agree on the
2 person which I think we are all in agreement at this point.

3 THE COURT: David Payne. I've dealt with Mr.
4 Payne before and he does an outstanding job and he's thorough.

5 MS. LABARTHE: He does, Your Honor.

6 MR. MANNING: For purposes of today's hearing I
7 want to make sure so that when we prepare the journal entry
8 that we get it correct.

9 Is it the Court's ruling that ABC is not entitled to be
10 reimbursed for any of the premiums that it has advanced thus
11 far and that the conservator is entitled to be reimbursed by
12 ABC for its expenses approved by the Court to date?

13 THE COURT: Well, I believe what the Court would
14 have to say, if ABC has advanced some premiums, and it's
15 determined later those premiums were, in fact, sitting with
16 ATCO available for use to pay those premiums, it would be
17 unwise of the Court to require double payment of premiums.

18 MR. MANNING: That's why I made available to the
19 Court our option or what we have previously offered since we
20 thought they had used that 400,000, but they hadn't, to allow
21 that to be a credit.

22 THE COURT: Exactly. Because that's not what
23 we're here for. We're not going to have Mr. LaMonda pay the
24 premium payments and have that premium payment sitting there
25 and then not get it back. But I can't make that determination

1 premiums over a period of time. I guess it's back to our
2 original conversation. We won't beat that to death again.

3 MR. MANNING: All I'm trying to clarify--

4 THE COURT: We take from Peter to pay Paul.

5 MR. MANNING: For the purpose of the journal
6 entry from today's hearing what should that reflect with regard
7 to the motions before the Court?

8 THE COURT: Well, it will reflect-- let's see if
9 I can word this without driving everybody crazy.

10 I don't believe the order entered by this Court is in any
11 way ambiguous as to the obligations of Mr. LaMonda.

12 Those premium payments, if Mr. LaMonda has advanced those
13 and those premium payments are available to ATCO to pay for the
14 very policies advanced he will be reimbursed for those pursuant
15 to the order at the end of this litigation which I hope isn't
16 going to take forever.

17 It was never the intent of the Court to have Mr. LaMonda
18 pay the premiums while the money is sitting there to be paid
19 via someone else.

20 I don't know how you want to put that in an order but
21 we're not here to double whammy somebody.

22 MR. MANNING: No.

23 THE COURT: In fact, the order wasn't a punitive
24 order. The order was just to gather the assets and make sure
25 we protected everybody.