

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

SEP 25 2003

PATRICIA PRESLEY, COURT CLERK
by Deputy

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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
Judge Dan Owens

**INTERIM APPLICATION FOR ORDER APPROVING ATTORNEY'S FEES
FOR THE PERIOD OF AUGUST 1, 2003 THROUGH AUGUST 31, 2003**

Conservator, Tom Moran, hereby respectfully applies to this Court for entry of an Order approving the interim application for attorney's fees of Phillips McFall McCaffrey McVay and Murrah, P.C. ("Phillips McFall"), counsel for Conservator for the period of August 1, 2003 through August 31, 2003. In support his application Conservator would show the Court as follows:

1. On February 6, 2002, the Court appointed Tom Moran as Conservator of certain assets of Defendant, Accelerated Benefits Corporation ("ABC"), and its agents, including American Title Company of Orlando and David Piercefield ("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.

2. The Conservator was 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;
- 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;
- i. Establish open communication with ABC Investors with proper disclosure of available options and consequences including, but not limited to, notice to ABC Investors of the Conservatorship Order within 30 days;
- j. 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, and compensate such persons, subject to application and approval by the Court;
- k. Open and inspect any and all mail and/or deliveries related 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;
- l. Institute, prosecute, defend, intervene in or become a 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 Conservatorship Assets, or the carrying out of the Conservatorship Order; and
- 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.

3. On February 21, 2002, the Court granted Conservator's application to employ Phillips McFall as counsel and approved its hourly rates.

4. Since its employment as counsel, Phillips McFall has performed certain tasks, which include:

- a. Representation of Conservator's interests in matters and proceedings arising in, or relating to, this case;
- b. Advising Conservator concerning the administration of the Conservatorship and Conservator's rights and duties, and the claims of investors and other parties in interest;
- c. Investigation of possible causes of action belonging to the Conservatorship; and,
- d. Assisting with such other matters as the Conservator has requested from time to time.

5. Conservator seeks to compensate Phillips McFall at its regular hourly rates, plus Phillips McFall's actual and necessary expenses for work performed for the period of August 1, 2003 through August 31, 2003.

6. Conservator did not pay Phillips McFall a retainer. While Phillips McFall would normally have requested a retainer, Phillips McFall agreed to accept employment on the basis that it would be provided interim compensation.

7. The standards for evaluating this application are set forth in State, ex rel. Burk v. City of Oklahoma City, 1979 OK 115, 598 P.2d 659; and Oliver's Sports Center, Inc. v. National Standard Ins. Co., 1980 OK 120, 615 P.2d 291. Those standards include the following:

- a. **Time and Labor Required.** Phillips McFall has devoted substantial time and effort in its representation of Conservator and seeks compensation for services which are detailed in the statement attached hereto as Exhibit "A".
- b. **Novelty and Difficulty of Questions Involved.** Phillips McFall has provided representation of the Conservator on numerous issues and tasks relating to the preservation of assets, pending litigation,

potential litigation and applications to the Court for approval of Conservator's actions.

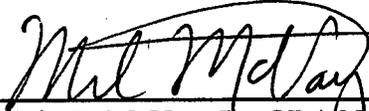
- c. **Skill Requisite to Perform Services Properly.** The Court previously approved the retention of Phillips McFall as general counsel because of the firm's experience and qualifications to render the services required by the Conservator.
- d. **Preclusion of Other Employment.** Phillips McFall has expended the time set forth in this application in representation of Conservator to the preclusion of other employment.
- e. **Fees Customarily Charged.** Phillips McFall has billed for its time on an hourly basis which is well within the professional rates customarily charged in this jurisdiction and which were previously approved by the Court on February 21, 2002.
- f. **Whether the Fee is Fixed or Contingent.** The fees charged by Phillips McFall are well within the professional rates customarily charged in this jurisdiction. The attorney's fees are neither fixed or contingent, but are based upon the reasonableness of such fees in relation to the work performed as a result of the representation.
- g. **Experience, Reputation and Ability of the Applicant.** The Court previously approved the retention of Phillips McFall as general counsel because of the firm's experience and qualifications to render the services required by the Conservator.

8. All professional services for which allowance of compensation is requested were performed by Phillips McFall for and on behalf of the Conservator.

9. This Application covers allowance of compensation for services performed from August 1, 2003 through August 31, 2003. During the period covered by this Application, Phillips McFall expended a total of 71.25 hours for services rendered on behalf of Conservator at hourly rates ranging from \$170.00 to \$240.00 per hour for a total fee of \$13,351.50, and has accrued \$240.94 in expenses. Exhibit "A" details the dates services were rendered, hours spent rendering the services and descriptions of the services rendered.

WHEREFORE, premises considered, Conservator, Tom Moran, respectfully requests this Court approve payment of interim compensation to Phillips McFall in the amount of \$13,592.44 for the period of August 1, 2003 through August 31, 2003.

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) 235-4562

ATTORNEYS FOR CONSERVATOR,

TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 25th day of September, 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

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



Phillips McFall McCaffrey McVay & Murrah, P.C.
Attorneys at Law
Twelfth Floor
One Leadership Square
211 N. Robinson
Oklahoma City, OK 73102
(405) 235-4100

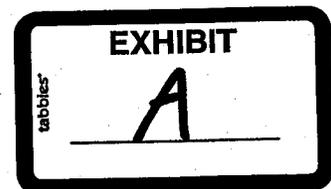
BILLING STATEMENT

Accelerated Benefits Corporation (ABC)
c/o Tom Moran, Receiver, Heritage
Heritage Group
3240 W. Britton Rd.
Oklahoma City OK 73120

08/31/03
ACCOUNT NO: 20861-12201M
21

ATTN: Conservatorship

	HOURS
08/01/03	
MRM Legal Services Telephone conferences with client and interoffice conferences regarding pending motion to intervene, payment of Akins insurance proceeds, which are in dispute, into Court, and drafting of interpleader order regarding same.	1.30
TPM Legal Services Conference with SAH re: escrow agreement; telephone conference with Mr. Lear re: Akin; conference with MRM re: Akin; telephone conference with Ms. Patterson re: Prudential release language; conference with SAH re: Order; conference call with Mr. Lear re: Order; telephone conference with Mr. Johnson re: Order.	1.90
SAH Legal Services Discussions of Escrow Agreement for interpleader of funds as a result by claims of Akin Trust.	1.20
08/02/03	
MRM Legal Services Review, revise and further drafting of Conservator's appellate brief regarding sale motion.	2.80
08/03/03	
SAH Legal Services Preparation of Order granting Motion to Intervene and establish escrow for disputed funds.	1.80
08/04/03	
NFW Legal Services Update correspondence and pleadings file; pull and obtain copy of Motion to	



	HOURS
Intervene for SAH.	0.75
MRM Legal Services	
Review proposed indemnification from Prudential regarding Aikins policy; telephone conferences with client and interoffice conferences regarding same.	1.30
BKS Legal Services	
Revise Answer Brief per discussions with Mel McVay.	3.60
SAH Legal Services	
Revise Order; telephone conference with J.Patterson regarding requested indemnity; telephone conference with H.Lear regarding facts associated with Beneficiary designations; review of proposed indemnity; conference with M.McVay.	2.90
08/05/03	
SAH Legal Services	
Telephone conference with H.Lear regarding background information on beneficiary designations under Akin Policy and other policies; analysis of irrevocables under Sale documents and prior pleadings.	1.80
08/06/03	
NFW Legal Services	
Pull and make copies for SAH of Conservator's Application for instructions from the court regarding handling irrevocable beneficiaries and Order re: same.	0.30
MRM Legal Services	
Conference with S. Hasenfratz regarding Aikin's policy and issues relating to same.	0.40
SAH Legal Services	
Telephone conference with M.McVay; review of Application for Order on irrevocables; review irrevocables on exhibit to Option to Purchase Agreement; telephone conference with H.Lear; telephone conference with office of J.Patterson requesting information.	2.30
08/07/03	
SAH Legal Services	
Telephone conference with J.Patterson regarding request for additional information.	0.60

	HOURS
08/11/03	
MRM Legal Services	
Telephone conference with client re: conservatorship issues; conference with Sally Hasenfratz re: same.	0.60
TPM Legal Services	
Conference with SAH re: status of Akin maturity payment.	0.50
08/12/03	
NFW Legal Services	
Pull copy of investor matrix and direct to clerical for handling.	0.10
MRM Legal Services	
Telephone conference with client re: Conservatorship issues; Review memos and case law re: Aikins policy issues; Review and analyze how to proceed re: issues relating to same.	1.80
TPM Legal Services	
Review investor list re: Akin matter.	1.70
TPM Legal Services	
Telephone conference with Mr. Lear re: Akin policy.	0.30
SAH Legal Services	
Review of issues and analysis of Option Purchase Agreement and related matters.	1.40
08/13/03	
MRM Legal Services	
Meeting with Sally Hasenfratz re: Conservatorship issues; Telephone conference with client re: same.	0.60
TPM Legal Services	
Telephone conference with Mr. Lear re: Akin policy; review documents from Mr. Lear re: irrevocables; conference with SAH re: Akin matter; telephone conference with Mr. Lear re: various questions on Akin.	1.70
SAH Legal Services	
Conference with M.McVay regarding Option Purchase Agreement; telephone conference with M.Doyle regarding status of Infinity payment; telephone conference with H.Lear regarding his inquiry about differences between face amount of policy and investor participation.	1.70
08/15/03	
MRM Legal Services	
Interoffice meetings re: Aikins policy issues; Review memos, pleadings and case law re: same.	1.40

	HOURS
08/18/03	
LAS Legal Services	
File Objection at Oklahoma County Court Clerk's Office.	0.25
TPM Legal Services	
Draft Response to Motion to Intervene.	0.80
MRM Legal Services	
Interoffice conferences regarding objection to motion to intervene; telephone conference with P. Labarthe regarding same; review and revise objection to motion to intervene.	1.10
08/19/03	
TPM Legal Services	
Telephone call to Mr. Johnson re: Motion to Intervene.	0.20
MRM Legal Services	
Follow-up work regarding issues relating to the Aikin's policy.	0.40
SAH Legal Services	
Telephone conference with J.Patterson's office regarding status of beneficiary designation on Akin Policy.	0.30
08/20/03	
MRM Legal Services	
Review memo regarding Aikin's policy and issues with Prudential; interoffice conferences regarding same.	0.50
SAH Legal Services	
Telephone conference with J.Patterson and preparation of memorandum regarding discussions; telephone conference with H.Lear summarizing accounting of premium payments made under Akin Policy.	0.90
08/21/03	
TPM Legal Services	
Telephone call from Mr. Lear re: irrevocables; telephone call from Mr. Moran re: Isaacs funds; draft Order re: June Conservator Fees; draft Order re: June Attorney Fees.	1.60
MRM Legal Services	
Review Aikin premium payment report; interoffice conferences regarding same; review appellant's application to file brief-in-chief.	0.80
TRP Legal Services	
Meeting with Tom Moran regarding several court matters.	0.90
SAH Legal Services	
Review of accounting regarding Akin	

	HOURS
Policy.	0.40
08/22/03	
KAS Legal Services File two Orders at Oklahoma County Court Clerk	0.25
TPM Legal Services Appear for hearing on Conservator Fees and Counsel Fee Applications; draft Application for July Attorney Fees; draft Notice of Hearing; telephone conference with Mr. Doyle re: July Conservator's fees; review and analyze Brief from Future First case.	2.20
SAH Legal Services Review of Future First position on irrevocable policies and brief.	0.60
08/25/03	
KAS Legal Services Filing at Oklahoma County Court Clerk	0.25
TRP Legal Services Review various matters with SAH and Tom Moran regarding Florida case.	1.90
08/26/03	
NFW Legal Services Assist TPM in locating a sample a purchase request agreement.	0.30
TRP Legal Services Personal conference with SAH re: Irrevocable beneficiaries and have to have them removed by the court; review Florida case.	1.80
MRM Legal Services Work on Akin policy issues; review various documents regarding same and case law regarding same; interoffice conferences regarding same.	1.70
08/27/03	
MRM Legal Services Continue to work on Akins policy issues and review of various documents regarding same.	1.20
TPM Legal Services Telephone conference with Mr. Doyle; telephone conference with Mr. Lear re: irrevocable policies; review irrevocable documents; conference with MRM re: same.	2.60
SAH Legal Services Detailed review of ABC files for policy and beneficiary information including sequence of ownership and beneficiary	

	HOURS
designations and whether irrevocable.	2.80
08/28/03	
IAS Legal Services Pick up Checks from Heritage Group.	0.60
KAS Legal Services File Cons. Report, Application for Fees, and Notice of Hearing at Oklahoma County Court Clerk, Set for Hearing with Judge Owens.	0.25
MRM Legal Services Continue to work on Akins policy issues; interoffice conferences regarding same.	0.80
TPM Legal Services Review documents from client; prepare July Conservator's Report; telephone conference with Mr. Doyle re: expense receipts; prepare Application for July Conservator's Fees.	2.20
SAH Legal Services Review of court pleadings regarding Akin Policy as Irrevocable; review of conveyance contracts and information applicable to transfer of Akin Policy from Akin Trust to Southwest Viatical to ABC.	1.20
08/29/03	
MRM Legal Services Further review of Akins policy relating documents and prepare for meeting regarding Akins policy; meeting with T. Manning and S. Hasenfratz regarding same; continue work on appellate brief regarding sale motion and order.	2.40
TPM Legal Services Letter to Mr. Moran re: hearing on Conservator Fee Application; review Akins file; conference with SAH and MRM re: Akins file; telephone conference with Mr. Moran re: Protective Order.	3.40
SAH Legal Services Re: Akin. Conference with M.McVay and T.Ray Phillips strategy for Akin policy; review of ABC file regarding various designations and beneficiary status and related matter.	1.90
FOR CURRENT SERVICES RENDERED	71.25 13,351.50
Long Distance	9.13
Photocopies	212.10

Accelerated Benefits Corporation (ABC)

(CONTINUED)

08/31/03

ACCOUNT NO: 20861-12201M

21

Postage	15.96
Local Fax	3.75

TOTAL EXPENSES THROUGH 08/31/03	<u>240.94</u>
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CURRENT ACTIVITY	13,592.44
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BALANCE DUE	<u><u>\$13,592.44</u></u>
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