

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

MAR 25 2004

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 Dan Owens

**INTERIM APPLICATION FOR ORDER APPROVING ATTORNEY'S FEES
 FOR THE PERIOD OF FEBRUARY 1, 2004 THROUGH FEBRUARY 29, 2004**

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 February 1, 2004 through February 29, 2004. 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

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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 February 1, 2004 through February 29, 2004.

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.

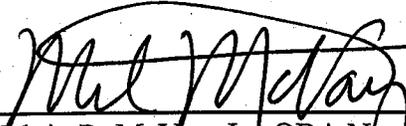
- c. **Skill Requisite to Perform Services Properly.** The Court previously approved the retention of Phillips McFall as general counsel because of the firm's experience and qualifications to render the services required by the Conservator.
- d. **Preclusion of Other Employment.** Phillips McFall has 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 February 1, 2004 through February 29, 2004. During the period covered by this Application, Phillips McFall expended a total of 134.80 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 \$25,954.00, and has accrued \$6063.36 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 \$32,017.36 for the period of February 1, 2004 through February 29, 2004.

Respectfully submitted,



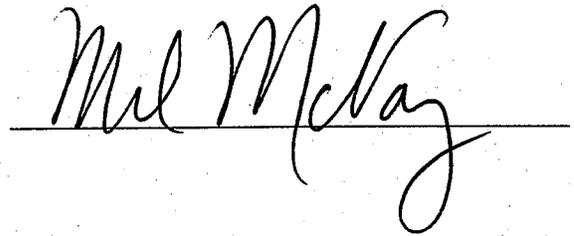
Melvin R. McVay, Jr., OBA No. 6096
Thomas P. Manning, OBA No. 16117
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4562
ATTORNEYS FOR CONSERVATOR,
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the ~~25th~~ day of March, 2004, 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.
Lance E. Leffel, 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

A handwritten signature in cursive script, reading "Mel McKay", is written over a horizontal line.

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
Tax ID #73-1288529
BILLING STATEMENT

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

02/29/04
ACCOUNT NO: 20861-12201M
28

ATTN: Conservatorship

	HOURS
02/02/04	
JKH Legal Services Pick up from First Fidelity Bank for DMC.	0.50
TPM Legal Services Review spreadsheet; telephone conference with Ms. Moran re: same; telephone call from Ms. Moran re: exhibits; telephone conference with District Attorney's office re: restitution account; telephone conference with Department of Corrections re: same; telephone conference with Ms. Moran re: balance of account; telephone conference with Ms. Brown re: First Fidelity Bank accounts; telephone conference with Mr. Moran re: balance of accounts and various legal matters; telephone call from investor re: irrevocable motion; prepare for hearing.	5.70
MRM Legal Services Interoffice conferences and telephone conferences with client regarding hearing on temporary injunction, fidelity bond and related conservatorship issues; follow up work regarding same and other conservatorship issues; review memorandum regarding employee dishonesty insurance policy.	2.20
SAH Legal Services Detailed review of Insurance Policies and preparation of Chart summarizing coverage and requirements.	3.40
TRP Legal Services Telephone conference with Tom Moran re: transactions; follow-up work re: same.	2.80
02/03/04	
TPM Legal Services Meet with Mr. Moran in preparation for	



	HOURS
hearing; appear before Judge Robertson on Motion for Temporary Injunction; draft Order Granting Injunction; meet with Mr. Moran and Ms. Townsend re: various matters; letter to Mr. Carter re: Order; telephone conference with Ms. Townsend re: investor question.	4.30
SAH Legal Services Conference with M.McVay regarding obligations under insurance policies; preparation of letter identifying loss.	2.60
MRM Legal Services Interoffice conferences and telephone conference with client regarding hearing on temporary injunction, fidelity bond and various conservatorship issues.	1.40
02/04/04	
MRM Legal Services Work on conservatorship issues; telephone conference with T. Moran regarding same.	0.90
SAH Legal Services Telephone conference with S.Thompson regarding title of Penny Calise and date of discovery of embezzlement; finalize notice letter.	0.90
02/05/04	
TPM Legal Services Review correspondence from Ms. Sievert; telephone conference with Ms. Sievert re: same; telephone call from Mr. Carter re: Ms. Calise.	0.70
MRM Legal Services Work on conservatorship issues; review and revise letter to bonding company; interoffice conferences regarding same.	0.80
02/06/04	
TPM Legal Services Telephone call from Ms. Townsend re: Holzmueller; review Orshien documents.	1.90
02/09/04	
MRM Legal Services Review service matrix regarding Akin interpleader lawsuit; interoffice conferences regarding conservatorship issues.	0.80
02/10/04	
MRM Legal Services Review and analysis of plaintiff's motion to certify third-party plaintiff class	

	HOURS
and brief in support; telephone conference with client regarding same and notice to insurance company regarding employee dishonesty policy; interoffice conferences and follow-up regarding conservatorship issues; review Conservator's report and application for order approving fees and expenses; draft correspondence to client regarding motion to certify.	2.70
TRP Legal Services Meet with MRM and Tom Moran regarding accounting matters.	2.90
SAH Legal Services Re: Embezzlement matter. Telephone conference with T.Moran regarding processing of insurance claim.	0.40
 02/11/04	
DC Legal Services 1. Filed Conservator's Report, Application for Conservator's Fees, get hearing date from Judge Owens' clerk for Notice of Hearing, filed same Oklahoma county Court Clerk. deliver "Filed" stamped copy of docs 1&2 to Judge Owens.	0.50
TPM Legal Services Review and analyze Motion for Summary Judgment re: Akin Trust.	1.30
MRM Legal Services Review correspondence from counsel for Prudential regarding Akin lawsuit; review and analysis of motion for summary judgment and brief in support filed by the Akin Trust; interoffice conferences and meetings regarding same; review local court rules and case law cited by Akin brief.	2.60
SAH Legal Services Conference with M.McVay regarding response to Motion for Summary Judgment; and initial review of Akin Trust Motion.	0.90
 02/12/04	
DC Legal Services Drop off Order for signature to Judge V. Robertson Oklahoma county courthouse.	0.30
TPM Legal Services Analyze Motion for Summary Judgment; conference with S.Hasenfratz re: same; draft response brief.	1.40
MRM Legal Services Interoffice conferences and work on conservatorship issues.	0.90

	HOURS
TRP Legal Services Work on problems with accounting matters.	3.20
02/13/04	
DC Legal Services Pick up Order from Judge Robertson, file same with Oklahoma county Court Clerk	0.30
MRM Legal Services Work on conservatorship issues.	0.60
02/16/04	
TRP Legal Services Meet with Tom Moran regarding policy matters.	1.90
TPM Legal Services Draft outline for response brief; research re: same.	5.10
TRP Legal Services Meet with Tom Moran, Jack Henley and Bill regarding corporate matters.	1.90
02/17/04	
SAH Legal Services Review of outline for preparation of Motion For Summary Judgement; review of Policy history and related matters.	2.30
TPM Legal Services Conference with S.Hasenfratz re: response brief; revise outline; research re: same; draft response brief; returned telephone call from investors.	7.20
MRM Legal Services Further review and analysis of Akin Trust's motion for summary judgment and case law regarding same; review documents/memos regarding Akin Trust issues; interoffice conferences regarding same; work on conservatorship issues.	2.80
DC Legal Services File Investor's responses (x15) Oklahoma county Court Clerk; deliver copy of same to Judge Dan Owens Oklahoma county Courthouse	0.50
02/18/04	
TPM Legal Services Draft response brief; telephone call from Ms. Townsend re: Akin.	2.50
MRM Legal Services Interoffice conferences regarding conservatorship issues and response to Akin Trust motion for summary judgment; telephone conference with client regarding conservatorship issues.	0.80

	HOURS
02/19/04	
TPM Legal Services Draft response brief.	5.30
MRM Legal Services Telephone conference with client regarding conservatorship issues and Infinity Capital; review correspondence and documents regarding same.	0.70
02/20/04	
SAH Legal Services Telephone conference with D.Kearney, attorney for Prudential, regarding issues with the Akin Life Insurance Policy and related matters for response to Motion for Summary Judgement.	2.20
TPM Legal Services Draft response brief; meet with S.Hasenfratz; telephone conference with Prudential's counsel re: questions; telephone call from Ms. Townsend re: Akin.	7.40
MRM Legal Services Review correspondence and documentation regarding change of ownership of Infinity; follow up regarding issues relating to same; work on conservatorship issues.	1.60
SAH Legal Services Preparation of letter on embezzlement and insurance claim.	0.30
02/22/04	
SAH Legal Services Review and revision of response to Motion for Summary Judgement.	2.40
02/23/04	
TPM Legal Services Draft Brief.	4.90
MRM Legal Services Interoffice conferences regarding response to motion for summary judgment; review and analysis of motion to strike the motion of the third-party plaintiff class; review documents regarding Akin Trust claims; further review of response brief.	1.80
SAH Legal Services Meeting with T.Manning regarding comments to Objection to Motion for Summary Judgement.	0.60

	HOURS
02/24/04	
TPM Legal Services	
Revise response brief; review and analyze Motion to Strike.	5.70
MRM Legal Services	
Review and revise response of Conservator to motion for summary judgment of defendant Akin Trust; work on various conservatorship issues; telephone conferences with client regarding same; interoffice conferences regarding class action suit; telephone conference with P. Saffron regarding sale of Infinity and that Yvonne Huang is the principal of the new owner of Infinity and the authorized agent of Infinity; conferences with S. Hasenfratz regarding same; follow-up regarding Infinity Capital issues; telephone conference with P. Verner regarding same.	3.70
SAH Legal Services	
Conference with T. Manning regarding status of Objection.	0.30
SAH Legal Services	
Review of documents regarding ownership and authorized signatory of Infinity; telephone conference with P.Saffron, P.Verner.	1.60
02/25/04	
TPM Legal Services	
Draft Affidavit; telephone conference with Ms. Townsend re: Freeman policy and Akin; revise Brief.	4.10
TRP Legal Services	
Telephone conference with Tom Moran. Meet with Mel and Tom regarding various matters.	2.80
SAH Legal Services	
Review and comment to Brief.	3.80
02/26/04	
TPM Legal Services	
Conference with S.Hasenfratz re: response brief.	0.40
MRM Legal Services	
Follow-up work and conferences regarding conservatorship issues and Conservator's answer brief to Akin Trust's motion for summary judgment.	0.70
SAH Legal Services	
Continued review of Motion for Summary Judgement; telephone conference with D.Kearney and L.Johnson regarding	

	HOURS	
extension of time; telephone conference, with Sheri regarding ABC as beneficiary.	1.20	
02/27/04		
DC Legal Services		
Files Order Granting Att. Fees and Order Substituting Accountants Oklahoma county Court Clerk	0.30	
TPM Legal Services		
Draft Order re: attorney fees; draft Order re: substitution of accountant; appear for hearing; draft Application for Extension; draft Order; file Application; telephone call from Mr. Carter re: Ms. Calise; revise Brief; revise Affidavit; telephone conference with Mr. Moran re: Affidavit; telephone conference with Ms. Townsend re: Akin.	6.10	
TRP Legal Services		
Meet with Tom, Jack and Bill regarding all accounting matters.	2.50	
SAH Legal Services		
Discuss comments to Motion for Summary Judgement.	1.20	
02/29/04		
MRM Legal Services		
Review and revise draft of response to Akin Trust's motion for summary judgment; further review of documents regarding same.	1.30	
FOR CURRENT SERVICES RENDERED	134.80	25,954.00
Long Distance		18.81
Photocopies		2,420.85
Postage		3,442.79
Local Fax		2.00
Long Distance Fax		27.00
TOTAL EXPENSES THROUGH 02/29/04		5,911.45
01/29/04 Check to Shadid & Assoc.\Private Process Server re: CJ-04-615		60.00
01/31/04 Check to Westlaw Invoice #805949506 re: online research.		71.91
02/02/04 Check to Oklahoma County Court Clerk\Filing Fees re: Court Reporters Fee CV-2004-615.		20.00
TOTAL ADVANCES		151.91

Accelerated Benefits Corporation (ABC)

(CONTINUED)

02/29/04

ACCOUNT NO: 20861-12201M

28

CURRENT ACTIVITY

32,017.36

BALANCE DUE

32,017.36

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA
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Oklahoma Department of Securities,
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vs.

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) MAR 25 2004
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PATRICIA PRESLEY, COURT CLERK

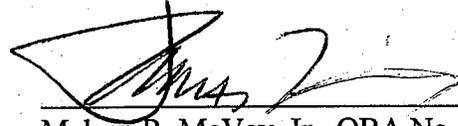
by _____
) Deputy

) Case No. CJ-99-2500-66
) Judge Daniel L. Owens
)
)
)
)

NOTICE OF HEARING

Please be advised that a hearing on the Interim Application for Order Approving Attorney's Fees for the Period of February 1, 2004 through February 29, 2004, has been set for the 23rd day of April, 2004, at 9:00 A.m., before the Honorable Judge Daniel L. Owens.

Respectfully submitted,



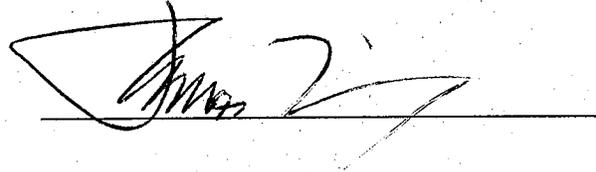
Melvin R. McVay, Jr., OBA No. 6096
Thomas P. Manning, OBA No. 16117
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4562
ATTORNEYS FOR CONSERVATOR,
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 25th day of March, 2004, a true and correct copy of the foregoing Notice of Hearing was mailed, first-class with postage prepaid, to:

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.
Lance E. Leffel, 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*

A handwritten signature in black ink, appearing to read "James J. Viera", is written over a horizontal line.