

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

Oklahoma Department of Securities,
ex rel. Irving L. Faught, Administrator,

Plaintiff,

vs.

Accelerated Benefits Corporation, a Florida
Corporation, *et al.*,

Defendants.

MAR 25 2005

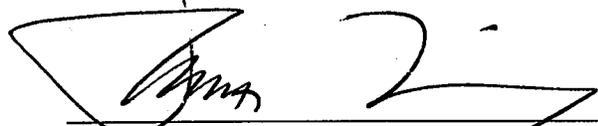
PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

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

NOTICE OF HEARING

Please be advised that a hearing on Conservator's Motion to Supplement Designation of Record for Appeal and Brief in Support has been set for the 29th day of April, 2005, at 9:00 A.m., before the Honorable Judge Daniel L. Owens.

Respectfully submitted,



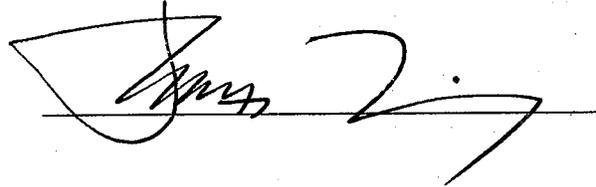
Melvin R. McVay, Jr., OBA No. 6096
Thomas P. Manning, OBA No. 16117
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4562
ATTORNEYS FOR CONSERVATOR,
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 25th day of March, 2005, 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.
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 "Dino E. Viera", is written over a horizontal line. The signature is stylized and cursive.

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

MAR 25 2005

OKLAHOMA DEPARTMENT OF)
 SECURITIES *ex rel.*, IRVING L.)
 FAUGHT, ADMINISTRATOR)

PATRICIA PRESLEY, COURT CLERK
 by _____
 Deputy

Plaintiff,)

v.)

Case No. CJ-99-2500-66

ACCELERATED BENEFITS)
 CORPORATION, *et al.*,)

Supreme Court
 Case No. 101054

Defendants.)

**CONSERVATOR'S MOTION TO SUPPLEMENT
 DESIGNATION OF RECORD FOR APPEAL AND BRIEF IN SUPPORT**

COMES NOW, Conservator Tom Moran, by and through his attorneys, and moves this Court for an order permitting the Designation of Record for Appeal in Oklahoma Supreme Court Case No. 101054 to be supplemented as provided in Rule 1.28(b) to include the Conservator's Report to the Court Regarding Distribution of the Akin Policy Proceeds filed March 3, 2005 (the "Conservator's Report"). In support of his Motion the Conservator states as follows:

BRIEF IN SUPPORT

On August 9, 2004, Defendants filed a Petition in Error and Designation of Record with the Oklahoma Supreme Court in Case No. 101054 challenging this Court's Order entered July 9, 2004, construing its prior Order Appointing Conservator and Transferring Assets (the "Conservatorship Order"). On August 24, 2004, the Conservator filed his Response to Petition in Error in Case No. 101054.

At the time the Response to the Petition in Error was filed, an interpleader action was pending in the United States District Court for the Western District of Oklahoma, Case

No. CIV-03-1444, regarding the proceeds of a life insurance policy covering the life of Jean Marie Akin, deceased (the "Akin Policy"). The federal court ultimately ordered that the remaining proceeds from the Akin Policy be distributed to the Conservator. Pursuant to the federal court's order, Prudential distributed the remaining Akin Policy proceeds to the Conservator. The Akin Policy proceeds have been used by the Conservator to pay court-approved Conservatorship expenses. The Conservator filed his Report to the Court Regarding the distribution of the Akin Policy proceeds on March 3, 2005.

As noted by the United States Supreme Court in *Board of License Commissioners of the Town of Tiverton v. Pastore*, 469 U.S. 238, 240, 105 S.Ct. 685, 686 (1985), counsel have a "continuing duty to inform the Court of any development which may conceivably affect the outcome" of the litigation, particularly when the development may deprive the Court of jurisdiction. Similarly, the Oklahoma Supreme Court has recognized that it may take cognizance of facts arising during the pendency of an appeal if such facts have a direct impact on the issues tendered for review. *See Northeast Oklahoma Electric Cooperative, Inc. v. State of Oklahoma ex rel Corporation Commission*, 1991 OK 28, 808 P.2d 680, 683 fn. 6; *City of Tulsa v. Chamblee*, 1940 OK 431, 106 P.2d 796, 797-98.¹ In fact, in *City of Tulsa*, the Oklahoma Supreme Court further stated that facts occurring during the pendency of the appeal are particularly noteworthy where they affect the right and duty of the Court to proceed in the exercise of its appellate jurisdiction. *Id.* at 798. Under such circumstances, Supreme Court Rule 1.28(b) permits materials not before the trial court at the time of the decision appealed to be included in the record on appeal pursuant to an order of the trial court.

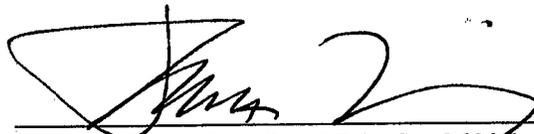
¹ Similarly, under 12 Okla. Stat. § 990.2(B) the successful party to a post-trial "motion to correct, open, modify, vacate or reconsider" must to advise the Supreme Court of the action taken on such motion, although that section is not directly applicable to the pleadings at issue here.

In the current case, the Conservator's Report on the distribution of the Akin Policy proceeds directly impacts the Supreme Court's jurisdiction of the subject appeal because the distribution of the policy proceeds may render the appeal moot. Accordingly, the Conservator has a duty to inform the Supreme Court of these facts. Therefore, the Conservator seeks this Court permission to supplement the record in Oklahoma Supreme Court Case No. 101054 to include the Conservator's Report.

CONCLUSION

For the reasons stated herein, the Conservator hereby requests that its Motion to Supplement Designation of Record for Appeal be granted as set forth herein.

Respectfully submitted,



Melvin R. McVay, Jr., OBA No. 06096
Thomas P. Manning, OBA #16117
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
One Leadership Square – 12th Floor
211 North Robinson
Oklahoma City, OK 73102
Telephone: (405) 235-4100
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ATTORNEYS FOR CONSERVATOR,
H. THOMAS MORAN

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Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102
Attorney for Plaintiff

Dino E. Viera, Esq.
Fellers, Snider, Blankenship, Bailey & Tippens
100 North Broadway, Suite 1700
Oklahoma City, OK 73102-8820
Attorneys for Defendants, Accelerated Benefits
Corporation and American Title Co. of Orlando

Clerk of the Supreme Court
of the State of Oklahoma
State Capitol, Room B-2
2300 North Lincoln
Oklahoma City, OK 73152

Patricia Presley, Court Clerk
District Court of Oklahoma County
320 Robert S. Kerr, 4th Floor
Oklahoma City, OK 73102

