

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

AUG 24 2004

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

Plaintiff,

vs.

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

Defendants.

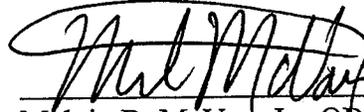
PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

Case No. CJ-99-2500-66
Judge 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 July 1, 2004, through July 31, 2004, has been set for the 13th day of OCT, 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,

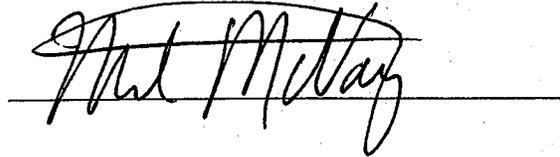
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 24th day of August, 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 cursive script, appearing to read "Paul McKay", is written over a horizontal line.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

AUG 24 2004

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
Judge Dan Owens

**INTERIM APPLICATION FOR ORDER APPROVING ATTORNEY'S FEES
FOR THE PERIOD OF JULY 1, 2004 THROUGH JULY 31, 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 July 1, 2004 through July 31, 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 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 July 1, 2004 through July 31, 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.

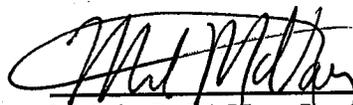
- c. **Skill Requisite to Perform Services Properly.** The Court previously approved the retention of Phillips McFall as general counsel because of the firm's experience and qualifications to render the services required by the Conservator.
- d. **Preclusion of Other Employment.** Phillips McFall has 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 July 1, 2004 through July 31, 2004. During the period covered by this Application, Phillips McFall expended a total of 98.25 hours for services rendered on behalf of Conservator at hourly rates ranging from \$45.00 to \$240.00 per hour for a total fee of \$19,008.50, and has accrued \$260.97 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 \$19,269.47 for the period of July 1, 2004 through July 31, 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 24th day of August, 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.
William H. Whitehill, Jr., 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 "Mark McLaughlin", is written over a horizontal line. The signature is stylized and cursive.

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

07/31/2004
ACCOUNT NO: 20861-12201M
33

ATTN: Conservatorship

	HOURS
07/05/2004 MRM Legal Services Review plaintiff's objection to Defendant's Application to Continue Hearing; follow up on various ABC matters.	0.90
07/08/2004 MRM Legal Services Work on various receivership issues; review correspondence re: same; telephone conferences with client re: same; prepare for meeting with client re: same; rewiw status report re: settlement in Akin case.	2.80
07/09/2004 MRM Legal Services Interoffice conferences re: Akin policy issues; prepare for meeting with client to discuss conservatorship issues; meeting with client re: same.	3.30
07/12/2004 MRM Legal Services Interoffice conferences re: conservatorship issues.	0.70
07/13/2004 MRM Legal Services Work on conservatorship issues; telephone conference with Gordon Dunlap re: servicing issues; telephone conference with client re: same; interoffice conference re: draft of letter re: servicing issues.	1.30



		HOURS
07/14/2004	MRM Legal Services Interoffice conferences re: Akin settlement; review and revise letter to Gordon Dunlap re: servicing issues; conferences with SAH re: same.	0.90
07/19/2004	MRM Legal Services Interoffice conferences re: conservatorship issues and Akin settlement; review Journal of Entry of Judgment and Application to the Court re: same; work on conservatorship issues.	1.60
07/20/2004	MRM Legal Services Interoffice conferences re: Akin settlement and dispute with ATCO; review court orders re: same; work on various conservatorship issues; telephone conference with Paul Verner re: servicing issues.	1.30
07/21/2004	MRM Legal Services Review Court of Appeals Opinion affirming the rulings of the trial court re: the sale of the portfolio and financing of the portfolio; review Journal Entry of Judgment re: Akin; conferences with client re: conservatorship issues; interoffice conferences re: same.	1.30
07/24/2004	MRM Legal Services Further review of Court of Appeals decisions; follow-up on conservatorship issues.	1.30
07/28/2004	MRM Legal Services Review and revise Motion of Conservator for Order of Disbursement of Interplead Funds and Brief in Support to be filed in the Akin lawsuit.	1.30
	Melvin R. McVay	<u>16.70</u>

		HOURS
07/01/2004	TRP	
	Legal Services	
	Telephone conference with Tom Moran regarding various operational matters regarding Section 6036; begin research; personal conference with Tom Moran regarding tax and corporate matters for accounting for conservatorship; research regarding Section 6036 and filing of tax returns.	6.10
07/13/2004	TRP	
	Legal Services	
	Telephone conference with Tom Moran re: financing.	0.80
07/16/2004	TRP	
	Legal Services	
	Meet with MRM regarding various matters regarding accounting and how to proceed.	1.20
07/21/2004	TRP	
	Legal Services	
	Meet with CPA, Sherry Townsend, Tom Moran regarding conservatorship. Meet with Grant Thornton re: same.	2.80
	T.Ray Phillips, III	10.90
07/23/2004	HLH	
	Legal Services	
	Office conference with T.Manning regarding reserach needed; conduct research and revise pleading.	3.70
07/26/2004	HLH	
	Legal Services	
	Office conference with T.Manning; research to support brief.	0.60
07/27/2004	HLH	
	Legal Services	
	Revise brief.	3.10
	Heather L. Hintz	7.40
07/09/2004	DC	
	Legal Services	
	File Order Granting April Att. fees; Oklahoma County Court Clerk	0.30

		HOURS
07/20/2004	DC	
	Legal Services	
	Deliver W-9 form to Tom Moran; The Heritage Group, 3240 W Britton Road	0.60
07/23/2004	DC	
	Legal Services	
	File Order Granting Application for May Fees; Oklahoma County Court Clerk	0.30
07/26/2004	DC	
	Legal Services	
	File Interim Application For June Attorney Fees; deliver copy of same to Judge Owens, set for hearing, file Notice of Hearing; Oklahoma County Court Clerk	0.30
	David Carter, Jr.	1.50
07/02/2004	TPM	
	Legal Services	
	Appear for hearing on Motion to Enforce; letter to Mr. Whitehill re: Order; review correspondence from Mr. Whitehill re: same; telephone conference with Ms. Labarthe re: same; telephone call to Judge Owens re: Order; telephone call to Ms. Labarthe re: presenting Order to Judge Owens; appear before Judge Owens re: Order.	2.30
07/06/2004	TPM	
	Legal Services	
	Telephone call from Mr. Kearney re: Journal Entry; telephone call from Mr. Viera re: Order re: Motion to Enforce; revise Order; telephone conference with Mr. Kearney re: Journal Entry.	0.90
07/07/2004	TPM	
	Legal Services	
	Telephone call from Ms. Townsend re: deceased investor; review and revise proposed Order from Mr. Kearney; telephone call to Mr. Viera re: Order for Motion to Enforce; review correspondence from Mr. Viera re: Order; telephone call to Mr. Viera re: same.	2.10

	HOURS
07/08/2004 TPM Legal Services Draft Motion to Settle Journal Entry; telephone call to Mr. Viera re: same.	1.10
07/09/2004 TPM Legal Services Draft Order for Attorney Fees; appear for hearing on Application for Attorney Fees; telephone conference with Mr. Viera re: hearing on Motion to Settle Journal Entry; appear for hearing on Motion to Settle Journal Entry; telephone conference with Ms. Townsend re: hearing and request for conservator information for reporting.	1.90
07/12/2004 TPM Legal Services Telephone call from investor re: payment received.	0.20
07/13/2004 TPM Legal Services Telephone call from Ms. Townsend re: Penny Calise; telephone call from Mr. Kearney re: Order.	0.50
07/14/2004 TPM Legal Services Telephone conference with Mr. Farner re: estate of Edward Michaels; telephone call to Mr. Adkins re: same; telephone conference with Ms. Seivert re: same; review documents from Ms. Seivert re investor Lopez.	1.70
07/20/2004 TPM Legal Services Review documents from Ms. Sievert re: Estate of Rita Moore; draft Motion for Order of Distribution.	2.70
07/21/2004 TPM Legal Services Draft Application for Order of Disbursement.	2.60
07/22/2004 TPM Legal Services	

		HOURS
	Draft Application for Order of Disbursement; research re: Rooker-Feldman doctrine; research re: full faith and credit.	6.90
07/23/2004 TPM	Legal Services Draft Order for May Attorney Fees; appear for hearing on May Fee application; telephone call from investor Guillory re: question on Akin policy; telephone call from Ms. Townsend re: various matters; draft Motion for June Attorney Fees.	2.70
07/27/2004 TPM	Legal Services Review and revise Application for Order of Disbursement; telephone call from investor re: distribution.	2.90
07/28/2004 TPM	Legal Services Telephone call from Mr. Farner re: deceased investor.	0.30
07/30/2004 TPM	Legal Services Telephone call from investor re: distribution; review documents from Ms. Sievert re: various deceased investor issues.	1.70
	Thomas P. Manning	30.50
07/09/2004 JDR	Legal Services Filed papers at Oklahoma Court Clerk	0.25
07/13/2004 JDR	Legal Services Deliver package to David Kearney at Gable and Gotwals.	0.15
07/21/2004 JDR	Legal Services Deliver package to David Kearney.	0.10
	Jeremy D. Robinson	0.50

		HOURS
07/01/2004	Legal Services	
SAH	Review of Service and Escrow Agreement; telephone conference with Tom Moran; telephone conference with P.Verner regarding letter from KBS Law; review file; prepare letter in response to KBS claim.	2.20
07/02/2004	Legal Services	
SAH	Conference call with T.Moran, P. Verner, G.Dunlop regarding identity of ownership of Infinity issues and KSB loan letter.	1.30
07/07/2004	Legal Services	
SAH	Telephone conference with T.Moran; review of Infinity ownership matters.	0.70
07/08/2004	Legal Services	
SAH	Review of P.Verner letter regarding accounting requirements; brief comparison with Service and Escrow Agreement.	0.80
07/09/2004	Legal Services	
SAH	Meeting with Conservator representation regarding P.Verner letter; summarize ownership; review accounting information; discuss response.	4.20
07/13/2004	Legal Services	
SAH	Commenced preparation of letter to G.Dunlop responding to administrative and accounting issues; review of Service and Escrow Agreement.	3.30
07/14/2004	Legal Services	
SAH	Continued work on letter in response to accounting and administrative issues; review of work sheets and reports; review of Prudential pleadings, irrevocable policies and related matters; conference with S.Townsend to provide additional reports and clarification of issues.	8.60

		HOURS
07/19/2004	SAH Legal Services Review letter to G.Dunlop; email to S.Townsend regarding adjustment to Reserve Account.	0.70
07/20/2004	SAH Legal Services Review of Invoices and telephone conference with Sheri Townsend to comments to invoices and 7/19 letter.	1.40
07/21/2004	SAH Legal Services Meeting with T.Moran, S.Townsend, Allen, R. Goranson, T.R. Phillips regarding accounting issues associated with conservatorship.	1.60
07/27/2004	SAH Legal Services Telephone conference with S.Townsend regarding consent to letter of inquiry about death benefits; review of report; telephone conference with S.Townsend regarding recommended changes.	0.80
07/30/2004	SAH Legal Services Preparation of Administrative Services Agreement; letter to P.Verner and M.Monk; review of research regarding receivership tax reporting.	4.90
	Sally A. Hasenfratz	30.50
	FOR CURRENT SERVICES RENDERED	98.00
		18,991.00

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
Melvin R. McVay	16.70	\$225.00	\$3,757.50
T.Ray Phillips, III	10.90	225.00	2,452.50
Heather L. Hintz	7.40	190.00	1,406.00
David Carter, Jr.	1.50	45.00	67.50
Thomas P. Manning	30.50	170.00	5,185.00
Jeremy D. Robinson	0.50	45.00	22.50
Sally A. Hasenfratz	30.50	200.00	6,100.00

Accelerated Benefits Corporation (ABC)

(CONTINUED)

07/31/2004

ACCOUNT NO: 20861-12201M

33

Long Distance	3.53
Photocopies	195.90
Postage	14.69
Local Fax	12.50
Long Distance Fax	6.00
TOTAL EXPENSES THROUGH 07/31/2004	<u>232.62</u>

07/01/2004	Check to DC/petty cash\Outside copies re: reimbursement for copies from Oklahoma County Court Clerk.	2.00
	TOTAL ADVANCES	<u>2.00</u>

CURRENT ACTIVITY	19,225.62
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BALANCE DUE	<u>\$19,225.62</u>
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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
Group
3240 W. Britton Rd.
Oklahoma City OK 73120

07/31/2004
ACCOUNT NO: 20861-17401M
14

HTM Conservator, L.L.C. Entity File

	HOURS	
07/07/2004		
JLM		
Legal Services		
File annual L.L.C. certificate		
electronically with the OK Secretary of		
State.	0.25	
FOR CURRENT SERVICES RENDERED	0.25	17.50
Photocopies		1.35
TOTAL EXPENSES THROUGH 07/31/2004		1.35
07/15/2004		
Sooner Deposit Access Acct/Filing Fees		
re: Secretary of State online filing		
Annual LLC Certificate.		25.00
TOTAL ADVANCES		25.00
CURRENT ACTIVITY		43.85
BALANCE DUE		<u>\$43.85</u>