

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

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

Plaintiff,

vs.

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

Defendants.

JUN 24 2004

PATRICIA PRESLEY, COURT CLERK

by _____
Deputy

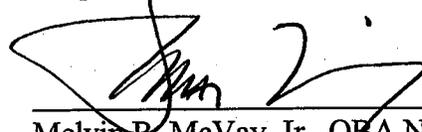
Case No. CJ-99-2500-66

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 May 1, 2004 through May 31, 2004, has been set for the 23 day of July, 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 June, 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*

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

JUN 24 2004

PATRICIA PRESLEY, COURT CLERK
By ~~DEBBY~~

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 MAY 1, 2004 THROUGH MAY 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 May 1, 2004 through May 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 May 1, 2004 through May 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 May 1, 2004 through May 31, 2004. During the period covered by this Application, Phillips McFall expended a total of 95.70 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 \$15,986.00, and has accrued \$435.23 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 \$16,421.23 for the period of May 1, 2004 through May 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 June, 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



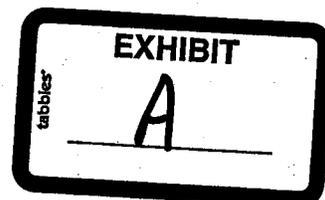
Phillips McFall McCaffrey McVay & Murrah, P.C.
Attorneys at Law
Twelfth Floor
One Leadership Square
211 N. Robinson
Oklahoma City, OK 73102
(405) 235-4100
Tax ID #73-1288529
BILLING STATEMENT

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

05/31/2004
ACCOUNT NO: 20861-12201M
31

ATTN: Conservatorship

	HOURS
05/04/2004 MRM Legal Services Meeting with TPM re: Akin policy discovery; handle various conservatorship issues; Conference with Tom Moran re: same.	1.30
05/05/2004 MRM Legal Services Finalize Akin lawsuit written discovery; Conference with TPM re: same; Review Prudential's Motion for Order Requiring Payment of Funds Into Court; Prepare comments to same.	1.60
05/07/2004 MRM Legal Services Interoffice conferences re: conservatorship issues; Follow up work re: conservatorship issues.	0.80
05/11/2004 MRM Legal Services Meeting with TPM re: Preparation of response to Prudential's Motion for Order to Pay Policy Proceeds into Court; Work on various conservatorship issues.	0.90
05/13/2004 MRM Legal Services Review and revisions to Conservator's Response to Prudential's motion to pay policy proceeds into Court; meeting with TPM re: same.	0.90
05/14/2004 MRM Legal Services Finalize response/objection to Prudential motion; Work	



		HOURS
	on receivership issues.	0.80
05/18/2004		
MRM	Legal Services Interoffice conferences and telephone conference with client re: portfolio servicing issues; Follow-up re: same; Work on receivership issues; Conference with TPM re: status conference in Prudential/Akin Lawsuit.	1.40
05/19/2004		
MRM	Legal Services Conference with TPM re: Prudential Akin Discovery plan and preparation of status and scheduling memorandum; Follow up on receivership issues; Review, revise and further drafting of Conservator's Motion to Explore Conservatorship Order and Brief in Support; Review discovery responses from the Akin Trust; Interoffice conferences re: same.	2.60
05/20/2004		
MRM	Legal Services Work on Receivership issues; work on settlement issues re: Akin Trust litigation; Telephone conferences with opposing counsel re: same.	1.10
05/24/2004		
MRM	Legal Services Work on Conservatorship issues.	0.80
05/25/2004		
MRM	Legal Services Review Joint Status Report filed in the Prudential/Akin pending litigation; Review case docket sheet; Telephone conference with Conservator re: Akin lawsuit and other conservatorship issues; Telephone conference with Larry Johnson re: settlement with Akin Trust; Follow up work re: conservatorship issues.	0.90
05/27/2004		
MRM	Legal Services Telephone conference with Tom Moran re: Conservatorship issues.	0.30
05/28/2004		
MRM	Legal Services Review fax from Prudential's counsel re: Akin policy; Prepare for status and scheduling conference.	1.20
	Melvin R. McVay	14.60

		HOURS
05/06/2004	TRP	
	Legal Services	
	Meet with MRM and Tom Moran re: various matters.	3.80
05/10/2004	TRP	
	Legal Services	
	Telephone conference with Tom Moran re: various matters on accounting.	1.30
05/13/2004	TRP	
	Legal Services	
	Telephone conference with Moran re: various receivership matters. Telephone conference with Sherry re: various accounting questions.	0.80
05/19/2004	TRP	
	Legal Services	
	Telephone conference with Tom Moran.	0.80
05/21/2004	TRP	
	Legal Services	
	Work on accounting matters with Tom Moran.	1.70
05/26/2004	TRP	
	Legal Services	
	Telephone conference with Tom Manning regarding Irving Faught and various related matters.	0.60
	T.Ray Phillips, III	9.00
05/06/2004	DC	
	Legal Services	
	Filed Notice to Defendants; US Dist. court western district	0.30
	DC	
	Legal Services	
	Deliver Interrogatories and Request for Production of Documents to David Kearney, Gable & Gotwals Leadership One #1500	
05/21/2004	DC	
	Legal Services	
	Filed Motion to Enforce Order, set same for hearing with Judge Owens, filed Notice of Hearing; Oklahoma County Court Clerk	0.30
	David Carter, Jr.	0.60
05/04/2004	TPM	
	Legal Services	
	Review Orscheln documents; review and revise	

	HOURS
proposed letter to Trustee; review and analyze Orscheln documents.	2.50
05/05/2004 TPM Legal Services Telephone conference with Ms. Townsend re: website and Samatha Amaral; telephone conference with Ms. Townsend re: Penny Calise/Travelers claim; telephone conference with Mr. Viera re: Akin Discovery Plan.	1.10
05/06/2004 TPM Legal Services Review and analyze Orscheln documents.	4.10
05/07/2004 TPM Legal Services Review correspondence and documents from Ms. Seivert re: Shackelford trust; telephone conference with Ms. Townsend and Ms. Seivert re: same and issues relating to joint accounts; review Orscheln documents.	1.70
05/10/2004 TPM Legal Services Review documents re: Schneck Trust; review documents re: Gunlock Trust; telephone conference with Ms. Seivert re: same; telephone conference with Ms. Townsend re: meeting request; returned telephone call from Ms. Labarthe re: Audit request; research re: attorney fees in interpleader response in federal court; review and analyze Prudential violation.	4.40
05/11/2004 TPM Legal Services Telephone conference with Ms. Townsend re: Medical Authorization form; telephone call to Mr. Kearney re: response to motion to interplead funds; meet with Mr. Moran and Ms. Townsend re: third party administration issues, uncashed check issues and website issue; telephone conference with Mr. Kearney re: objection to Prudential's motion to interplead funds; research re: discharge in interpleader action; draft Answer Brief to Prudential's Motion for Order Requiring Payment of Funds and Discharge of Prudential.	6.30
05/12/2004 TPM Legal Services Telephone call from Ms. Labarthe re: D.R. Payne letter; draft Answer Brief to Prudential's motion;	

		HOURS
	additional research re: Prudential's motion; review and analyze documents from Ms. Harrell re: Hagan policy; telephone conference with Ms. Harrell re: same.	4.30
05/13/2004	TPM Legal Services	
	Revise response brief; review correspondence from Ms. Seivert re: Bayer Trust; telephone conference with Ms. Seivert re: same; draft Motion to Enforce Conservatorship Order re: Akin policy.	6.70
05/14/2004	TPM Legal Services	
	Revise Response to Prudential's motion and prepare for electronic filing; draft Motion to Enforce Conservatorship Order re: Akin policy.	6.50
05/17/2004	TPM Legal Services	
	Draft Motion to Enforce Conservatorship Order.	3.90
05/18/2004	TPM Legal Services	
	Revise Motion to Enforce Conservatorship Order; telephone conference with Ms. Harrell re: Hagan policy; telephone conference with Mr. Hagan re: excess coverages on purchased policy; telephone conference with Ms. Townsend re: same; telephone conference with Mr. Viera re: Joint Discovery Plan; telephone conference with Mr. Kearney re: Joint Status Report.	3.60
05/19/2004	TPM Legal Services	
	Review documents re: investor Hicks; review documents re: investor Foster (deceased); telephone conference with Ms. Sievert re: same.	1.10
05/20/2004	TPM Legal Services	
	Telephone conference with Ms. Townsend re: irrevocable policies; revise Motion to Enforce Conservatorship Order; draft Affidavit in support of brief; telephone conference with Mr. Johnson re: possibility of settlement of Akin matter; review proposed Joint Status Report re: Akin/Prudential action; telephone conference with Ms. Townsend re: distributions to irrevocable investors; revise Joint Status Report.	3.80

		HOURS
05/21/2004	TPM	
	Legal Services	
	Revise Motion to Enforce Conservatorship Order;	
	telephone conference with Mr. Moran re: Affidavit;	
	telephone conference with Ms. Townsend re: Akin	
	premiums; review and revise Joint Status Report;	
	review and finalize Rule 26 Disclosure letter.	3.30
05/26/2004	TPM	
	Legal Services	
	Review correspondence from insurance company re:	
	Lowell Stafford; telephone call to Ms. Roy re: same;	
	telephone conference with Ms. Townsend re: Stafford	
	and Arnold policies; telephone conference with Ms.	
	Townsend re: Pensco accounts; telephone conference	
	with Ms. Townsend re: Orscheln policy; telephone call	
	from Mr. Moran and Ms. Townsend re: Houston	
	investors.	2.10
05/27/2004	TPM	
	Legal Services	
	Telephone call from Ms. Townsend re: Trust issues;	
	telephone call from daughter of deceased investor re:	
	distributions to estate.	0.60
05/28/2004	TPM	
	Legal Services	
	Drafted Order re: counsel fees; Appeared for hearing;	
	Telephone conference with Ms. Townsend re: various	
	issues with investor trusts.	0.70
	Thomas P. Manning	56.70
05/14/2004	FAL	
	Legal Services	
	Final editing and supplementation of response by	
	Prudential to motion to distribute.	0.50
	Fred A. Leibrock	0.50
05/17/2004	LEB	
	Legal Services	
	Research re: Missouri Life Insurance Regulations and	
	possibility of private cause of action against Insurance	
	Company	4.00
05/18/2004	LEB	
	Legal Services	
	Research re: Missouri Life Insurance Regulations and	

Accelerated Benefits Corporation (ABC)

(CONTINUED)

05/31/2004

ACCOUNT NO: 20861-12201M

31

	HOURS	
		possibility of private cause of action against Insurance Company
	3.50	
05/19/2004		
LEB		Legal Services
		Research re: Missouri Life Insurance Regulations and possibility of private cause of action against Insurance Company
	6.50	
	14.00	Laine E. Baker
05/28/2004		
ALB		Legal Services
		Filed and certified Order at county Court Clerk office
	0.30	
	0.30	Amanda L. Brown
	95.70	FOR CURRENT SERVICES RENDERED
	15,986.00	

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
Melvin R. McVay	14.60	\$225.00	\$3,285.00
T.Ray Phillips, III	9.00	225.00	2,025.00
David Carter, Jr.	0.60	22.50	13.50
Thomas P. Manning	56.70	170.00	9,639.00
Fred A. Leibrock	0.50	200.00	100.00
Laine E. Baker	14.00	65.00	910.00
Amanda L. Brown	0.30	45.00	13.50

Long Distance	1.83
Photocopies	194.55
Postage	131.05
Local Fax	1.00
TOTAL EXPENSES THROUGH 05/31/2004	328.43

05/17/2004	Check to IKON Office Solutions Document Services Invoice # 153807.	106.80
	TOTAL ADVANCES	106.80

CURRENT ACTIVITY 16,421.23

Accelerated Benefits Corporation (ABC)

(CONTINUED)

05/31/2004

ACCOUNT NO: 20861-12201M

31

BALANCE DUE

\$16,421.23