

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

v.

ACCELERATED BENEFITS
CORPORATION, a Florida
corporation, et al.

Defendants,

Case No. CJ-99-2500-66

**RESPONSE AND OBJECTION TO
APPLICATION FOR EMERGENCY RELIEF
AND REQUEST FOR COURT
APPROVAL OF REPRESENTATION**

COMES NOW Jon McLanahan and Lester, Loving and Davies, attorneys for selected viatical Investors (hereafter "Investors' Attorneys") and hereby submit their Response and Objection to the Application for Emergency Relief and Request for Court Approval of Representation.

Because there has never been a conflict of interest and there is no current financial arrangement between Investors' Attorneys and Accelerated Benefits Corporation, Inc. (as explained below), Plaintiff's Application should be denied, and Investors' Attorneys should be allowed to continue representing the Investors' interests.

INTRODUCTION.

The Plaintiff, Oklahoma Department of Securities is very mistaken. The Investors' Attorneys only objective has always been to protect the interests of their clients – the Investors - and to recover as much of their investment as possible from Accelerated Benefits Corporation and from others (hereafter "Accelerated").

The allegations contained in the Department's Application were levied without any investigation of the situation, and without even a discussion with the Investors' Attorneys to discover the facts. Instead, the Department rushed to a terribly wrong conclusion.

Had the Department conducted a modest investigation, it would have learned the truth about the Investors' Attorneys and their representation of the Investors. The Department would have learned that from the outset, the Investors' Attorneys have represented only the Investors, have never had an attorney-client relationship with Accelerated, currently have no financial relationship with Accelerated, and are in fact preparing their own claims against Accelerated and others. Instead, the Department rushed to judgment - a judgment that is grossly in error and not supported by the fact or law.¹

A client's choice of legal counsel is a constitutionally-protected matter. The Oklahoma Supreme Court called it a "critically important matter." A trial court may invade this important choice only upon a "clear evidentiary showing" that a conflict of interest exists. It is reversible error to disqualify an attorney or law firm without such clear evidence of a conflict. Here, there is not, nor has there ever been, a conflict of interest to warrant removal.

The Investors' Attorneys have never represented Accelerated, but have only represented the Investors. And, a previous financial relationship between Investors' Attorneys and Accelerated was permitted under Rule 1.8(f) of the Rules of Professional Conduct, since the parties were informed of the situation and agreed to it.² This payment arrangement is no longer in existence, which means there is nothing for the Investors' Attorneys to disclose, according to the ethical rules.

For these reasons, Investors' Attorneys request the Department's Application for Emergency Relief be denied, and they be allowed to continue representing the Investors' interests.

INITIAL INVOLVEMENT.

On October 3, 2002, the Oklahoma Supreme Court reversed this Court's Order, partially because of a lack of due process afforded the Investors. In light of this ruling, James A. Slayton was

¹ It is significant to note that the Department can provide not one legal authority in its Application which would support its extraordinary request to disqualify Investors' Attorneys.

² Further, the Department is in no place to complain about this situation, since it lacks standing to object to a payment arrangement agreed to between other parties.

contacted by Accelerated attorney William Whitehill in November of 2002 about the possibility of representing Investors in the referenced matter. It had become clear that it was in all parties' best interests for the Investors to be represented by their own legal counsel, particularly in light of the Supreme Court's ruling. Mr. Slayton then contacted Jon McLanahan about assisting in the case.

Immediately it was understood that the if the Investors' Attorneys assumed legal representation for the Investors, someone would surely try to argue that there was a conflict of interest. So, it had to be made explicitly clear that if Investors' Attorneys were in fact to get involved in the case, they would have to represent only the Investors, and this would have to be understood by all parties. It was also understood that the Investors' Attorneys would pursue claims against Accelerated and its principals, should such claims mature into causes of action.

It was agreed in writing that Investors' Attorneys would accept a payment from Accelerated, but represent only the Investors and have no attorney-client relationship with Accelerated. ***No attorney-client relationship was ever formed between the Investors' Attorneys and Accelerated.***

A Letter Agreement was then prepared by Investors' Attorneys and sent to Accelerated (See, Exhibit A, attached hereto and incorporated herein). Paragraph 2 of the Letter Agreement states:

It is understood between the Parties that while ABC will be financially responsible for the fees for legal services of Attorneys under this letter agreement, ***the Investors alone will be clients of the Attorneys in the referenced matter. Attorneys will undertake no legal representation of ABC, or any individual employed by or associated with ABC, and no attorney-client relationship is formed by this letter agreement between Attorneys and ABC, or any individual employed by or associated with ABC. As such, Attorneys will maintain all necessary and ethical obligations toward the Investors alone,*** including but not limited to maintaining all confidential information covered by the attorney-client privilege, and all other ethical obligations owed by Attorneys to the Investors as their clients. Since no attorney-client relationship is formed by this letter agreement, Attorneys shall maintain no such ethical obligations to either ABC, or any individual employed by or associated with ABC.

(Emphasis added.)

The Fee Agreement was signed by both Investors' Attorneys and was sent to Accelerated on or about November 27, 2002. The Fee Agreement originally contemplated an ongoing financial obligation under Rule 1.8(f), but it was modified to be a one-time retainer payment of \$25,000.

Investors' Attorneys then began involvement in this case on behalf of some Investors who had expressed a desire to be represented. It was made clear that while Accelerated had paid for this

initial involvement, the Investors' Attorneys were representing only the Investors. Much time was then spent reviewing the voluminous files, pleadings and other documents and evaluating the case and potential claims for the Investors. Attorneys then appeared on behalf of the investors at hearing dates of December 13 and December 20, 2002, regarding the sale of Conservator assets.

Investors' Attorneys can represent to the Court:

- (1) The initial work for the Investors has been completed.
- (2) The retainer amount provided by Accelerated has been completely exhausted.
- (3) No financial arrangement with Accelerated currently exists.
- (4) No attorney-client relationship between Investors' Attorneys and Accelerated ever existed.
- (5) There has been no contact between Investors' Attorneys and Accelerated.
- (6) And no further contact between Investors' Attorneys and Accelerated, other than litigation, is contemplated.

SUBSEQUENT INVOLVEMENT.

On December 13, 2002, a hearing on the Conservator's Petition for Sale of Assets was to be held. Numerous Investors, including John Roberts, were in attendance in the courtroom. Unfortunately, the hearing was continued due to the Court's unavailability. At that time, the Investors held a long meeting with Tom Moran and others in the courtroom.

Afterwards, the Investors met in the courtroom with the Investors' Attorneys. The discussion was centered on how to recover the amount of their investment that would be lost after the sale of the Conservator's Assets. The Investors' had numerous questions as to whether the Investors' Attorneys would pursue claims against Accelerated and others for their lost investments.

At this meeting on December 13, 2002, Investors had many questions about the relationship between Investors' Attorneys' and Accelerated. It was made clear to everyone's satisfaction that the Investors' Attorneys had received a one-time retainer fee from Accelerated, but the Attorneys had represented only the investors and had no relationship at all with Accelerated. (See, Affidavit of John Roberts, attached hereto as Exhibit B and incorporated herein by reference.)

After this meeting, many investors gave their mailing information to Investors Attorneys. They also asked how they might hire the Investors' Attorneys to represent them against Accelerated. (See, Affidavit of John Roberts.)

Thereafter, the Investors' Attorneys have been working at length with an investor group out of Amarillo, Texas, led by John Roberts in preparation of these claims. On or about February 25, 2003 a packet of information was mailed to Mr. Roberts' 33 customers. The packet is substantially similar to the one attached to the Department's Application. Thereafter, these same investors received another packet which contained Mr. Roberts' letter (which is attached hereto as Exhibit C, and incorporated herein). In Mr. Roberts' letter, he states:

All together I have interviewed seven Attorneys who wanted to represent us (the investors) in a class action lawsuit. I have chosen Mr. Jim Slayton and Jon McLanahan from Edmond, Oklahoma. They both enjoy a sterling reputation by their colleagues, clients and are respected by adversaries as well. Furthermore, they are Christian attorneys and come highly recommended.

Then, another 29 investors received packets of information on February 27, 2003. Finally, Betty J. Hudson asked for information packets be sent to her 10 customers, which was done on March 6, 2003.³

ARGUMENT AND AUTHORITIES.

The cases involving the disqualification of an attorney or law firm for a conflict of interest, state such a removal is an extraordinary remedy. This action should be reserved for extraordinary situations, because it impinges upon a client's constitutional right to choose legal counsel. As noted, in this case, *there is no evidence that an impermissible conflict has ever existed*. Thus, the Department's Application should be denied and the Investors' Attorneys should be allowed to continue representing their clients, the Investors.

In the case of *Towne v. Hubbard*, 3 P.3d 154, (Okla. 2000), the Supreme Court found an individual's right to hire an attorney of his/her own choosing to be a fundamental, due process right.

³ It was incorrectly represented to the Court that there were 2 mailings totaling 60 information packets mailed to Investors who received information packets. After investigation, it was learned that there were actually 3 mailings, totaling 72 packets (33, 29, and 10) that have been mailed to Investors.

In this case, the Supreme Court reversed the Order of the Honorable Carol Ann Hubbard, which disqualified an attorney from representation, based on conflict of interest allegations. The Supreme Court stated:

The right to the assistance of legal counsel includes the right to be represented by a legal practitioner of one's own choosing. In *Powell v. Alabama*, [287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932)] the United States Supreme Court stated, "It is hardly necessary to say that the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice." This right to select counsel without state interference is implied from the nature of the attorney-client relationship within the Anglo-American adversarial system of justice, wherein an attorney acts as the personal agent of the client and not of the state. ***It is also grounded in the due process right of an individual to make decisions affecting litigation placing his or her liberty at risk.***

Id. at 160, (emphasis added, citations omitted).

The only exception to this constitutionally-protected rule is when the judicial process itself is at stake, such as when an actual conflict of interest exists. But removal can only be allowed after a "full adversarial evidentiary hearing" in which evidence is provided on this "critically important matter". *Id.* at 162..

In the Supreme Court case of *State v. Rouse*, 961 P.2d 204 (Okla. 1998), the Court ruled on a conflict of interest allegation. The Court found no conflict of interest existed since the attorney (as here) never represented clients with conflicting interests. The Court stated:

This bar matter stands or falls on the belief of the credibility of the respondent, who testified that he told M.R. that he could not represent him. If believed, the respondent cannot be found to have violated Rule 1.7.

Id. at 208. In *Rouse*, the Supreme Court found no conflict of interest based on *testimony* of the attorney.

Here, the evidence is much stronger to disprove a conflict on interest. It is not mere testimony, but an actual letter agreement wherein ***no representation of Accelerated was clearly enunciated.*** It was explicitly stated - No attorney-client relationship has ever existed between the Investors' Attorneys and Accelerated.⁴

⁴ Similarly, in *Whitehead v. Rainey, Ross, Rice & Binns, LP*, 997 P.2d 177 (Okla. App. 1999), the Court of Appeals stated there was no attorney-client relationship between attorneys for a retirement plan administrator and the plan's beneficiaries.

Finally, in *Piette v. Bradley & Leseberg*, 930 P.2d 183 (Okla.1996). the Supreme Court reversed a trial court's disqualification of a law firm, because there was no attorney-client relationship established. The Court found no evidence that the law firm in question had ever received confidential information and therefore no attorney-client relationship existed.

The trial judge's disqualification order is summarily reversed and the cause remanded for an evidentiary hearing. If, after holding a hearing, the trial judge should determine that plaintiff's attorneys should be disqualified, its order of disqualification must include a specific factual finding that attorney Wagner had knowledge of material and confidential information.

(Citations omitted.)

Even if a continuing payment arrangement by Accelerated were present (*which it is not*), the Investors' Attorneys could still represent Investors, under the Oklahoma Rules of Professional Conduct. Rule 1.8(f) of the Professional Rules allows such arrangements, on an ongoing basis, when the arrangement is disclosed and the client consents to it⁵

Here, there is no payment arrangement to disclose. The payment arrangement with Accelerated is over, no more services on that retainer amount will occur. There is nothing under the Professional Rules for the Attorneys to disclose.

In the letter in question from Investors' Attorneys, it is *FUTURE* legal services which are discussed, not past services. For these future services, the Investors will be responsible for payment, not Accelerated. It is explicitly clear in the letter, the Investors - not Accelerated - will be paying for their own legal services. There is no payment arrangement with Accelerated disclosed, because no payment arrangement exists. And the Professional Rules never require disclosure of a past payment arrangement. (This is clear from the Rule's usage of the term "shall," meaning future

⁵ Rule 1.8(f) of the Rules of Professional Conduct states:

- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
 - (1) the client consents after consultation;
 - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (3) information relating to representation of a client is protected as required by Rule 1.6.

payment for legal services.) An attorney only has a duty to disclose a payment arrangement if such a payment arrangement exists for the future legal services of another.

This is not the case here – *the Investors will be paying for their own legal services*, according to the clear terms of the Legal Representation Agreement. In other words, because the Investors will be paying for their own legal services – and not Accelerated – there is no payment arrangement with Accelerated to disclose. And there has never been a conflict of interest which would require the Investors' waiver.

Thus, the Investors' Attorneys have complied with all ethical rules in this matter. The claims and allegations by the Department are incorrect. The Investors Attorneys should be allowed to continue representing their clients, the Investors, in this case, and the Department's Application should be denied.

WHEREFOR, Investors' Attorneys hereby request that Plaintiff's Application be denied in all respects and that they be allowed to continue their representation of investors in this matter and be reimbursed their costs and fees for defending this action.

Respectfully submitted,



Jon McLanahan, OBA No. 12777
Shannon Davies, OBA No.
LESTER, LOVING & DAVIES, P.C.
1505 S. Renaissance Boulevard
Edmond, Oklahoma 73013
(405) 844-9900 Telephone
(405) 844-9958 Facsimile

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of March, 2003, a true and correct copy of the above and foregoing was mailed by United States mail, postage prepaid, to:

Attorneys for Conservator, Tom Moran

Melvin McVay, Jr., OBA #6096
Thomas P. Manning, OBA #16117
Phillips McFall McCaffrey McVay & Murrah, P.C.
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Telephone: (405) 235-4100
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Attorney for Robert D. Stone and Larry W. Hanks

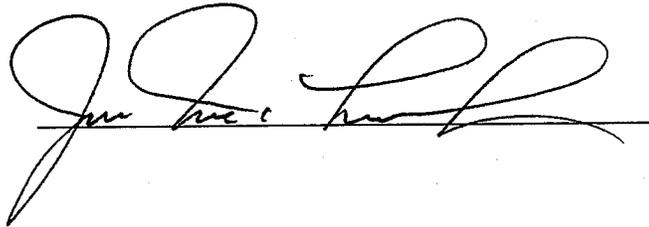
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Attorney for Lawrence Deziel

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Riggs, Abney, Neal, Turpen, Orbison and Lewis
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Attorney for John C. Hinkle and Wanda B. Hinkle

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Helms & Underwood
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120 North Robinson
Oklahoma City, OK 73102
Telephone: (405) 319-0700
Facsimile: (405) 319-9292

A handwritten signature in black ink, appearing to read "John C. Hinkle" and "Wanda B. Hinkle", written over a horizontal line.

November 27, 2002

C. Keith LaMonda
ACCELERATED BENEFITS CORPORATION
105 E. Robinson, Suite 308
Orlando, FL 32801

Re: Legal Services Regarding Viatical Settlement Purchasers of Accelerated Benefits Corporation; Case Number CJ-99-2500; In the District Court of Oklahoma County, State of Oklahoma

Dear Mr. LaMonda:

Thank you for requesting our assistance to represent the individual Viatical Settlement Purchasers (hereafter the "Purchasers"). We appreciate the confidence you have placed in us as attorneys. This letter will confirm our agreement whereby Accelerated Benefits Corporation (hereafter "ABC") employs us as attorneys (hereafter "Attorneys") to represent the Purchasers in the referenced litigation and all other proceedings in connection with the referenced matter.

It is understood between the Parties that while ABC will be financially responsible for the fees for legal services of Attorneys under this letter agreement, the Purchasers alone will be clients of the Attorneys in the referenced matter. Attorneys will undertake no legal representation of ABC, or any individual employed by or associated with ABC, and no attorney-client relationship is formed by this letter agreement between Attorneys and ABC, or any individual employed by or associated with ABC. As such, Attorneys will maintain all necessary and ethical obligations toward the Purchasers alone, including but not limited to maintaining all confidential information covered by the attorney-client privilege, and all other ethical obligations owed by Attorneys to the Purchasers as their clients. Since no attorney-client relationship is formed by this letter agreement, Attorneys shall maintain no such ethical obligations to either ABC, or any individual employed by or associated with ABC.

We charge for the time involved in a client's matter, which might include reviewing documents and correspondence, attending conferences (including telephone conferences), legal research, and any other time which, in our judgment, must be expended in the successful performance of the assignment.

If any out-of-pocket expenses such as telephone charges, messenger services (such as Federal Express), mileage, transportation costs, photocopying, court costs and special service of process fees, computer-assisted research, and other appropriate items are incurred they will be identified and charged to the Purchasers account with ABC.

EXHIBIT "A"

We normally send bills monthly. A statement of account will be sent to ABC on a monthly basis showing the total amount of hours incurred in the month, expenses incurred and the total amount owed by ABC for the month. Our billing cycle ends on the last day of the month and our statements will be rendered to ABC shortly thereafter.

In cases of this sort, we require that a retainer/deposit in the amount of \$30,000.00 be paid in advance of commencing any legal work. We will deposit these funds in our client trust account and will charge the fee for each month's services against the retainer/deposit amount. ABC will then be expected to reimburse the client trust account to the full \$30,000.00 retainer amount each month for which services are charged. Expense advances will also be billed on the statement and charged to the client trust account. If we anticipate a major expenditure of time or expense, for example preparation of the case for trial, we may request an increase in the size of the retainer/deposit in the client trust account.

The hourly attorney rates are \$190.00 per hour. In order to serve you most economically, certain matters may be handled by our legal assistant, whose rate is \$75.00 per hour.

These rates are subject to review and change by the Attorneys on a periodic basis. However, ABC will be given 15 days' advance notice of any such changes. Of course, we will handle our work for the Purchasers in such a way as to provide the most cost-effective representation possible consistent with our ethical and legal responsibilities.

With regard to time-based fees, the time spent performing services is measured in units of quarters of an hour (.25 = 15 minutes). All services have *minimum* time charges, ranging from .25 to 1.5 hours, even though the actual time may be less. Some examples of the Attorneys' services and their *minimum* time charges are as follows:

<u>Item</u>	<u>Time</u>
*Telephone calls	.25
*Preparation of correspondence or review of correspondence	.25
*Conferences with client or others	.25
*Preparation of documents where there is no fixed fee by agreement	.50
*Legal research	.50
*Court appearances (including travel and waiting time)	1.50

If this letter correctly expresses ABC's understanding of the terms of our engagement as Attorneys for the Purchasers, we would appreciate it if you would sign this letter below.

Sincerely yours,

Jon McLanahan

James A. Slayton

AGREED TO AND ACCEPTED this ____ day of _____, 2002.

ACCELERATED BENEFITS CORPORATION

BY: _____

TITLE: _____

JM:jm

no statement, taken no action, nor mentioned any course of proceeding which would conflict with the investors' interests.

6. I willingly talk to those of my customers who have questions about Messrs. McLanahan and Slayton and assure them that these are Christian men who have a high degree of integrity and will do all they can to protect the investors' interests. They have been nothing but open and honest in their dealings with me and my customers.

FURTHER AFFIANT SAYETH NOT.

Dated this _____ day of _____, 2003.

John R. Roberts

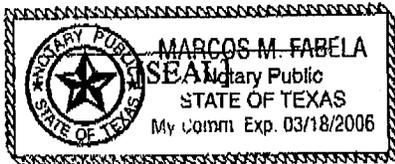
JOHN R. ROBERTS, SR.

SUBSCRIBED AND SWORN TO before me this 25 day of MARCH, 2003.

My Commission expires:

Marcos M. Fabela

Notary Public



JOHN ROBERTS & ASSOCIATES

Financial Services Company



John R. Roberts Sr., BS., MA.
Branch Manager
Registered Principal & O.S.J.



LUTC Graduate: Personal & Business Insurance
Recipient of: National Sales & Quality Awards

#19 Village Drive • Canyon, TX 79105
Bus (806) 655-4751 • Fax (806) 655-7300
Email jroberts@arn.net

17 Feb 2003

Dear ABC Investor;

For more than three years I have agonized over our investments with ABC and have followed all of the events as they have un-folded beginning with the Grand Jury Indictments handed down by the Florida Securities and Insurance Departments in 1998.

The results, as I understand them, are as follows: in the original trial, ABC won dismissal of 7 of the 11 allegations. Upon appeal, ABC won additional dismissals but still lost their licenses as a "Funding Company" in Florida. These were misdemeanors convictions.

The investigation and trial took about two years and during that time, **no substantial information was available from Florida authorities while investigations, were on-going.**

Once the information was available I concluded that if I had known conclusively of ABC's questionable ethics, I would not have invested my wife's own money or have presented "viaticals" to any of my investors.

Last year, ABC got into more trouble with the Oklahoma Securities Agency because some of their Sales Agents in Oklahoma were charged with selling viaticals (a security under Oklahoma State Law) as non-securities. After some time, attorneys representing ABC and the LaMonda family, made a settlement offer wherein the entire ABC portfolios would be turned over to Oklahoma under a Conservator ship managed by Mr. Tom Moran of Oklahoma City, Oklahoma.

ALL SECURITIES OFFERED THROUGH
UVEST Investment Services

member NASD • member SIPC
128 South Tryon 13th floor Charlotte, NC. 28202
(800) 277-7700 • (204) 371-8034 FAX

EXHIBIT "C"

Mr. Moran received all assets sometime in February of 2002. As of January 17th of 2003, Judge Owens, Oklahoma State District Judge, had agreed to sell the entire viatical portfolio through an auction process. There were 12 bidders. We (investors) paid retail of \$107,000,000 for the portfolio and the highest bidder offered \$57,000,000 to be paid out over a 10-year period.

THIS IS ONLY 50% OF WHAT WE PAID AND SOME OF YOU HAVE ALREADY WAITED SINCE 1997 HOPING AGAINST HOPE FOR THE MATURITIES WE WERE PROMISED WOULD ULTIMATELY BE PAID TO US PLUS A PROFIT.

There is still the possibility that the Oklahoma State Supreme Court may rescind Judge Owens's Order. We should know in 30-60 days.

Two of my clients and I went to Oklahoma City to represent our interest and was surprised to be the only Sales Agent to appear and defend his client's interest. (No other Financial Planner, Stockbroker, or Insurance Agent attended). At the end of the day, I was given the opportunity to cross-examine the Conservator, Mr. Moran, for about one hour

Later, I was given an opportunity to make a summary statement. I declared, "Your Honor, we have paid a high price for the privilege of speaking here today. We have been screwed by ABC & now by the Conservator. We are mad as hell and we are not going to take it anymore!"

All together I have interviewed seven Attorneys who wanted to represent us (the investors) in a class action lawsuit.

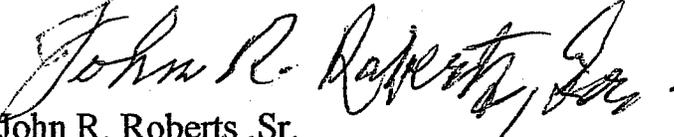
I have chosen Mr. Jim Slayton and Jon McLanahan from Edmond, Oklahoma. They both enjoy a sterling reputation by their colleagues, clients and are respected by adversaries as well. Furthermore, they are Christian Attorneys and come highly recommended.

We are suing for the full return of our principal, the profits we were promised upon maturity, IRA fees we paid to Sterling Trust Company, and a return of the premiums we paid unjustly thus violating the terms of our Purchase Agreements.

***Ultimately, it is up to each of us to decide what we will do in this matter.
The decision is yours, the time is right, and our cause is just.***

Please review the enclosed documentation and I hope you will choose to join with my wife Linda, and I in an effort to recover the full value of our investments.

Sincerely,


John R. Roberts ,Sr.