FILED
SUPREME COURT
STATE OF OKLAHOMA

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MICHAEL S. RICHIE
CLERK

No. 98,663

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES *ex rel.*,
IRVING L. FAUGHT, ADMINISTRATOR,
Plaintiff/Appellee,
v.
ACCELERATED BENEFITS CORPORATION and
AMERICAN TITLE COMPANY OF ORLANDO,
Defendants/Appellants.
v.
TOM MORAN,
Court-Appointed Conservator/Appellee

DEFENDANTS/APPELLANTS' PETITION FOR CERTIORARI

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE DANIEL L. OWENS, JUDGE OF THE DISTRICT COURT
CASE NO. CJ-99-2500-66
ACTION FOR VIOLATIONS OF THE OKLAHOMA SECURITIES ACT

October 11, 2004.

Dino E. Viera (OBA #11556)
William H. Whitehill (OBA #12038)
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS
100 North Broadway, Suite 1700
Oklahoma City, OK 73102-8820
Telephone: (405) 232-0621
Facsimile: (405) 232-9659

Attorneys for Defendants/Appellants, Accelerated Benefits Corporation and American Title Company of Orlando

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Pursuant to Oklahoma Supreme Court Rule 1.178, Defendants/Appellants, Accelerated Benefits Corporation ("ABC") and American Title Company of Orlando ("ATCO"; collectively "Defendants"), hereby apply for a writ of certiorari and request that the opinion of the Court of Civil Appeals ("COCA"), rendered on July 20, 2004 (the Opinion"), be vacated on the grounds it has decided a question of substance not in accord with the applicable decisions of this Court.[1]

I. INTRODUCTION

A. Reasons For Granting Certiorari.

In this appeal, COCA was called upon to determine whether the district court erred in construing its previous "Conservatorship Order" ("Order"). COCA affirmed the district court's construction of the Order and, in doing so, failed to follow Oklahoma's comprehensive scheme of construing orders and judgments in two respects. First, it ignored the basic principle that specific provisions of a judgment control over its general provisions and that the rule of *ejusdem generis* prohibits the type of construction reached by COCA. COCA's construction resulted in imposing an unwarranted obligation on Defendants exceeding $1 million. (Op. at 6.)

Second, COCA incorrectly determined that an insurance policy is deemed transferred "when the insurer confirms to the Conservatorship that the change of beneficiary or ownership ha[s] been made." (Op. at 8.) COCA never even acknowledged settled law that once the change of beneficiary forms have been completed, the transfer is deemed complete. The only reason given for ignoring this settled principle is "that ABC had been determined to have committed fraud," and that investments which ABC sold were "precarious." (Op. at 8.) However, there is no basis for eschewing controlling law for the sole reason that the defendant is, in the eyes of the

[1]Defendants' application for rehearing was denied on September 20, 2004.

court, a "bad actor who gets what he deserves." Had COCA followed the law, Defendants' monetary obligations would have been reduced by hundreds of thousands of dollars.

B. Subject Matter of the District Court Proceedings.

This case was originally filed by the Oklahoma Department of Securities (the "Department") on April 8, 1999, against ABC, ATCO and several other defendants. The Department successfully alleged that Defendants violated various provisions of the Oklahoma Securities Act. ABC arranged for the purchase of life insurance policies through a viatical broker who represented terminally ill persons insured under various life insurance policies. A "viatical settlement" generally provides that, in return for a sum of money in advance of death, the insured, or "viator," agrees to change the beneficiary of the policy in favor of a trustee who holds nominal title to the policy for the benefit of persons who have agreed to purchase an interest in the policy (hereafter the "Purchasers"). Upon the death of the viator, the proceeds of the policy are distributed to the Purchasers according to their quantum of interest in the policy.

ABC matched Purchasers with policies and received a fee for arranging the viatical transactions. ATCO, a bonded title company, acted as the trustee. Its duties included documenting the transaction to carry out the purchase of the policies, including changing the beneficiary of the policies. In some cases, the Purchasers became direct beneficiaries of the policies; however, in most cases, ATCO became the nominal beneficiary of the policies for the benefit of the Purchasers. ATCO held nominal title to approximately 1,400 policies for the benefit of nearly 4,500 Purchasers. Each of the Purchasers executed a "Purchase Request Agreement," which in tandem with various other documents, effected the viatical transaction. A reserve account was established to pay premiums, and keep the policies in force over the estimated life expectancy of the viator. After the District Court entered judgment in favor of the

Department, the parties drafted the terms of the Order which transferred the subject policies to the Conservator. The Order was thereafter submitted to the Court for his signature.

II. ARGUMENT AND AUTHORITIES

A. General Rules Of Construction Of Judgments.

COCA erroneously found that a phrase contained in the Order stating "office expenses salaries, and **other costs** of the Conservatorship," included the payment of premiums. (Op. at 6; emphasis supplied.) Even though the rules pertaining to the construction of judgments are well-settled, COCA did nothing but pay lip-service to these precepts and failed to apply them correctly. In general, once a judgment has become final, any controversy over the meaning and effect of that judgment must be resolved by resorting *solely* to the face of the judgment roll. *Stork v. Stork*, 1995 OK 61, 898 P.2d 732, 739. Only if a judgment is ambiguous on the face of the record may a court reach it for construction. *Id.* The meaning of a judgment is to be defined from the terms expressed in its text, which is to be construed with the other parts of the judgment. *Id.* In spite of these basic tenets of construction, COCA engaged in a wholesale revision of the terms of the Order to arrive at a result it saw as "just." However, justice cannot be achieved by ignoring the law, no matter what outcome is dictated by following it.

Even if it were proper to "construe" the judgment being considered, a court may not rewrite its provisions, and a court's search for clarification must be limited to the judgment roll. *Mills v. Mills*, 1992 OK Civ. App. 136, 841 P.2d 624, 627. Mere ambiguity will not affect a judgment's validity, unless none of its terms is susceptible to construction which will carry out its evident purpose and intent, rather than defeat it. *Jackson v. Jackson*, 2002 OK 25, 45 P.3d 418, 428. The court has no authority to add new provisions to the decree or to change

substantive provisions already in the decree, under the guise of construing the decree. *Id.* As shown below, these rules were not followed by the COCA. Rehearing should be granted and the district court's orders should be reversed. Further, when interpreting a judgment, the court should employ the usual canons of construction applied to contracts where, as here, the parties themselves drafted the judgment. *General Creditors of Estate of Harris v. Cornett*, 1966 OK 64, 416 P.2d 398, 400.

B. The Order Expressly Dictates That The Conservator Is Responsible For The Collection and Payment of Premiums.

The Order directed the Conservator to take possession and control over certain "assets." (Order at 2.) These assets included, *inter alia*, "all life insurance policies owned directly or indirectly" by ABC and its agents, including ATCO," and " all premium reserve accounts and bank accounts into which ABC investor funds or proceeds from the policies had been deposited. . . . ." (Order at 2.) The Conservator seized many of these assets immediately upon execution of the Order. Further, the Conservator was "*directed*" by the Order:

> 1. to take custody, possession and control of the Conservatorship Assets as they are transferred to the Conservator.
>
> * * *
>
> 5. to 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.**

(Order at 3; emphasis supplied.)

Thus, under the clear and unambiguous terms of the Order, the Conservator was, from the inception of the Conservatorship, responsible for control of the policies and payment and collection of premiums on the policies. Inexplicably, COCA eschewed the clear wording of the Order by claiming these provisions allowed the Conservator to force Defendants (or conceivably

anyone else) to make premium payments [cite]. This is sheer nonsense. If that were truly the intent of the Order, the Conservator could impose its own obligations (and did so) on other entities nowhere mentioned in the Conservatorship Order. The Order simply does not state that the Conservator has the power to delegate his obligations to pay premiums.

COCA also opined: "[T]he question should be asked that if Defendants were not responsible for making premiums' [sic] shortfall, then who was?" (Op. at 7.) The answer to this question lends nothing to the proper analysis of this issues. The Order says the Conservator pays the premiums. Moreover, *even though there were no shortfalls*; Defendants were forced to pay *all* premiums despite the fact that the Conservator had hundreds of thousand dollars on hand to pay them. This is precisely why the district court stated that the Conservator would have to reimburse ABC for premiums that had already been paid by the Purchasers. Why? Because, in the words of the district court, the Conservatorship Order was not meant to be punitive. If there had been a shortfall, *i.e.*, a situation where the Conservator was near the point of exhausting its available funds then, consistent with its track record, ABC would have been more than willing to cover the shortfalls. But here, ABC was forced, without a court order, to pay *all premiums*, not just the shortfalls. COCA should be required to clarify its opinion and direct the conservator to reimburse ABC for premiums it paid that were also paid by the Purchasers.

Contrary to the express wording of the Conservatorship order, the Conservator also informed ABC that it would not reimburse it for the premiums which ABC had advanced to protect the Purchasers from the Conservator's failure to perform his duties. COCA agreed with this non-existent contractual duty, based on the following language in the Order:

> IT IS FURTHER ORDERED that ABC pay and maintain all office expenses, salaries, and other costs of the Conservatorship until at least seventy-five percent (75%) of all Conservatorship Assets have been transferred to the Conservator.

(Order at 5.)

This language in no way references the funding or payment of premiums. It is limited to administrative expenses of the Conservatorship. In contrast, the Order, as quoted above, specifically says that the Conservator, not ABC or ATCO, is expressly duty-bound to make the timely payment of all premiums. (Order at 3.) It is a well known precept of Oklahoma law that the specific provisions of a contract control over its general terms. *See, e.g., West v. Aetna Life Ins. Co.*, 1947 OK Civ. App. 61, 536 P.2d 393, 397. Accordingly, COCA's construction is without basis; it should have enforced the clear terms of the Conservatorship regarding the payment of premiums, rather than an unrelated, general provision dealing with administrative expenses. COCA ducked this settled principle of law even though it is directly on point.

Even if the phrase "office expenses, salaries, and other costs of the Conservatorship," stood alone and its meaning was not expressly superceded by the express provision requiring the Conservator to make premium payments, the rule of *ejusdem generis* would nevertheless require a finding that the words "other costs" refer only to the words which precede them – "office expenses" and "salaries." The rule of *ejusdem generis* is "a rule of interpretation. *It gives guidance to the ordinary insight that when specific words are followed by general words those specific words restrict the meaning of the general.*" (Emphasis supplied.) *State ex rel. Comr's of Land Office v. Butler*, 1987 OK 123, 753 P.2d 1334, 1336. In *Butler*, the issue was whether the word "minerals" used in the phrase, "oil, gas and other minerals," referred to all types of minerals or only to minerals associated with oil and gas. The court held that "where the phrase "other minerals" follows the enumeration of particular classes of minerals such as oil and gas, the general words will be construed as applicable only to minerals of the same kind or class as those specifically named." *Id.* By the same token, because the words "other costs" follow the

words "office expenses" and "salaries," it must be assumed that the parties were referring to the type of costs normally associated with office expenses and salaries. These specific terms restrict the meaning of the more general terms "other costs" – which could admittedly cover many types of costs. Here, they can only be referring to administrative office costs because the terms which precede "other costs" clearly refer to costs associated with the office administration of running the Conservatorship and not to the premiums which must be paid to keep the policies in force.

Here, too, COCA evaded application of the law by inventing a concept that is no where to be found in Oklahoma jurisprudence. Instead of following the law, COCA stated, without record support, that Defendants were unable to protect the purchasers. This has nothing to do with the rules pertaining to construction of a judgment. Moreover, COCA overlooked the fact *that ABC alone* was protecting the investors by paying all premiums until the Conservator finally agreed to follow the mandate of the Conservatorship Order over 9 months after the Conservatorship was created. If COCA's construction of the Order were correct, the Conservator could have continued to exact the premium payments from ABC; however, it was clear to the parties that the Order contemplated no such thing. Indeed, why even create a conservatorship? It would have been a simple matter for the district court to hoist this burden on Defendants in clear language *ad infinitum*, but that is obviously something to which the parties never agreed nor would Defendants have done so when negotiating the Order.

In short, even if the Order never expressly set out the duty of the Conservator to pay premiums (it obviously does), the office expense provision of the Order cannot be interpreted to impose that obligation on ABC. COCA's opinion should be vacated, and the district court's interpretation of the premium payment obligation should be reversed.

C. Even If COCA's Construction Were Correct, The Conservator Was Still Nevertheless Responsible For All Premiums, Expenses, Salaries And Other Costs Upon The Transfer of 75% of the Conservatorship Assets.

Pursuant to the terms of the Order, Defendants transferred virtually all Conservatorship Assets to the Conservator well within the 90-day period prescribed by the Conservatorship Order. (Order at __.) According to the terms of the Order, once Defendants transferred 75% of the Conservatorship Assets, Defendants' obligation to pay the expenses of the Conservatorship ceased, thereby eliminating any obligation on the part of Defendants to pay premiums. *Id.* Well over 75% of the policies were transferred during the initial months of the Conservatorship. As a result, even if "office expenses, salaries and other costs of the Conservatorship" included premiums, as urged by the Conservator, he nevertheless abdicated his responsibility to pay premiums for several months after ABC fulfilled its responsibility to transfer the assets.

In an effort to avoid his responsibilities, the Conservator took the position that while the paperwork effecting the transfer of the policies had been expeditiously executed by Defendants (indeed, why would they want to delay doing so), only 51% of the various insurance companies had formally acknowledged or "confirmed" such transfers at the time the subject issues were raised. The Conservator argued that, as a result, ABC's "expense" obligations continued.

In the context of life insurance and change of beneficiary forms, the law of Oklahoma is clear — if the insured has done everything in his power to effect a change of beneficiary but dies before the last act is completed, particularly when the remaining act is a ministerial act to be performed by the insurer, the change will be regarded as complete. *Shaw v. Loeffler*, 1990 OK 81, 796 P.2d 633, 635; *Ivey v. Wood*, 1963 OK 281, 387 P.2d 621, 626; *Bowser v. Bowser*, 211 1949 OK 200, P.2d 517, 520; *see also*, *Connecticut Gen. Life Ins. Co. v. Gulley*, 668 F.2d 325, 327 (7th Cir. 1982). Here, Defendants did everything to effectuate the transfer of well over 75%

of the policies in compliance with the Order. *Thus, once the paperwork was complete, so were the transfers in the eyes of the law*. Indeed, "existing applicable law is part of every contract as if it were expressly referred to or incorporated within the agreement." *Welty v. Martinaire, Inc.*, 1994 OK 10, 867 P.2d 1273, 1276; *see also*, *Gamble, Simmons & Co. v. Kerr-McGee Corp.*, 175 F.3d 762, 769 (10th Cir. 1999). Accordingly, the remaining ministerial acts of the insurers' approval did not delay the effective date of the transfer of the policies.

Further, why would it have made a difference? The Conservator effectively had complete control over the policies from day one of the Conservatorship. The date of the actual transfer is superfluous because, regardless of whether the transfer was complete, the Conservator still was in control. The basic, indisputable fact is that the Conservator took his position solely to exact further premium payments from ABC. The provision requiring ABC to pay "other costs" (assuming *arguendo* it was meant to apply to premium payments) was simply a method, not to last longer than 90 days, to allow the Conservator to become familiar with the process. It makes no sense that the provision was designed to keep ABC on the "hook" given the Conservator had ample funds at his disposal to pay premiums at the inception of the Conservatorship.

Nor does it make any sense to penalize Defendants with payment of premiums and other expenses because of the vagaries of insurance company delays, especially when Defendants went to great lengths to expeditiously complete the transfer documents. Defendants effectively transferred "title" to the policies to the Conservator when it executed the necessary paperwork and forwarded it to the insurance companies. Moreover, when an insurer accepts premiums from a new owner, *i.e.*, the Conservator, with knowledge of the change in ownership and of the desire of the new owner to keep the policy in full force and effect, the insurance policy continues for the new owner's benefit. *Ward v. Continental Ins. Corp.*, 1933 OK 408, 24 P.2d 654, 656-57.

Therefore, when the Conservator ordered Defendants to send in the forms *and to do so on the Conservator's behalf*, the policies were effectively transferred to the Conservatorship whether or not insurance companies formally confirmed their transfer. Further, *all* of the premium payments were made by ABC even though ATCO had already relinquished beneficiary ownership of the policies to the Conservator through execution of the change of beneficiary forms. In short, even under the Conservator's concocted construction of the Order, it became responsible for payment of premiums and for payment of all other expenses, salaries and other costs of the Conservatorship once the Conservator directed ABC and ATCO to pay the premiums on the Conservator's behalf.

COCA did not even bother to address these well accepted rules of law, except to say that "given . . . ABC had been determined to have committed fraud," these rules were somehow rendered inapplicable. (Op. at __.) Since when does a court's personal view of what is just stand in the way of applying the law? This is a court of law, and there is no rule which allows a court to ignore it simply because it does not produce the desired result.

III. CONCLUSION

For the reasons set forth above, COCA's Opinion should be vacated and the district court orders should be reversed.

Dino E. Viera (OBA #11556)
William H. Whitehill, Jr. (OBA # 12038)
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS
100 North Broadway, Suite 1700
Oklahoma City, OK 73102-8820
Telephone: (405) 232-0621
Facsimile: (405) 232-9659

Attorneys for Defendants/Appellants, Accelerated Benefits Corporation and American Title Company of Orlando

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing *Defendants/Appellants' Petition for Certiorari* was mailed, U.S. Mail, postage prepaid, this 11th day of October, 2004, to:

Patricia A. Labarthe, Esq.
Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Oklahoma City, OK 73102

Attorney for Plaintiff/Appellee

Melvin R. McVay, Jr., Esq.
T. Ray Phillips, Esq.
Thomas P. Manning, Esq.
Phillips McFall McCaffrey McVay
& Murrah, P.C.
One Leadership Square, 12th Floor
211 North Robinson Avenue
Oklahoma City, OK 73102

Attorneys for Court Appointed
Conservator/Appellee

Dino E. Viera

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

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OKLAHOMA DEPARTMENT OF SECURITIES, ex rel. IRVING L. FAUGHT, ADMINISTRATOR,	)	
Plaintiff/Appellee,	)	
vs.	)	Case No. 98,663
ACCELERATED BENEFITS CORPORATION; C. KEITH LaMONDA; AMERICAN TITLE COMPANY OF ORLANDO; and DAVID PIERCEFIELD,	)	
Defendants/Appellants,	)	
vs.	)	
TOM MORAN,	)	
Court Appointed Conservator/ Appellee.	)	

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE DANIEL L. OWENS, TRIAL JUDGE

AFFIRMED

Patricia A. Labarthe
Melanie Hall
OKLAHOMA DEPARTMENT
OF SECURITIES
Oklahoma City, Oklahoma — For Plaintiff/Appellee

Dino E. Viera
William H. Whitehill
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS
Oklahoma City, Oklahoma — For Defendants/Appellants

Melvin R. McVay, Jr.
Thomas P. Manning
Kay Smith
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
Oklahoma City, Oklahoma — For Conservator/Appellee

OPINION BY JERRY L. GOODMAN, JUDGE:

Defendants, Accelerated Benefits Corporation (ABC), American Title Company of Orlando, C. Keith LaMonda, and David Piercefield (collectively, Defendants), appeal the trial court's orders construing the terms of an order which appointed a Conservator and transferred viatical life insurance policies from Defendants to a Conservatorship. Based on the facts and applicable law, we affirm.

FACTS

ABC purchased approximately 1,500 life insurance policies through what are known as viatical settlements.[1] Under such an arrangement, a terminally-ill policyholder (known as the viator) sells the right to receive the proceeds of his or her life insurance policy to an investor, usually through a viatical settlement provider. The viator receives an amount equal to the discounted value of the death benefit; the investor pays the policy's premiums and, upon the death of the viator, receives the death benefits paid under the policy. The investor's profit or loss is the discounted amount paid to the viator, less the costs of the premiums and administrative fees. *Seidman v. State*, 847 So. 2d 1144, 1145 (Fla. Dist. Ct. App. 2003).

ABC funded the purchases by selling interests in the viaticals to over 5,000 investors nationwide, who invested their money in exchange for a portion of the death benefit proceeds payable upon the deaths of the viators. ABC also received a fee for arranging the transactions. Another defendant in this case, American Title Company of Orlando, is a bonded title company and trustee which held nominal title of the policies for the benefit of the investors.

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[1] The record does not reflect the exact number.

In 1999, the Oklahoma Department of Securities filed a securities fraud action against ABC. The trial court found ABC had made misstatements and omissions of fact to its investors and had committed fraud. The trial court entered an agreed order finding that ABC had sold unregistered securities in Oklahoma and therefore violated the Oklahoma Securities Act. This order was not appealed.

In another agreed order, dated February 6, 2002, the trial court appointed Tom Moran as Conservator and transferred assets to the Conservatorship, including the 1,500 life insurance policies owned or held by American Title Company for the benefit of the investors. Conservator later estimated the policies had a face value of $141,000,000, with investors having paid $107,541,742 for their right to receive a percentage of the death benefits. The order stated it was entered to protect the investors from losses, and authorized Conservator to take necessary steps to protect the investors' interests. This language essentially acknowledged the fact that unless timely payments were made on the policies' premiums, the policies would lapse and the investors would lose their investments. The order also required ABC to pay all of Conservator's costs and expenses until at least 75 percent of the assets had been transferred to him. This order was not appealed.

Defendants filed a motion to enforce and/or construe this order. Conservator filed a motion to require Defendants to comply with the order. The trial court entered two orders filed November 20, 2002, which are the subject of this appeal and are discussed below. Defendants have appealed, asserting that the trial court erred in its construction of the February order by imposing new obligations on them not contained in the previous order.[2]

STANDARD OF REVIEW

The February 2002 order states that the parties agreed to its entry. A consent judgment is to be construed "as other contracts" and the court is to ascertain the parties' intent. *Holleyman v. Holleyman*, 2003 OK 48, ¶ 11, 78 P.3d 921, 926. The intention of the parties is to be ascertained from the writing alone, if possible. *Id.* Once a judgment becomes final, any controversy over its meaning is to be resolved by resorting solely to the face of the judgment roll; only if it is ambiguous on the face of the record proper may the court reach it for construction. *Stork v. Stork*, 1995 OK 61, ¶ 10, 898 P.2d 732, 739.

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[2] The Department's surreply brief is stricken as not permitted by the Oklahoma Supreme Court Rules. Similarly, we deny Conservator's motion to reconsider the Supreme Court's order striking his surreply brief.

ANALYSIS

Defendants first assert the trial court erred by ordering ABC "to pay all costs and expenses of the Conservatorship, including premium shortfalls" until 75 percent of the Conservatorship assets were transferred to Conservator. The February 2002 agreed order required ABC to "pay and maintain all office expenses, salaries, and other costs of the Conservatorship" until the 75 percent plateau was reached. Defendants assert the obligation to pay premium shortfalls is outside the scope of the earlier order requiring them to pay the Conservatorship's costs and expenses.

We do not agree. At most, the earlier order is susceptible to several different meanings. Defendants asserted the earlier order's phrase, "office expenses, salaries, and other costs of the Conservatorship" limited the order's effect to administrative matters. However, the Department and Conservator presented evidence indicating it was the parties' intention to require ABC to pay the premiums until enough assets were transferred to the Conservatorship. Certainly "costs of the Conservatorship" could be said to include the costs of paying the premiums – which actually is the most important "cost" associated with the Conservatorship, because paying that cost keeps the investments viable.

Defendants assert language in the earlier order required Conservator, and not them, to pay the premiums. However, the order itself does not lead to that conclusion. It states Conservator "is given directions and authority to accomplish" the timely payment of premiums. In other words, rather than simply order Conservator to *make* the payments, the trial court gave Conservator authority to ensure the payments *are made*. The order does not exclude Defendants from contributing to that result.

We also reject Defendants' arguments that the trial court erred under the doctrines of "the specific controls the general" and of *ejusdem generis*. The gist of the earlier order (in fact, of all the orders) is to give Conservator the authority to do what Defendants were unable to do – protect the investments made by thousands of investors. The methods chosen by the trial court in the appealed orders are encompassed in the earlier order.

Finally in this regard, the question should be asked that if Defendants were not responsible for making up the premiums' shortfall, then who was? The February order gave the Conservator authority to take possession of the assets, but indisputably the parties acknowledged that it would take some time to transfer the assets to the Conservatorship. Given that the stated purpose of the trial court's order was "to prevent potential irreparable loss, damage or injury to purchasers of

interests in the right to receive the proceeds from the viatical and/or life settlement policies," it is logical to conclude that the order placed the obligation of paying shortfalls during this period on the only other possible party: ABC.

Defendants next assert the trial court erred in determining that for purposes of when 75 percent of the assets were transferred to Conservator, transfer of a policy takes place when the insurer confirms to Conservator that the change of beneficiary or ownership had been made. This might be considered a conservative interpretation, but given that ABC had been determined to have committed fraud, and further given the precarious nature of the investments, we cannot say the trial court erred. There is no evidence the trial court made this decision to punish ABC; rather, the decision simply seems prudent.

Finally, Defendants assert the trial court erred in requiring them to pay Conservator's office expenses. The February 2002 agreed order, as explained above, required Defendants to "pay and maintain all office expenses . . . of the Conservatorship" until the 75 percent plateau was reached. As further explained above, this language was repeated in the November 2002 orders. Defendants assert that these expenses, which the orders require them to pay, should be offset by assets Conservator received at the inception of the Conservatorship. Defendants

further assert that the trial court's failure to offset results in a modification of the earlier order.

We reject this argument. Defendants are essentially arguing that by using the same language it used in the earlier order, the trial court somehow modified that order. To the contrary, only if the trial court had agreed with Defendants and allowed the offset could it be said the court was modifying the earlier order. The trial court did not modify its earlier order.

We also note that in their reply brief, Defendants assert this matter was not decided by the trial court. An examination of the record leads to the conclusion that the trial court's order reiterating Defendants' obligation to pay the expenses is a rejection of Defendants' assertion that they should not be required to do so.

AFFIRMED.

TAYLOR, P.J., and STUBBLEFIELD, J., concur.

July 20, 2004