

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

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

vs.)

Case No. CJ-99-2500-66

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

Acheron Portfolio Trust,)

vs.)

H. Thomas Moran II, Conservator of certain assets)
of Accelerated Benefits Corporation, HTM)
Conservator, L.L.C., and Asset Servicing Group,)
L.L.C.)

**ASSET SERVICING GROUP L.L.C.'S OBJECTIONS AND REPNSES TO
ACHERON PORTFOLIO TRUST'S SECOND SET OF DISCOVERY REQUESTS**

Pursuant to 12 OKLA. STAT. §§ 3226, 3233 and 3234, Defendant Asset Servicing Group, L.L.C. ("Defendant" or "ASG") hereby submits the following responses and objections to Acheron Portfolio Trust's Second Set of Discovery Requests to ASG ("Discovery Requests"). All responses contained herein are based only upon such information and documents presently available to ASG. Further discovery, investigation, research and analysis may supply additional facts and documents and/or add meaning to known facts. Moreover, the responses below are given without prejudice to ASG's right to later produce additional information and documents.

GENERAL OBJECTIONS TO DISCOVERY REQUESTS

Defendant makes the following preliminary objections and qualifications:

1. Defendant objects to any definitions or words or terms beyond their ordinary and accepted usage and beyond that required by 12 OKLA. STAT. § 3226.

2. Defendant objects to any instruction beyond that generally required under 12 OKLA. STAT. §§ 3226, 3233 and 3234 and for the further reasons that they are overly broad and burdensome and attempt to obtain information which is protected from disclosure by the attorney/client privilege or work-product doctrine.

3. Defendant objects to all requests for admissions to the extent that the same call for information protected from discovery by the attorney/client privilege, the work-product doctrine, or any other applicable privilege or immunity from discovery.

4. The information supplied by these responses to request for admissions is that currently available to the executing parties or their agents, representatives, or attorneys, unless privileged, and Defendant reserves the right, but assume no obligation beyond that required or imposed by 12 OKLA. STAT. §§ 3226, 3233 and 3234, to supplement or modify the information contained in these responses should additional or different information become available through discovery or otherwise.

5. In providing these answers and responses, Defendant makes no admission as to the relevance or admissibility of any of the information set forth and expressly reserves all objections regarding relevancy, admissibility or otherwise, pertaining thereto.

6. These general objections apply to each and every request for admission hereinafter set forth and, subject to and without waiver of the stated objections and qualifications, Defendant provides the following answers and responses.

7. Defendant objects to the Discovery Requests to the extent they seek to impose obligations on it that are not imposed by, or are otherwise inconsistent with, the Oklahoma Discovery Code.

8. Defendant objects to the Discovery Requests to the extent they seek or require the disclosure of information or documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine, and/or any other applicable privilege or immunity.

9. Defendant objects to the Discovery Requests to the extent they impose upon it a duty to seek out information not in his possession, custody or control.

10. Defendant objects to the Discovery Requests to the extent they are overly broad and unduly burdensome.

11. Defendant objects to the Discovery Requests to the extent they are vague and ambiguous.

12. Defendant objects to the Discovery Requests to the extent they call for a legal conclusion or legal argument.

13. Defendant objects to the Discovery Requests to the extent they are not relevant to the claim or defense of any party, not relevant to the subject matter of the lawsuit, and not reasonably calculated to lead to the discovery of admissible evidence.

14. Defendant objects to the Discovery Requests to the extent they call for information without regard to a time period reasonably related to the subject matter of this lawsuit.

15. Defendant objects to the Discovery Requests to the extent they call for information relating to their contentions prior to the completion of sufficient discovery from Defendant, among others.

16. Defendant objects to the Discovery Requests to the extent they call for information relating to Defendant's experts prior to the time set for expert disclosures in this action and pursuant to the Oklahoma Discovery Code. Defendant further objects to the Discovery Requests on the grounds they seek the identity of consultants engaged by Defendant, disclosure of which is not required by the Oklahoma Discovery Code or any scheduling order entered herein.

17. Defendant objects to the Discovery Requests to the extent they call for information that is equally available to Plaintiff or is already in Plaintiff's possession, custody or control.

18. Defendant objects to the Discovery Requests to the extent they seek information that can be found in the pleadings in this action.

19. In providing responses to the Discovery Requests, Defendant does not in any way waive or intend to waive, but rather intends to preserve and is preserving:

a. All objections to the competency, relevancy, materiality and admissibility of the Discovery Requests, Defendant's responses or the subject matter;

b. All objections as to vagueness, ambiguity or other infirmity in the form of the Discovery Requests, and any objections based on the undue burden imposed thereby;

c. All rights to object on any ground to the use of any of the information provided in response to the Discovery Requests, or their subject matter, in any subsequent proceedings, including the trial of this or any other lawsuit;

d. All rights to object on any ground to any other discovery requests involving or related to the subject matter of the Discovery Requests;

e. The right to revise, correct, supplement or clarify any of the responses to the Discovery Requests; and

f. Any and all privileges and/or rights under the applicable provisions of the Oklahoma Discovery Code or Evidence Code.

20. The failure to object on a particular ground or grounds shall not be construed as a waiver of Defendant's rights to object on any additional grounds.

INTERROGATORIES

Interrogatory No. 24: Identify the full social security number and last-known address for each Insured.

Response to Interrogatory No. 24: ASG objects to this Interrogatory for the reason it calls for the production of information that is neither relevant nor likely to lead to the discovery of relevant information. In this lawsuit, Acheron alleges ASG failed to properly service the ABC Portfolio. The manner in which ASG services the ABC Portfolio is neither dependent on nor impacted by the particular social security number for any Insured. Although ASG uses the social numbers to track insureds, the composition of the individual social security numbers is immaterial to the manner in which ASG services the Policies within the Portfolio. The same is true with respect to the addresses of the Insureds.

ASG further objects to this Interrogatory for the reason it demands ASG produce the Insureds' personal information. ASG is prohibited from disclosing the requested information by Oklahoma statute and other State laws.

Interrogatory No. 25: For each Policy you have identified as having matured since 2006, describe how you learned of the Insured's death. Your explanation should be specific to each deceased Insured.

Response to Interrogatory No. 25: ASG objects to this Interrogatory for the reason it is overly broad, burdensome and calls for information that is neither relevant nor likely to lead to the

discovery of relevant information. Since January 1, 2006, ASG has identified a total of 222 Policy maturities. Of these 222 Policy maturities, Acheron alleges that two (2) were not timely identified. ASG has provided an explanation of how ABC learned of these Insureds' deaths. *See* Letter from Melvin R. McVay, Jr. to John Hermes, dated August 30, 2013, at § B.1; *see also*, Answer filed October 2, 2013, at ¶¶ 14 and 15. Acheron's request that ASG provide an explanation, specific to each Insured, as to how ASG learned of each of the 220 other Policy maturities is overly broad and calls for information that is neither relevant nor likely to lead to the discovery of relevant information.

Further, to compile the requested information, ASG would have to expend several hundred hours to review each of the files relating to the 220 other Policy maturities and, based on this time-consuming review, compile the requested descriptions for 220 other Policy maturities. Simply put, Acheron's request is overly burdensome, especially in light of the lack of relevance or possible relevance of the information requested.

ASG also objects to this Interrogatory for the reason it seeks information that is proprietary to ASG. The details of how ASG tracks insureds and identifies maturities are proprietary to ASG. The disclosure of ASG's confidential processes would place ASG at a business disadvantage with ASG's competitors. Thus, even if the information sought by Acheron were discoverable and not unduly burdensome, its disclosure would be harmful to ASG and its ability to compete in the life settlement/viatical servicing industry.

Interrogatory No. 26: Describe your practice or procedure for inquiring about the disability status of the Insureds.

Response to Interrogatory No. 26: If the Policy has a renewable disability premium waiver ("DPW"), ASG tracks the renewal date and, prior to the renewal date, contacts the insurance

carrier to determine what (if any) information concerning the Insured's disability status is needed to renew the DPW. In the event an insurer reviews a Policy with a DPW, the insurer usually contacts the Insured directly to obtain information concerning the Insured's disability. In some instances, the insurer will send a "physician's statement of disability" to ASG, which ASG will then send to the Insured. If the Insured returns the completed physician's statement to ASG, ASG will in turn forward it to the insurance carrier's claims department. If, on the other hand, the Insured does not return the completed physician's statement to ASG, ASG will contact the Insured to determine whether the Insured has returned the completed physician's statement to the insurer and, if not, request the Insured do so. In other instances, even though the insurance carrier has not sent a physician's statement to ASG, ASG will contact the Insured and/or the physician to determine whether the completed physician's statement has been returned to the carrier. In those instances, ASG will contact the Insured and ask him or her to ask their physician to complete the form and return the completed physician's statement to the insurance carrier. If the Insured has provided the form to his or her physician, but the physician has not returned it to the Insured or carrier, ASG may contact the physician and ask that the physician complete the form and return it to the insurance company. ASG will follow up with insurance company's claims department and the Insured monthly until ASG confirms either that the insurance company has received the completed physician's statement or that the Insured is non-complaint. In the event the Insured will not cooperate, the Policy becomes eligible for conversion. If necessary, ASG will also follow up with the physician's office. Additionally, prior to 2007, the viator update forms sent to the Insureds asked them to indicate whether they were disabled.

Interrogatory No. 27: Describe your practice or procedure for applying for and maintaining disability premium waivers or other similar benefits for the Policies in the ABC Portfolio.

Response to Interrogatory No. 27: See Response to Interrogatory No. 26, above.

Interrogatory No. 28: Identify every date you have sought to obtain medical records for each insured since 2006 and state whether each attempt was successful.

Response to Interrogatory No. 28: ASG objects to this Interrogatory for the reason it is overly broad and burdensome. As of the effective date of the effective date of the Servicing Agreement, there were 1,172 active Policy files. To provide the requested information, ASG would be required to manually review each of the 1,172 Policy files, page by page, to determine if medical records had been requested in connection with each of 1,172 Policies. As part of this exhaustive review of thousands of documents, ASG would also be required to determine every date ASG sought to obtain medical records and whether each such attempt was successful. This would require hundreds of hours and is unduly burdensome.

In addition to being burdensome, ASG objects to this Interrogatory for the reason it calls for information that is neither relevant nor likely to lead to the discovery of relevant information. The Servicing Agreement does not require that ASG obtain medical records for Insureds. Nonetheless, there have been instances when Acheron requested ASG obtain an Insured's medical records, which ASG has done. Acheron is itself aware of those dates.

REQUESTS FOR PRODUCTION

Request for Production No. 11: Produce all letters, emails, or other correspondence between you and the insurance carrier of any Policy since 2008 that pertain to the disability status of any Insured.

Response to Request for Production No. 11: ASG objects to this Request for the reason it is overly broad, unduly burdensome and calls for information that is neither relevant nor likely to lead to the discovery of relevant information. As of January 2008, there were 1,117 active Policy files. To provide the requested documents, ASG would be required to manually review each of the 1,117 Policy files, page by page, to determine if they contain any documents responsive to this Request. This would require several hundreds of hours and is unduly burdensome.

Request for Production No. 12: Produce all documents that evince or relate to the death or potential death of any Insured since 2006.

Response to Request for Production No. 12: ASG objects to this Request for the reason it is overly broad, burdensome and calls for information that is neither relevant nor likely to lead to the discovery of relevant information. *See also*, Response to Interrogatory No. 25, above.

Request for Production No. 13: Produce the original insurance contract and any amendments thereto for the following Insureds: 0716V, 0375V, 6702V, 5437V, 0539V, and 7026V.

Response to Request for Production No. 13: The requested documents, with the personal information of the insureds redacted, will be produced.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that on the 17th day of December, 2014, a true and correct copy of the foregoing was served by hand-delivery and certified mail, return receipt requested, to:

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