

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

APR 16 2015

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

Case No. CJ-99-2500-66

**ASSET SERVICING GROUP, L.L.C.'S RESPONSE AND OBJECTION
TO ACHERON PORTFOLIO TRUST'S MOTION TO COMPEL**

Melvin R. McVay, Jr., OBA No. 06096
Shannon K. Emmons, OBA No. 14272
PHILLIPS MURRAH P.C.
Corporate Tower / Thirteenth Floor
101 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4133

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

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Asset Servicing Group, L.L.C. (“ASG”), for its response and objection to Acheron Portfolio Trust’s (“Acheron”) Motion to Compel, respectfully represents and states to the Court as follows:

I. INTRODUCTION

Acheron filed the current action seeking, for the fourth time in the last five years, to terminate the Service and Escrow Agreement (“Service Agreement”) that the Court approved in 2006. Under Court supervision, and monitoring by the Oklahoma Department of Securities (“DOS”), Asset Servicing Group, L.L.C. (“ASG”) has served as the servicer of the assets – a portfolio of life insurance policies (“Policies” or “Portfolio”) – of Accelerated Benefits Corporation (“ABC”) since 2001. The ODS, which brought this action, has remained involved in the case and receives copies of the reports submitted to the Court by the Court-Appointed Conservator, Tom Moran. To date, neither the Court nor ODS has expressed any dissatisfaction with the services ASG has provided.

Acheron likewise voiced no concern or criticism of ASG’s handling of the portfolio until July of 2013, after Acheron had already failed three times in its attempts to terminate the Servicing Agreement. In July 2013, Acheron’s counsel sent ASG’s counsel a letter expressing various complaints and demanding that the Servicing Agreement be terminated. This letter was ASG’s first notice of Acheron’s contention that ASG failed to perform any duty it has under the Servicing Agreement. ASG’s counsel provided a detailed response and offered to discuss the matters further. In response, Acheron filed suit.

To date, ASG has produced nearly 10,000 pages of documents and has, in the spirit of compromise on discovery issues, supplemented discovery responses to provide additional information. Nonetheless, Acheron seeks to compel the production of information and

documents that have no possible relevance to the issues in this case. Additionally, the production of the requested information would be unduly burdensome to the Conservatorship, and would require ASG to reveal the personal information of the insureds in violation of the Oklahoma Viatical Settlements Act, OKLA. STAT. tit. 36, § 4055.1 *et seq.* (the “Act”).

For these reasons, and others set forth below, Acheron’s Motion to Compel should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Conservatorship.

The ODS brought the above-referenced action in 1999 to protect the interests of the investors (the “Investors”) in ABC.¹ On February 6, 2002, the Court established a conservatorship (the “Conservatorship”) of the assets of ABC comprised of the Policies. The Court appointed Mr. Moran to act as Conservator of the Portfolio, and, on February 21, 2006, authorized HTM Conservator, L.L.C. (“HTM”) to hold title to the Policies. Pursuant to these Court orders, HTM is the current owner of the Policies.

On June 7, 2006, the Court approved an Option Purchase Agreement (“OPA”) between Acheron’s predecessor, Lorenzo Tonti, Ltd. (“Tonti”), and HTM. The Court also approved the Service Agreement between Tonti, Mr. Moran and HTM. Under the terms of the Service Agreement, Tonti expressly agreed that HTM could retain ASG to provide servicing for the Portfolio. The OPA obligates Acheron to pay the Investors \$38,050,000 for the Policies (the “Purchase Price”), the total face value of which was \$109,528,545 at the time the OPA was executed. The OPA also provides that Acheron is allowed to pay the purchase price from the

¹ The former CEO of ABC, Keith LaMonda, and its President, Jesse LaMonda, were convicted in Florida federal court of defrauding ABC Investors. They were sentenced to 20 and 13 years, respectively.

death benefits that are paid as the Policies mature: 60% of the death benefits are paid to the Conservatorship and credited toward the purchase price; the remaining forty percent 40% is paid to Acheron. Until the Purchase Price is paid in full, HTM holds title to the Policies and Acheron is contractually obligated to pay the servicing fees under the terms of the Service Agreement. Once Acheron pays the full Purchase Price, HTM will convey title of the Policies to Acheron.

B. Performance of the Conservatorship and Investor Returns.

As of April 16, 2015, there are 5,159 active Investor accounts. Each Investor receives a *pro rata* share of the funds distributed by the Conservatorship. Since the inception of the Conservatorship, Mr. Moran has made 24 distributions to Investors, totaling \$35,000,000. To date, approximately 34% of each Investor's net has been returned to the Investor. Payments will continue until each Investor receives approximately 50% of the amount of his or her net investment in ABC.

C. History of Servicing of the Policies.

As noted, pursuant to the Court's February 6 and February 21, 2002 and June 7, 2006 Orders, Mr. Moran and HTM engaged ASG to service the Policies. The Court and ODS are, and have always been, fully aware of the business relationship between Mr. Moran and ASG. Similarly, Acheron was fully aware of the relationship between Mr. Moran and ASG prior to executing the Service Agreement. In fact, Acheron's manager, Jean-Michel Paul, was involved in detailed and extensive discussions, from 2006 through 2007, about the prospect of purchasing ASG. Additionally, Mr. Paul and his associates conducted a due diligence review of ASG's operations including periodic on-site visits and meetings with Mr. Moran and the ASG staff. Therefore, Acheron has always been very knowledgeable about the servicing provided by ASG under the terms of the Service Agreement.

Neither the Court, ODS nor the Investors have ever questioned ASG's performance under the terms of the Service Agreement or objected to ASG's servicing fees. Further, the Court has approved all servicing fees requested by ASG. Even Acheron, which has chafed at its financial obligations under the Service Agreement since its inception, did not complain about the servicing provided by ASG until July, 2013. Apparently, Acheron's newfound complaints have less to do with the actual servicing of the Portfolio than with Acheron's desire to avoid the financial cost of servicing the Policies, which Acheron is obligated to pay despite the perhaps less than desired financial performance of the Portfolio.

D. Acheron's Prior Attempts to Renegotiate the OPA and Terminate the Service Agreement.

Since entering into the OPA and Service Agreement, the viatical and life settlement markets have changed significantly adversely affecting the value of the Portfolio. While this does not impact the amount the Investors are entitled to receive under the terms of the OPA, these market shifts have caused Acheron to re-evaluate its decision to purchase the Portfolio with its concomitant duty to pay the servicing fees for the Policies. As a result, Acheron continues its efforts to renegotiate and revise these contracts – which Acheron entered into voluntarily and with the Court's approval – to Acheron's benefit and to the detriment of the Investors.

1. Acheron's Initial Attempt.

In 2007, Acheron made its first attempt to reduce its contractual obligations to the Investors. In a letter to Mr. Moran, Acheron candidly stated:

The current payment structure under the Purchase Agreement is generating negative cash flow and is not sustainable. My clients therefore believe that the best way to proceed would be to reach an agreement on the prepayment of the balance of the Purchase Price. The Trust is willing to pay the Conservator the sum of Ten Million Dollars (\$10,000,000) (the Prepayment Amount) in full satisfaction of the balance of the Purchase Price. (Emphasis added).

After receiving Acheron's proposal, Mr. Moran consulted with ODS and had numerous discussions with Acheron's managing director, Jean-Michel Paul, and Acheron's Boston, New York and local attorneys. Mr. Moran and ODS repeatedly told Acheron that they could not recommend prepayment of the Purchase Price in the amount proposed by Acheron, which would have been a substantial discount to the balance owed on the purchase price. They instead suggested various counter-proposals they believed would adequately compensate the Investors. Acheron rejected these counter-proposals.

2. Acheron's First Attempt to Obtain Court Approval to Revise the Terms of the OPA and Terminate the Service Agreement.

In a January 2010 Motion (the "First Motion"), Acheron asked the Court to approve the "sale" of the Portfolio (which Acheron was already contractually obligated to purchase at the agreed-upon and Court-approved Purchase Price) to Acheron on its proposed revised terms. Acheron proposed to pay a lump sum of \$10,200,000 for the Portfolio. At the time, the balance of the purchase price owed by Acheron was \$30,953,473. As part of its proposal, the Service Agreement would terminate upon payment of the reduced purchase price. When the Court indicated that it did not consider the offer to be sufficient, Acheron withdrew its First Motion.

3. Acheron's Second Attempt to Obtain Court Approval to Revise the Terms of the OPA and Terminate the Service Agreement.

In a July 2010 Motion (the "Second Motion"), Acheron requested the Court's approval to submit a proposed payoff of the OPA to the Investors. Acheron proposed a payoff of \$11,500,000 plus allowing the Investors to participate in the 2010 maturities (which the Investors were already entitled to receive under the terms of the OPA) up to \$1,800,000. As with Acheron's first proposal, the Service Agreement would terminate upon payment of the reduced purchase price. The Court set the Second Motion for evidentiary hearing to determine the

reasonableness of Acheron's offer, including a reasonable discount rate for determining the present value of the Investor's share of future maturities under the terms of the OPA. At the October 28, 2010 hearing, Acheron announced it had revised its proposed offer to include an additional \$1,800,000 at the closing "if required" by the Court. The total lump sum payoff under the revised offer totaled \$13,300,000 reflecting a discount rate of 13.7%.

At the conclusion of the hearing, the Court denied Acheron's Second Motion finding that the offer was neither reasonable nor fair to the Investors and stating:

When we started this hearing, I announced and I think I've announced it every time we've talked about this case and what I would do with reducing this to a lump sum payment, that Acheron had an uphill burden; the reason being, there's no doubt in this case, Acheron has bought the investor portion of this portfolio. They've got a contract.

This isn't going on the open market. And as Mr. Page said, and that's why I asked him again if that's what he said, and that would be that the buyer would set the price if they were to buy this portfolio. And Acheron did that when they bought it. They set the price based upon, I guess, an analysis of the value of the portfolio when they jumped in to this mess.

And the Court approved it because everybody had signed off on it and because everybody believed it was in the best interest of the purchaser, that being Acheron, and the best interest of the investors who are the folks relying on us to make sure their investment is protected; although, they had relied on someone at the outset of these investments and they weren't protected.

But the reality of the evidence in this case, there's no evidence indicating in this case that the offer being made by Acheron is fair and sufficient for the investors in this portfolio, that being the folks who bought them initially.

The Court further stated that it would consider an offer by Acheron that used a reasonable discount rate, which the Court explained was a "discount rate is to make the opportunity available to the person getting the discount rate to make that much money in the future." The Court also cautioned that it would not consider any offers of a lump sum payment by Acheron that exceeded an 8% discount rate.

4. Acheron's Third Attempt to Obtain Court Approval to Revise the Terms of the OPA and Terminate the Service Agreement

In April of 2011, Acheron filed its third motion, this time asserting that it had offered to "accelerate its purchase of the Conservatorship Assets for a total of \$18 million" which "represents a discount rate of 7.8%..." However, Acheron did not offer to actually pay \$18,000,000, but \$16,200,000. And Acheron's new offer did not represent a 7.8% discount rate, but a nearly 10% discount rate. Again, Acheron's offer (if it had been approved by the Court) anticipated the termination of the Service Agreement upon payment of the proposed revised purchase price. The Court again rejected Acheron's request to revise the terms of the OPA and terminate the Service Agreement without complying with the terms of these agreements.

E. Acheron's Current Efforts to Terminate the Servicing Agreement.

In July of 2013 – seven years after the effective date of the Servicing Agreement – Acheron alleged, for the first time, that ASG was not properly servicing the Portfolio. *See* July 23, 2013 Letter from John Hermes to Melvin R. McVay, Jr., Exhibit 1. Acheron had not even mentioned, much less attempted to address, its complaints with ASG prior to hiring counsel. Notably, as previously stated, Acheron conducted an extensive on-site due diligence review of ASG's servicing procedures in 2006 and 2007. Logically speaking, if Acheron sincerely believed that ASG's servicing procedures were insufficient or defective in any way, it would have raised those concerns then, not seven years later.

Notwithstanding, Acheron asserted that the Servicing Agreement should be terminated because ASG had failed to timely discover the deaths of two insureds over a seven year period during which ASG had processed over 200 Policy maturities. ASG responded with a detailed explanation:

Acheron offers as a reason to terminate the Servicing Agreement the fact that ASG did not discover until 2013 that two (2) insureds had died in 2004 and 2001. One of the insureds was Arturo Jacobs, who was insured under two Policies. In this regard, ASG sent repeated requests for information to numerous addresses for Mr. Jacobs and contacts known to ASG. ASG continually searched for information regarding Mr. Jacobs' whereabouts, and also hired a private investigator to assist in finding information. After much diligence, ASG was able to receive a piece of information from a reluctant contact indicating that Mr. Jacobs had returned to Guatemala, and had possibly met his demise. The contact refused further interaction, and had no details or confirmation. ASG, through exhaustive efforts and research, was able to confirm the death. ASG attempted to obtain a death certificate from various governmental agencies in Guatemala, with no response. Additionally, ASG worked with the United States Department of State in an attempt to obtain a death certificate. The Guatemalan government had not reported the death in the United States, so a death certificate was not available through the Department of State. Ultimately, with the assistance of a resident of Guatemala and by hiring local counsel, ASG was able to obtain the death certificate. She was able to hire a local attorney to obtain the death certificate. Much of the cost for this endeavor was not charged to Acheron, despite Acheron's obligation to pay these costs under the terms of the Servicing Agreement. The other insured, Gregory Jamison, was likewise unresponsive despite repeated attempts to reach him and all known contacts. However, diligent efforts from ASG ultimately resulted in reaching an individual who revealed Mr. Jamison had died from a gunshot wound. Each of these insureds represented extraordinary circumstances, and in each instance ASG's persistence yielded the payment of death claim proceeds to Acheron. In all instances, premium payments paid to the carrier after the date of death were returned. ASG's efforts on behalf of Acheron also yielded interest on a significant portion of the death proceeds. These interest payments totaled \$80,456.38, benefiting Acheron as well as the investors.

See Letter from Melvin R. McVay, Jr. to John Hermes, Exhibit 2.

ASG responded to further complaints as follows:

Acheron's claim that 'ASG does nothing more than conduct electronic database sweeps and mail standardized postcards' is not accurate. First, ASG conducts searches of multiple databases, which are conducted regularly on a weekly or monthly basis. Second, ASG does not mail standardized postcards to the insureds. ASG mails a packet to each insured twice a year. The packet contains a questionnaire and HIPAA form for the insured to complete and return to ASG. If the insured does not respond within thirty (30) days, ASG follows up with a second letter to the insured and mails a different packet to known contacts of the insured. ASG also attempts to reach the insured and known contacts by phone. If ASG has an email address for the insureds, it will attempt to reach them through

email.² If the mailings to the insured or contacts are returned, ASG researches for new contact information and attempts to reach the insured and the insured's contacts with the new information. If the insured or contact's phones are disconnected, ASG attempts to determine whether the insured or contact has a new phone number. Additionally, ASG hires a private investigator to assist it in certain instances. Where appropriate, ASG also utilizes social media sources to locate insureds.

The chart on page 6 of your letter indicates that it is 'unknown' whether ASG utilizes databases that charge a fee. ASG does (at ASG's expense) and always has, as Acheron well knows from its extensive and detailed review of ASG's operations in 2006 and 2007. However, even if Acheron truly did not know that ASG utilizes these databases, this question could have easily been answered with a simple phone call to ASG's Chief Operating Officer, Sheri Townsend; ASG's Director of Policy Services, Pam Maule; the ABC Portfolio Manager, Christie Reid; or any of the numerous other ASG employees with whom Mr. Paul and his staff communicate on a regular basis. Also, Acheron could have discovered that ASG does much more than mail a postcard to the insureds if Acheron had just picked up the phone and asked Ms. Maule or Ms. Reid. Given how these questions could have been resolved with so little effort by Acheron, it appears that Acheron would rather have these complaints than ASG's assurances that the tracking procedures Acheron would like to have in place are, in fact, in place.

The reality of servicing any portfolio is that the servicer cannot force the insured to respond to letters or phone calls if the insured chooses not to respond. The same is true of known contacts for the insured. Also, insureds and contacts move without notifying ASG or leaving a forwarding address. They change from land line phones to cell phones, which makes locating them more difficult. Some move out of the country and some become homeless, making contact with them often extremely difficult. Even a private investigator, such as the one retained by ASG to locate Mr. Arturo and Mr. Jamison, may not be able to locate an insured.

Exhibit 2.

Rather than responding in any way to ASG's reply,³ Acheron filed suit asking the Court to terminate the Servicing Agreement.

² ASG does not request that the insureds submit any health information by email for privacy reasons.

³ Acheron's 2013 letter also included other complaints regarding the annual adjustments to the servicing fees and servicing fees for certain Policies. ASG addressed these complaints as well and made adjustments to certain fees in an effort to resolve these issues and move forward.

F. Discovery

Before Acheron filed its Motion to Compel (the “Motion”), ASG produced almost 10,000 pages of documents. Further, ASG’s counsel had drafted an amended protective order and, on April 8, 2015, submitted it for Acheron’s review as both parties had discussed. ASG’s counsel has received no response regarding the draft motion for protective order. Further, ASG’s counsel had agreed to supplement certain discovery responses and has, in fact, done so. *See* ASG’s Supplemental Discovery Responses, Exhibit 3. While Acheron’s counsel called before filing the Motion, he called, while ASG’s counsel was out of the office, the same day Acheron filed its twenty-two page Motion. As shown below, ASG would have voluntarily produced (some with and some without a protective order) certain information:

1. Identification of Third-Party Databases ASG Utilizes to Track Policy Maturities (Interrogatory No. 7)

ASG agreed to provide this information subject to the Court amending the existing protective order to specifically prohibit the disclosure of this information to ASG’s competitors and limit it to Acheron’s counsel and expert witnesses. Acheron’s counsel has not responded to ASG’s offer or proposed protective order.

2. Actions Taken by ASG to Continue or Renew Disability Premium Waivers (Interrogatory Nos. 14 and 15) and Correspondence between ASG and the Insurer Regarding the Disability Status of any Insured (Request for Production No. 11).

ASG has supplemented its response to Interrogatory No. 14. Additionally, prior to the time Acheron filed its Motion, ASG produced the requested documents for 42 of the Policies

with a disability premium waiver (“DPW”)⁴, which include correspondence between ASG and the insurance company for these Policies.

3. Identity of Policies for Which ASG has Sought to Apply for a Disability Premium Waiver (Interrogatory No. 15).

ASG has identified these Policies.

4. How ASG Learned of Each of the 230 Policy Maturities Since 2006 (Interrogatory No. 25).

Since January 1, 2006, ASG has identified 230 Policy maturities. Of these, Acheron initially alleged that the deaths of two Insureds (out of 182 Insureds who have died since January 2006) were not timely identified. ASG has provided an explanation of how ASG learned of these Insureds’ deaths. *See Exhibit 2*; see also, Answer filed October 2, 2013, at ¶¶ 14 and 15. To compile the information regarding each Policy maturity would require ASG to a hundred or more hours to compile the requested information. Although ASG currently maintains a list of how it learns of each maturity, it did not maintain this information in a central document until September of 2009. Prior to September 2009, ASG maintained the information as to how it learned of a maturity in the particular Policy file. To now compile the information Acheron requests – which includes all Policy maturities even if there is no issue as to whether they were timely identified by ASG – ASG would be required to review each of the Policy files for the 94 prior maturities and, based on this time-consuming review, compile the requested information for these Policy maturities. ASG’s estimates this will take 100 to 150 hours to complete.

ASG’s counsel suggested, and Acheron’s counsel seemingly agreed, that Acheron narrow its request to maturities Acheron claimed ASG did not timely identify. Accordingly, Acheron’s

⁴ Many life insurance policies have provisions that waive payment of premiums should the covered individual be disabled.

counsel provided a list of Policies that Acheron titled “Insureds whose death was not timely identified by ASG.” ASG produced copies of the files for each of these Policies.

III. ARGUMENTS AND AUTHORITIES

A. Acheron is not entitled to the Insured’s Personal Information.

1. The Act Prohibits Disclosure of the Insureds’ Personal Information.

OKLA. STAT. tit. 36, §4055.6(B) provides:

....[e]xcept as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured’s identity, shall not disclose that identity as an insured, or the insured’s financial or medical information to any other person....”

It should be noted, at the outset, that the Insureds are not litigants. Nor can Acheron’s demand for the Insureds’ personal information be plausibly construed as befitting the Insureds in any way. To the contrary, Acheron seeks their personal information (including their social security numbers, home addresses and telephone numbers) so that Acheron can “track” the Insureds. Stated differently, Acheron is asking the Court to order ASG to divulge the Insureds’ protected, personal information for Acheron’s possible, tangential benefit.

Contrary to Acheron’s assertions, ASG does not claim that this statute creates a privilege in favor of ASG. However, by its plain terms, the statute prohibits the disclosure of an Insureds’ identity, financial and medical information except in the limited situations enumerated by the statute, which are not applicable here. Consequently, ASG has expended considerable effort and cost to redact the reams of documents produced to Acheron to comply with the Act. ASG did so not because ASG claimed the information was protected by ASG’s privilege, but because ASG is prohibited by statute from disclosing it.

Acheron fails to cite to any other law that allows or requires the disclosure of this information. Instead, Acheron relies on the general discovery rule allowing parties to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter. “Where a matter is addressed by two statutes—one specific and the other general—the specific statute, which clearly includes the matter in controversy and prescribes a different rule, governs over the general statute.” *Hall v. Globe Life & Acc. Ins. Co. of Okla.*, 1999 OK 89, ¶ 5, 998 P.2d 603, 605 (citation omitted). To the extent the general provisions of the Discovery Code address the issue of whether the Insureds’ information can be properly disclosed, the specific provisions of §4455.6(B) govern over general rules of discovery. Section 4455.6(B) expressly prohibits disclosure of the Insureds’ personal information and Acheron has failed to cite any legal authority that would arguably “otherwise allow[] or require[]” the disclosure of the Insureds’ protected personal information.

Lacking legal authority that would allow or require the disclosure of the Insureds’ protected personal information, Acheron argues that “many statutes that contain a confidentiality or non-disclosure provision have been held to not create privileges that wholly exempt relevant information from discovery....” See Motion at 12. Not only is Acheron’s Motion devoid of Oklahoma authority, but it cites case law inapposite to the issues before the Court in this case.

For instance, in *In re F.E.F.*, 594 A.2d 897 (Vt. 1991), the court found that confidentiality statutes relating to investigation of child abuse and neglect did not create an evidentiary privilege. However, the court based its decision on the fact that that confidentiality statute: (1) was “riddled” with exceptions; (2) gave the Commissioner “broad discretion to allow disclosure;” and; (3) allowed “for the information to reach the prosecutor for law enforcement

use.” *Id.* at 904. Additionally, the trial court ordered in camera review, not production to the opposing litigant. *Id.*

In contrast to the statute at issue in *In re F.E.E.*, § 4405.6(B) is not “riddled” with exceptions to the prohibition against disclosure of the Insureds’ personal information. Section 4055.6(B) contains six narrowly drawn exceptions that are, by their terms, inapplicable here. Second, § 4055.6(B) does not provide any state official discretion to allow disclosure. Finally, § 44055.6(B) does not allow disclosure to third parties litigating a matter only tangentially related to the information protected by the Act.

Moreover, Acheron fails to address the *In re F.E.E.* court’s express recognition that a more narrowly drawn statute could signal legislative intent to create a “form of evidentiary privilege. *Id.* at 904 (examining *State v. Roy*, 557 A.2d 884, 893 (Vt. 1989)). The statutory provision in *Roy*, unlike the statutory provision in *In re F.E.E.* but like § 4055.6(B), had narrow disclosure exceptions inapplicable to the circumstances. “[T]he intent of the statute is that the records not be subject to disclosure except for the statutory purposes.” *Id.* Applying *In re F.E.E.*’s rationale here, § 4055(B) creates “a form of evidentiary privilege” preventing it from disclosure during discovery.

Nguyen Da Yen v. Kissinger, also cited by Acheron, involved a class action brought in 1975 against the Immigration and Naturalization Service and others on behalf of Vietnamese children who had been airlifted from Vietnam. The plaintiffs sought, and the INS refused to produce, information concerning the children’s identities, locations and the circumstances of their admission to the U.S. In refusing to produce this information, the INS argued that the records were protected from discovery by state adoption laws. In rejecting this argument, the court noted that the plaintiffs did not seek information regarding the prospective adoptive

parents, but instead sought “information from INS files which the INS may and must accumulate to determine the children’s admission and adoption status.” 528 F.2d 1194, 1204. The court held that “the district court had ample power under the All Writs Act, 28 U.S.C. § 1651, to require the INS, which has access to the facts, to develop the preliminary information as the identity, location, and circumstances of the potential habeas applicants necessary to litigate the claim of illegal detention. *Id. Nguyen Da Yen* clearly has no application to the present case.

Acheron also argue, in footnote 7, that the “Oklahoma regulations contemplate that a viatical settlement provider or broker can be compelled to produce the insureds’ personal information in response to a subpoena.” *See* Motion, at p. 13. The regulation cited by Acheron, Okla. Admin. Code § 365:25-11-8(a) provides:

A viatical settlement provider or viatical settlement broker shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider or viatical settlement broker is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five (5) business days after receiving notice of the subpoena.

This regulation is inapplicable to the present situation because ASG is neither a viatical settlement provider or viatical settlement broker. Section 4405.6(B)’s prohibition against disclosure of an insured’s personal information extends to “any other person with actual knowledge of an insured’s identity.” By contrast, the regulation cited by Acheron is narrowly drawn to include only viatical settlement providers and brokers. Accordingly, Acheron cannot properly rely upon this regulation to obtain the Insureds’ personal information, which is protected from disclosure by statute, for Acheron’s purposes.

2. Acheron's Claim that Its "Ownership Interest" Entitles It to the Insureds' Personal Information is Without Factual or Legal Basis.

As even Acheron acknowledges, it does not own the Policies. Acheron will not acquire title to the Policies unless and until Acheron pays the full purchase price. To date, Acheron has only paid \$24,379,519 of the \$38,050,000 purchase price. Additionally, Acheron has repeatedly failed to obtain Court approval to reduce the purchase price so that Acheron could obtain title to the Policies without payment of the full purchase price. Simply put, Acheron does not have an ownership interest in the Policies.

Section 4455.6(B)'s exceptions do not include disclosure of a viator's personal information to an entity that has made "a substantial investment" in the viaticals. *See* Motion at 14. Nor does the statute allow disclosure to an entity with a claimed "equitable interest" in a viatical policy. *Id.* Acheron does not cite to any of the exceptions set forth in the statute as support for its arguments.

Acheron relies solely on § 4055.8(A)(10) to support its quest for discovery. Section 4055.8(A)(10) does not allow for the disclosure of a viator's personal information to an entity with a claimed ownership, equitable or investment interest in the viator's policy. Section 4055.8(A)(10) governs the disclosures that a company purchasing a viator's policy must provide to a viator when purchasing the policy stating:

The disclosure document shall contain the following language: 'All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other *may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider.* If you are asked to provide this information, *you will be asked to consent to the disclosure.* The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two (2) years.'

(Emphasis added).

Section 4055.8(10) is silent regarding when a viator's personal information may or must be disclosed. The statute merely mandates that a viatical settlement provider or broker must convey to the viator the possibility that the information could be disclosed. Section 4055.6(B), not § 4055.8 addresses when disclosure is appropriate. Disclosure of personal information is permitted "if necessary" to effect the purchase of the policy from the viator in the first instance. OKLA. STAT. tit. 36, § 4055.6(B)(1). It does not stand to reason that that, by informing the viator that information may be disclosed, the viator's personal information can be properly disclosed without the viator's consent. Nor does it stand to reason that, by advising the viator that their information may be disclosed with their consent to someone "who buys the policies or provides funds for its purchase," that the viator's personal information can properly be disclosed to an entity that has not actually purchased the policy, but has merely acquired an unfulfilled option to purchase the policy.

B. The 128 Insureds' Files are not Relevant to Acheron's Claims.

As a basis to terminate the Servicing Agreement, Acheron claims that ASG failed to timely discover the deaths of 8 Insureds out of the 182 that have died since 2006. Acheron initially claimed that ASG had failed to timely discover the deaths of two Insureds. ASG then provided Acheron with a detailed explanation of how these Insureds died, the difficulties in verifying their deaths and the manner in which ASG was able to do so. ASG also produced the files for each of the Policies that matured after these Insureds died. After suit was filed, Acheron identified 6 other Insureds whose deaths Acheron claims ASG failed to timely discover. ASG has produced the files for each of the Policies that matured after these Insureds died.

Acheron now seeks an order compelling production of the files for 128 other Insureds so that it can "fully evaluate ASG's tracking methodology and attempt to determine where these

insured are living.” *See* Motion at 16. Importantly, ASG has already produced the most comprehensive record it maintains of its contacts and attempts to contact Insureds, the Contact Report. The Contact Report includes all attempts to contact an Insured, whether in writing, by telephone or electronically. Additionally, the Contact Report includes the results of internet searches of social networking sites such as Facebook. The 128 requested files (which are maintained by Policy, rather than by Insured) contain correspondence from Insureds. Therefore, the Contact Report contains all information contained in the Policy files, but the Policy files are not as comprehensive as the Contact Report. Because the Contact Log provides Acheron with the information it claims to need to test ASG’s tracking methodology, Acheron’s argument regarding the relevancy of the Insureds’ files does not bear scrutiny.

To the extent the contents of any of the Policy files do, in fact, allow Acheron to evaluate ASG’s tracking methodology, ASG has produced information that would allow Acheron to make this evaluation with the personal information of viators redacted as required by statute. Acheron’s request is but a thinly veiled attempt to obtain information protected from disclosure by the Act (viator dates of birth, social security numbers, *etc.*).

C. Acheron’s Demand that ASG Provide a Description of How It Identified over 200 Policy Maturities that are not at Issue is Unreasonable and Outside the Scope of Permissible Discovery.

Acheron further seeks a description of how ASG learned of each of the 230 Policies maturities since 2006. Acheron argues that this information is relevant because “Acheron believes ASG’s methodology for tracking the insured and identifying policy maturities is ineffective and falls short of industry standards.” *See* Motion at 17-18. Notwithstanding, Acheron’s request goes far beyond the information necessary to ascertain whether ASG’s tracking methodology was ineffective.

Acheron claims that ASG failed to timely discover the deaths of eight Insureds and, correspondingly, the maturities of the thirteen Policies insuring their lives. Although ASG disputes this allegation, ASG has: (1) produced the Contact Log, which includes the details of ASG's attempts to contact these Insureds; and (2) has produced the files for these 13 Policies. The other 217 Policy maturities – which Acheron tacitly concedes ASG timely discovered – are irrelevant to any issue in this case. If, as Acheron contends, ASG's "ineffective" tracking procedures (rather than the usual circumstances of the Insureds' deaths or their inaccessibility) resulted in the delay in confirming these deaths, only those thirteen Policies are arguably relevant. ASG has provided Acheron with the requested information for these thirteen Policy files.

Acheron's demand that ASG review the other 217 Policy files and prepare a description of how ASG learned of those Insureds' deaths could easily take a significant amount of effort and time to complete. ASG did not begin tracking this information electronically until July of 2008. For any maturities prior to that time, ASG would be required to review each Policy file to determine how ASG learned of each Insured's death. Of the 217 maturities that Acheron admits ASG timely identified, 94 matured before ASG began keeping an electronic log of how it identified maturities. For each of these 94 Policies, ASG would be required to review the paper file to determine how it learned that the Insured had died. This process would take at least one ASG employee approximately 100 to 150 hours to complete.

The burden on ASG to produce this information far outweighs any possible relevance of the information. Acheron does not contend that ASG failed to timely identify these maturities, much less that it employed "faulty" tracking procedures in timely identifying the maturities. ASG has produced the information in its possession regarding the thirteen Policies that Acheron

claims ASG failed to adequately track. Acheron's request for information regarding ASG's timely discovery of the other 207 Policy maturities is burdensome and outside the scope of permissible discovery.

As to Acheron's suggestion that ASG produce these Policy files with the personal information of the Insureds, the confidentiality of the Insureds' personal information is discussed above.

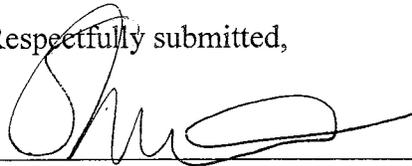
D. Acheron's Other Discovery Issues are Moot.

In Section D of its Motion, Acheron asks the Court to compel ASG to produce all correspondence ASG has had with any insurance carrier since 2008 regarding the disability status of any Insured. Prior to the filing of its Motion, ASG had produced the requested correspondence for forty-two Policies with a DPW. Since that time, ASG has produced correspondence for the remaining DPW Policies in response to Request for Production No. 11.

In Section E of its Motion, Acheron asks the Court to compel ASG to supplement certain discovery responses. ASG agreed to supplement these responses in an effort to resolve all the discovery issues raised by Acheron. ASG anticipated that, by agreeing to a compromise whereby it would forgo its objections and supplement its previous responses, Acheron would itself narrow or forgo its demand for other discovery of information to which ASG objected. Although Acheron later refused to make similar compromises, ASG has supplemented its responses to Interrogatories Nos. 7, 14, 15 and 25, and has agreed to provide further supplementation if an appropriate protective order is entered by the Court.

WHEREFORE, premises considered, Asset Servicing Group, L.L.C. respectfully requests that the Court deny Acheron Portfolio Trust's Motion to Compel and award Asset Servicing Group, L.L.C. the costs and attorney fees incurred in responding to the Motion to Compel.

Respectfully submitted,



Melvin R. McVay, Jr., OBA No. 06096
Shannon K. Emmons, OBA No. 14272
PHILLIPS MURRAH P.C.
Corporate Tower / Thirteenth Floor
101 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4133

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

CERTIFICATE OF SERVICE

The undersigned certifies that on the 16th day of April, 2015, a true and correct copy of the foregoing was mailed, first-class with postage prepaid, to:

John N. Hermes
Patrick L. Stein
McAfee & Taft A P.C.
10th Floor, Two Leadership Square
211 North Robinson
Oklahoma City, OK 73102-7103

Attorneys for Acheron Portfolio Trust

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

Attorney for Plaintiff



Shannon K. Emmons

July 23, 2013

Via Certified Mail

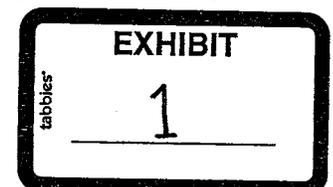
Melvin R. McVay, Jr.
Kenneth A. Tillotson
Phillips Murrah P.C.
Corporate Tower, Thirteenth Floor
101 North Robinson
Oklahoma City, OK 73102

Re: Accelerated Benefits Corporation portfolio – Breaches of the Service Agreement by ASG – Conflict of Interest of Conservator

Gentlemen:

We represent the Acheron Portfolio Trust in a matter concerning the Accelerated Benefits Corporation portfolio of life settlements. Acheron is the largest investor in the ABC portfolio, and it pays 100% of the portfolio's servicing fees. Our understanding is that you represent Tom Moran, who is both the Conservator of the ABC portfolio and the controlling principal of Asset Servicing Group (ASG), the entity that services the ABC portfolio. We believe that ASG is failing to adequately perform its duties under the Service and Escrow Agreement (the "Agreement"), and that its failures have been exacerbated by Mr. Moran's inherent conflict of interest. ASG's failure to discharge its duties under the Agreement has injured Acheron and the other investors in the ABC portfolio. Accordingly, Acheron demands that Mr. Moran take certain actions specified below to remedy the damages incurred by Acheron and the rest of the portfolio Estate.

According to Section 10.10 of the Agreement, the Servicer is entitled to engage ASG "to perform some of the administrative services" required under the contract. Instead, however, there has been a wholesale delegation of servicing responsibility to ASG, which has created what Acheron (and we believe a court) will view as an irreconcilable conflict of interest that prevents the terms of the Agreement from being fulfilled. This conflict has reached a point where it is impossible for Acheron or other third party to determine whether it is dealing with Mr. Moran in his capacity as owner of ASG, or as Conservator. Furthermore, this is far from a theoretical conflict. It has caused serious financial harm, not only to Acheron, but to all of the ABC portfolio investors that Mr. Moran, as Conservator, is duty-bound to protect. Although



Acheron receives 40% of the recoveries, it is for the most part individual, elderly investors that receive the other 60% and who are being directly adversely affected by ASG's breach of the Agreement.

Many of the policy-related services that ASG is obligated to perform are set forth in Section 2 of the Agreement ("Policy Services"):

2. Policy Services. During the Term of this Agreement, Servicer will provide on behalf of Buyer and Seller the following services (collectively, the "Policy Services"):

2.1 Insured Tracking. With respect to the insured under each Policy (each an "Insured" and collectively the "Insureds") Servicer will use reasonable efforts to monitor the health status and last known address of each Insured, in accordance with the following:

2.1.1 Physician Contact. On a periodic basis, not less frequently than annually, nor more frequently than allowed under applicable law, Servicer will contact the physician of each Insured for which a valid medical release is available to determine the health status of each such Insured.

2.1.2 Insured Contact. On a periodic basis, not less frequently than semiannually, nor more frequently than allowed under applicable law, Servicer will contact each Insured or their respective nominee(s), if applicable, to determine (a) the last known address or other whereabouts of each such Insured; (b) the health status of each such Insured (including whether such Insured has qualified for any type of disability); and (c) whether such Insured has changed regular physicians and if so, the Servicer will use reasonable efforts to obtain the name and address of such new physician to be contacted by Servicer pursuant to Paragraph 2.1.1 above.

2.1.3 Inforce Illustrations. On a periodic basis, but not less frequently than once every two (2) years, the Servicer will use reasonable efforts to contact the insurance companies which issued certain of the Policies which constitute universal life and whole life insurance policies to verify: (a) the coverages and (b) the premiums with respect thereto, as are customarily verified via an inforce ledger illustration for each such respective Policy.

2.2 Disability Waiver. With respect to each Policy which contains a rider waiving the payment of premiums in the event of the disability of the Insured, the Servicer will use reasonable efforts to: (a) continue or renew existing waivers of premium payments for Policies in which the premiums are currently paid as a result of a disability rider; and (b) apply for and

seek the waiver of premiums for any Policy in which the Servicer has actual knowledge that the Insured thereof has hereafter become disabled.

* * *

In consideration of its services, the Servicer is paid (i) an annual fee per policy that is currently approximately \$470, (ii) 8% of all maturities above a certain threshold of payments to the estate, as well as (iii) 8% of any net surplus in any given year. This is an extraordinarily high compensation for servicers by industry standards, especially in view of the large size of the ABC portfolio, which should create efficiencies of scale not available with smaller portfolios. Given the considerable compensation ASG was able to negotiate from Mr. Moran as Conservator, Acheron expected a correspondingly high level of service, at least up to the contractually agreed standards. We find that this is not the case.

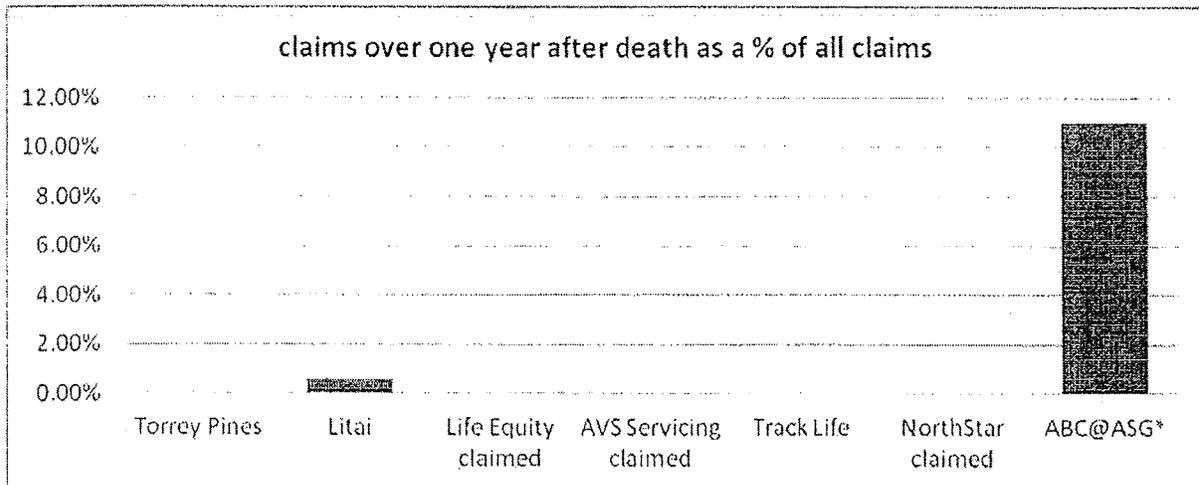
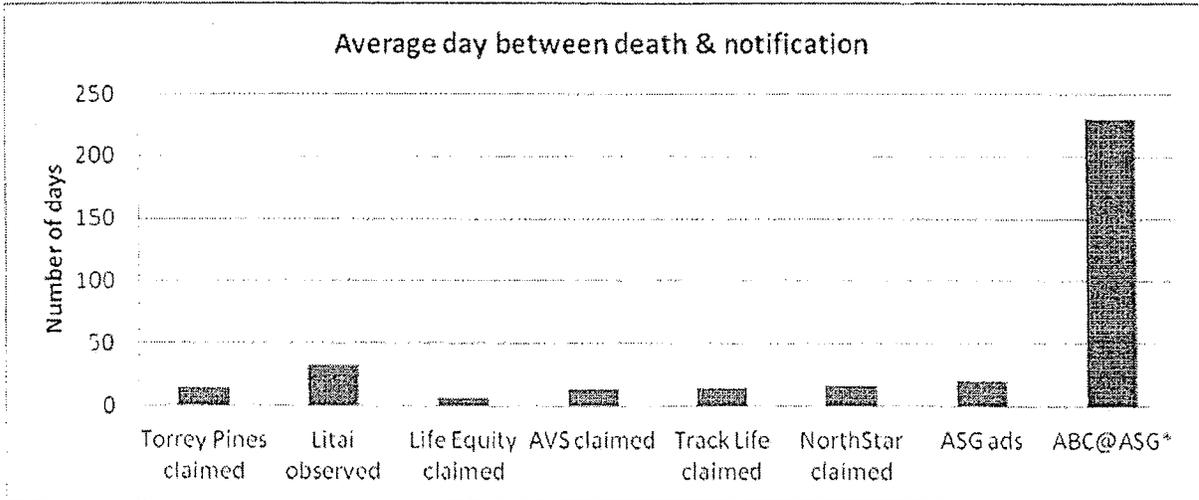
Failure to Identify Policy Maturities in a Timely Manner

In just the last few months, ASG has advised Acheron of three policies that had matured (the insured died), respectively in April 2004 (two policies for one insured) and November 2001. ASG did not identify these policies as having matured until April of 2013. The result is that Acheron has continued to pay, and ASG has continued to collect, a monthly fee for 12 years on one policy and 9 years on two policies, after the insureds had died. ASG should have identified these death events years earlier. Identifying death events promptly is what ASG is being handsomely compensated to do. Additionally, ASG has compounded the unnecessary expense to Acheron and payments to ASG, because, as noted, the individual who passed away on April 3, 2004, was insured under two policies, and ASG has been billing Acheron a monthly fee for each policy, even though the work and effort involved (or in this case the lack of effort) in tracking the status of the insured was identical, regardless of the number of policies involved. In other words, ASG was billing Acheron for work on policies that it did not perform. This is apparently true for many insureds. And, as discussed below, there has been substantial harm to the ABC investors as a whole, not just to Acheron.

These examples have prompted a more detailed examination of ASG's practices based upon data only recently provided by ASG. As a result, we have identified a consistent pattern of ASG's failure to identify matured policies in a timely fashion. That is a breach of the Agreement, and Mr. Moran's failure to monitor the services being provided to the ABC portfolio is a breach of his duties as Conservator, and therefore, a breach of the duties owed to the court.

With regard to the failure to timely identify deaths, we note that in a press release Mr. Moran issued in July 2012, he stated that, before the changes in the Social Security Death Master File that took effect on November 1, 2011, ASG typically identified a death event within 14 days after its occurrence. He also stated that, after the changes in the Social Security Death master File that took effect on November 1, 2011, ASG typically identifies a death event within 21 days after its occurrence. That timeframe is more or less consistent with industry standards. Unfortunately ASG's actual performance, at least with respect to the ABC portfolio, is far below both industry and its own, self-proclaimed standards. Based on ASG recently-provided reports, the average number of days between maturities and identification of the maturity since 2010, for the ABC portfolio, has been of 238 days, or over ten times the 21 days Mr. Moran reported is

ASG's average. Comparable servicers reported around 30 days or less to identify a maturity on portfolios with similar characteristics during a similar timeframe. There have been no less than 10 policies (out of a portfolio of approximately 1000 policies) whose deaths were not identified for over 3 years. That performance is grossly inadequate for the estate and costly to all parties except, of course, ASG. ASG's comparable performance in this area is set forth in the following table:



*: data used for ABC at ASG is from March 2010 to April 2012, and the same therefore applies to the following graphics

It is also interesting to note that while the rest of the industry is described as “scrambling” to deal with the reduction in available information from the Social Security Administration, ASG apparently is largely unaffected:

“I don’t think it’s hurt us at all,” Sheri Townsend, chief operating officer of Asset Servicing Group, said in an interview. “Really no one knows. If you don’t know if you haven’t caught a maturity, you don’t know.”¹

In at least two cases, true to Ms. Townsend’s words, ASG did not catch a maturity for over nine years. It is this cavalier attitude that has produced the poor performance by ASG on the ABC portfolio that Acheron has only recently been able to measure. At the risk of repetition, this poor quality of service would not have been permitted if the portfolio was being supervised by a Conservator who did not have the significant conflict of interest that Mr. Moran does.

What is particularly troubling to us is that ASG has a financial incentive to not identify deaths in a prompt and timely manner, or to otherwise perform the other work necessary to service this portfolio. ASG benefits, on a monthly basis, from each policy that it purports to continue to service. ASG likewise has no incentive to perform the direct contact and conversations with the insureds and to provide case by case status reports that are necessary for proper tracking, even though that is called for under the Agreement. For ASG, to identify maturities promptly is to decrease the fees paid to it. In fact, postponing maturities until later years can create a further, artificial surge in maturities in a given year, such that ASG will be in a position to then collect a performance fee of 8% for that year. As Conservator, Mr. Moran should have taken steps to ensure that ASG performed its tracking functions in a reasonable manner. He did not, and therefore ASG does not. And, as Conservator, Mr. Moran has a responsibility to protect all investors, including Acheron. It appears, however, that his conflict of interest is preventing him from carrying out your responsibilities as Conservator to oversee ASG and require it to provide the services called for under the Agreement.

ASG’s Failure to Obtain Necessary Health Information

The reasons for ASG’s failure to identify deaths in a timely fashion, and the resulting cost to the Estate, is due at least in part to ASG’s failure to perform the specific tracking services identified in section 2 of the Agreement. ASG is required to provide a health status and make periodic physician contact “not less frequently than annually.” It appears that ASG is not making any attempt to contact insureds directly (other than by mailing standardized postcard), or to obtain updated records relative to an insured’s medical condition. Unlike ASG, other servicers in the industry typically talk to insureds on a regular basis on the phone, or conduct a one-to-one, dedicated and personalized exchange with them by email or similar means. Additionally, such servicers frequently provide updates on the health status of the insureds, and obtain physicians’ reports. This quality of servicing is particularly important to the ABC portfolio, which is very heavily weighted with HIV-positive insureds, as the Conservator and ASG well know. None of this is being done by ASG, however.

Our understanding is that ASG does nothing more than conduct electronic database sweeps and mail standardized postcards to be returned by the insureds, if the insureds are willing. It is well known in the life settlement industry that database sweeps are not very effective. Additionally, requesting the insureds to return a postcard when they have no incentive to do so is obviously ineffective, and relying on this practice creates a significant potential for

¹ Quote is from The Life Settlements Report, August 16, 2012.

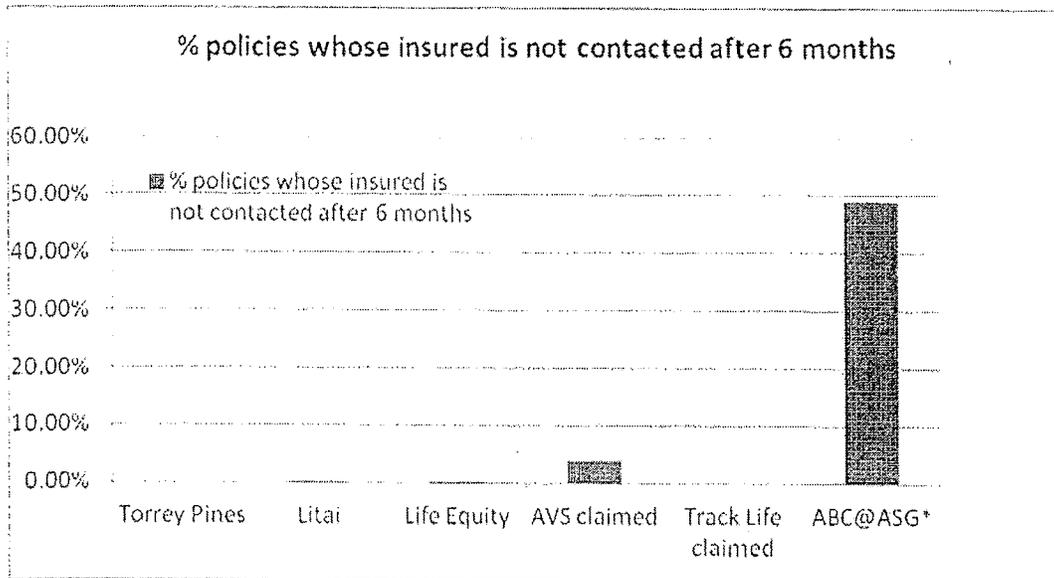
losses in a portfolio the size of the ABC portfolio. ASG's methods are simply inadequate and fall far short of industry practice.

Other servicers provide various forms of health reports or updates based on the direct contact with the insureds or their caregivers through telephone calls, email, and social networking. ASG has not provided a single health status or physician report in the last 12 months. This lack of effort is clearly detrimental to the Estate that Mr. Moran, as Conservator, has a duty to protect. The following table illustrates ASG's communication methods as compared to other servicers in the industry:

		Torrey pines	Lital	AVS Servicing	Life Equity Claimed	Track-Life Claimed	North Star	ASG press release	ABC experience at ASG
Direct Contact	Phone	x	x	x	x	x	x	unknown	
	Mail	x	x	x	x	x	x	unknown	x
	Email	x	x	x	x	x	x	unknown	
	Social network	x	x	x	x	x	x	unknown	
Database	Free websites	x	x	x	x	x	x	x	x
	Paying website	x	x	x	x	x	No	unknown	unknown

	Torrey pines	Lital	AVS Servicing	Life Equity Claimed	Track-Life Claimed	North Star	ASG press release	ABC experience at ASG
Health status asked by direct contact	x	x	x	x	x	x	x	none observed
Medical report	x	x	x	x	x	x	x	none observed
LE upon request	x	x	x	x	x	x		x

The unreasonableness of ASG's methods for contacting insureds is further demonstrated by the percentage of insureds it has lost contact with. Other servicers indicate that they generally fail to have direct contact with only one or two percent of the insureds they are tracking in any given six months period. As shown by ASG's own data, however, ASG has had no contact with an astounding 43 percent of the insureds in the ABC portfolio within the last 12 months. Thus, as of May 2013, ASG had lost contact with approximately \$35 million of death benefits, out of a total of approximately \$87 million—approximately 40 percent of the face value of the ABC portfolio. ASG's comparative performance is set forth in the following tables:



ASG's performance is also completely at odds with the performance standards it promises on its own website:

Untimely demise discoveries can be costly; therefore, ASG has established a highly effective dual approach to insured tracking to ensure that each life is monitored efficiently. The most effective means for discovering demises is by utilizing data from multiple third-party sources. These sources, some of which are unique to ASG, are checked weekly, bi-weekly or monthly to determine the health status of the insured which can result in as many as 40 individual checks per year for each insured.

ASG also makes periodic (quarterly, semi-annual, annual, and in some cases monthly) contact with each insured to ensure that the most current and accurate information regarding their current physicians, contact information and medical information is on record. By using a combination of direct contact, up-to-date medical records, and reliable third party data systems, we can provide you with timely and accurate results.

ASG's skilled personnel have processed nearly a thousand death claims. Upon a discovered demise, ASG will obtain a death certificate with respect to such insured. Additionally, ASG will obtain and complete all necessary death benefit claim forms to ensure that the proceeds are received in a timely manner. The efficiency and accuracy used in requesting death certificates and filing death claims is crucial to ensure that death benefits are received as soon as possible, which in turn, optimizes returns for you, the client.

This is clearly not the level of service being employed by ASG for the ABC portfolio.

In light of ASG's dismal performance, it is therefore problematic that Mr. Moran, as Conservator, is not more actively supervising (or in reality, supervising at all) the services provided by ASG. This is not surprising, however, since the Servicer (Tom Moran, as controlling principal of ASG) is the Conservator (Tom Moran). This conflict of interest has harmed not only Acheron, but the ABC portfolio's other investors, many of whom are in their 70s, 80s, and perhaps 90s, and would have been entitled to much larger payouts if the Conservator were aggressively supervising the Servicer to ensure that it was using reasonable efforts to actively track insureds and collect maturities. As ASG notes on its website, "Untimely demise discoveries can be costly." We agree. ASG has lost track of over 40 percent of the insureds in the ABC portfolio. That is so far below industry standards as to suggest willful disregard of ASG's contractual duties.

The losses suffered by the Estate are considerable. Over 10 percent of the maturities discovered by ASG were not identified until at least 3 years after the insured's death. This performance is very poor both by industry standards and by ASG's own, self-proclaimed standards. But worse yet is the unknown: if all the policies for which contact with the insureds has been lost had matured, the Estate would have collected funds equivalent or close to the entire remaining amount owed to the Estate. This would mean this Conservatorship would be over and the Estate reimbursed, and that Mr. Moran would no longer be collecting conservatorship fees. In the meantime, many of the Estate's investors likely have to pay interest at high rates in order to fulfill their obligations, and their advanced age mean that we are now, in a number of cases, dealing with their heirs rather than the original investors. Indeed, the investors may be older, as a group, than the insureds, whose death provide the Investors with income. Similarly, the provision of health status updates on the insureds would help investors and a non-conflicted Conservator manage the portfolio by using better mortality estimation. For instance, in some cases, premium waiver and accelerated death benefits would be obtained. Better projections of payments to investors could be provided. Of course projections require the portfolio to be properly tracked. These health status updates, which do not even require doctor's reports, let alone life expectancy evaluation reports but do require proper direct tracking and careful recording of information by dedicated employees, as is done by other servicers, are not being provided by ASG.

ASG's inadequate tracking of the insureds has further injured the ABC portfolio's investors because ASG has been unable to take advantage of advantageous policy provisions. Some policies in the ABC portfolio have a "waiver of premium" rider or an accelerated death benefit ("ADB") feature. The waiver-of-premium riders permit the policy holder to stop payment of premiums if the insured becomes terminally ill or disabled. An ADB feature usually permits the policyholder to receive cash advances in the case of a diagnosis of terminal illness. Obviously, the Conservator cannot take advantage of features if the Servicer has lost contact with over 40% of the portfolio and is not pursuing and obtaining medical information with respect to the rest. ASG's failure to keep track of such a large percentage of insureds, and its failure to keep medical information updated through direct contact with respect to virtually the entire portfolio, means that investors are paying more and receiving less. The net result here is that Mr. Moran is benefitting from ASG's failure to provide adequate services at the expense of the investors he is obligated to protect.

Improper Use of Inflated CPI Factors by ASG

In further reviewing ASG's charges, it appears that ASG has been overcharging Acheron for at least the last four years by incorrectly applying an inflated CPI number to the per-policy charge. Our calculation is as follows: The base rate per the Agreement is \$32.88 per policy. There was to be an adjustment each year based upon the CPI, United States, All Urban Consumers as published by the United States Department of Labor. When we went back and recalculated the amount, it appears that for 2009-2013 there was an overcharge to Acheron of approximately \$55,000, when using the correct DOL CPI factor. Additionally, CPI adjustments were made at different months over the years. This appears to serve no purpose, but does reflect a high level of disorganization creating confusion. As a result, we need to review ASG's records for 2008 to determine whether there was an overcharge, as we suspect, for that year as well.

Improper and Unauthorized Charges for Policy Riders

Acheron's recent inquiries into ASG's practices have also revealed that when a policy's dividends are reinvested for the purchaser of a rider, guaranteed option, or other feature (collectively riders) that increases the death benefit, ASG has been treating the addition of the rider as if it were a new policy and collecting a separate monthly fee for each rider, as well as for the base policy to which the rider belongs. In some instances, a rider increases the death benefit by less than \$1,000, while ASG charges close to \$500 a year to service it. Thus, the increase in the amount of coverage, which should benefit Acheron and the rest of the Estate, benefits only ASG. There appear to have been over 10 such instances of riders being billed monthly as separate policies. No provision of the Agreement permits ASG to do this. Moreover, industry practice is to treat such riders as part of the original policy or, if the riders are considered as separate policies, to service them at a discounted rate.

The Asset Purchase Agreement between the parties dated May 24, 2006 ("APA") provided for the sale by the Conservator of "certain assets" being "certain unmaturing life insurance policies which were 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 . . ." Exhibit A of the Agreement provides a list of the policies being sold and describes it as "a viatical portfolio of life insurance policies owned by Seller [the Conservator] as of December 27, 2005."

If the riders are "new" policies, which appears to be by ASG's position in charging separately for them, then they were not part of the original asset purchase because they are not described on Exhibit A. As a result, it is the Conservator who has made the decision to purchase them (without consultation with Acheron), and therefore the Conservator who must pay the premium and servicing fee. If the riders are not new policies, but merely increases in the death benefits (and in some cases very modest increases), then there should not have been any additional servicing charges for them.

One example of which we are aware where ASG is charging Acheron for the "new" policies is ASG reference number 0586V, issued April 18, 2007. The "new" policy was issued as part of a class action settlement against Allstate. The basis on which it was issued is that there was a current, far larger policy already in existence owned by the Conservator. The death benefit of the "new" policy is only \$1,776, and no premium was charged. Moreover, this

rider can only lapse if the larger policy lapses. Thus, to service this "new" policy, ASG needs to do nothing beyond servicing the old policy. Yet, ASG, without notice to Acheron, has been charging Acheron what is now \$500 per year for servicing an additional \$1,776 in death benefits, with no extra work involved.

Acheron demands that Mr. Moran, as Conservator and controlling principal of ASG, determine how many similar instances exist and provide a detailed accounting of the premiums paid and servicing fees charged. ASG's separate charges for these riders is especially egregious, because there is little or no extra work involved, and no additional tracking required. Thus, ASG has no economic justification for charging separate fees for these riders. ASG does not provide Acheron with a separate accounting of these charges, nor were these charges negotiated with Acheron. As Conservator, Mr. Moran should have ensured that ASG acted in good faith with Acheron. He has not, and his conflict of interest as Conservator and principal of ASG could not be starker.

Acheron's Demands Upon ASG on Behalf of Itself and Investors

1. Acheron demands that ASG refund to Acheron the monthly fees on all policies where there have been charges from 180 days after the date of death (a very conservative timeframe, given industry standards and ASG's own pronouncements). Acheron further calls upon ASG to make an adjustment for the multiple policies insuring the same individual since the tracking functions are duplicative. Acheron will consider ASG's failure to reimburse it as a breach of the Agreement.

2. Additionally, Acheron demands that ASG pay the Estate 40% of the servicing fees Acheron has paid to ASG over the last five years to compensate the for the damage it suffered as a result of ASG's failure to obtain necessary medical information on the insureds. In Acheron's view as experienced investors in this industry, 40% is a conservative percentage because the actual cost of tracking would be greater than 40% of the overall servicing charge. Generally the premium payment procedure is regarded as the other 60% of the service Acheron recognizes that the injury here is to the Estate as a whole, not to Acheron alone. And, therefore, Acheron believes this sum should be paid back to the Estate. Acheron appreciates that this demand highlights the conflict of interest situation Mr. Moran is in since he, as Conservator, has an interest in obtaining the highest recovery on behalf of the Estate, while he, as principal of ASG may have an interest in minimizing ASG's breaches of contract and payments to the Estate resulting therefrom. Nonetheless, this is a problem of Mr. Moran's own making. Acheron has given this issue considerable thought and has concluded that 40% of the yearly servicing fee for policies where the insured was not contacted for over 6 months, for each of the last five years is a fair, reasonable, and conservative assessment of the damage to the ABC Estate, and it should be a payment by ASG to the Estate. Acheron's estimation of the amount is approximately \$999,000 for those losses. Acheron, therefore demands that ASG pay that amount to the Estate, plus interest, as allowed by Oklahoma law. Failure to do so is a breach of the Agreement.

3. Acheron demands that ASG reimburse the excess monthly servicing fee charged by ASG by use of an incorrect CPI factor, in the amount of around \$55,000, plus interest, as allowed by Oklahoma law.

4. Acheron demands that ASG reimburse the Estate for all servicing fees of policies that matured more than a year before ASG notified the ABC portfolio's investors.

5. Acheron also calls upon ASG as the Servicer and Mr. Moran as the Conservator to perform an internal audit identifying all instances where ASG has charged Acheron servicing fees for riders to existing policies, to stop the practice, and to reimburse Acheron all duplicate charges, plus interest, as allowed by Oklahoma law. Failure to do so is a breach of the Agreement.

6. Acherons also demands that ASG provide health status updates by contacting insureds and their physicians, as required under the Agreement. ASG's failure to do so is already a breach of the Agreement.

7. Finally, based upon the health information ASG should already have obtained, and Acheron's demand that it obtain in fulfillment of its contractual obligations, Acheron further demands that ASG trigger all available waiver-of premium riders and accelerated death benefit features, which ASG should have already done.

**The Persistent Lack of Performance by ASG and
Conflict of Interest Resulting from the Relationship between
ASG and the Conservator Suggest a Change in Servicer is Warranted**

Acheron, as a result of the Option Purchase Agreement, is the largest ABC investor and receives 40% of the distributions of the policy benefits. It pays 100% of the Servicer's fees. The Conservator is duty-bound to protect Acheron's interests, particularly where these interests are not in conflict with the interests of the other investors. ASG's endemic failures mean that all investors are being paid less on a current basis. Moreover, given the severe under-performance of ASG, the existence of the conflict of interest reflects poorly not only on Mr. Moran as Conservator but on the Conservatorship proceedings, and therefore, the court itself.

Acheron requests that you provide us with the initial disclosures made to the court concerning the relationship between Mr. Moran as Conservator and principal of ASG. It is hard to believe the court countenanced such a conflict of interest. Be that as it may, ASG's performance requires that its relationship with the ABC portfolio be revised or terminated. Acheron believes it is time for a change of servicer for the good of the ABC Estate.

Acheron proposes, in light of the poor performance of ASG, that Mr. Moran (in consultation with Acheron) select another recognized servicer to replace ASG. Based on Acheron's extensive expertise in the Life Settlement industry, it has been in contact with other servicers, and, as noted above, other servicers' efforts in tracking insureds and getting updated medical information is far more robust than ASG's. Other servicers have long track records in the industry and are willing to commit to perform services at lower costs while providing a level of service well in excess of the level at which ASG is performing. In addition, at least one firm will offer guarantees of performance that ASG does not.

Upon preliminary inquiry, Acherons has received expressions of interest from other servicers about servicing the ABC portfolio. All of these servicers routinely provide

materially better performance in terms of tracking and servicing than ASG has done for the ABC portfolio.

Attached is a specific proposal Acheron has obtained from Litai Assets, LLC. Other servicers requested more details before they would offer final terms, which Acheron was not willing to provide until we discussed the matter with you. As you may know, Litai is already servicing a large portfolio for Acheron. As a result, Litai was willing to devote more time and thought to an actual proposal. Additionally, because of this existing relationship, Acheron has been able to observe Litai's performance up close. Its tracking services are far more robust than ASG has been providing, and there would be no conflict of interest with the Conservator.

Acheron proposes that it and Mr. Moran, as the Conservator, approach the court jointly about moving the portfolio to another servicer in order to relieve Mr. Moran's conflict of interest. We need to know Mr. Moran's position on this issue within the next thirty (30) days. If he is not interested in this proposal, we will request that the court select another servicer and consider replacing Mr. Moran as Conservator as well. Please contact me at your earliest convenience to coordinate a joint proposal for the court.

Very truly yours,

A handwritten signature in black ink, appearing to read "John N. Hermes". The signature is fluid and cursive, with a large initial "J" and "H".

John N. Hermes, Esq.

cc: Jean-Michel Paul

Melvin R. McVay, Jr.
Director

405.235.4100
mrmcvay@phillipsmurrah.com

August 30, 2013

VIA HAND-DELIVERY

John Hermes
McAfee & Taft
Two Leadership Square, Tenth Floor
211 North Robinson
Oklahoma City, Oklahoma 73102-7103
john.hermes@mcafeetaft.com

Re: Oklahoma Department of Securities, vs. Accelerated Benefits Corporation;
Case No. CJ-99-2500-66, District Court of Oklahoma County, Oklahoma

Dear John:

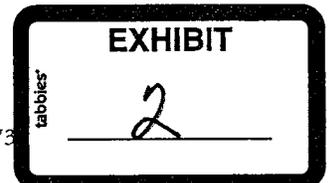
We are in receipt of your letter dated July 23, 2013. Please find the response of the Court-appointed Conservator, Tom Moran, to the issues raised by Acheron Portfolio Trust ("Acheron") below. We have also included background information that provides context to Acheron's complaints and the Conservator's response.

I. Background

A. History of the Conservatorship

The Oklahoma Department of Securities (the "Department") brought the above-referenced action in 1999 to protect the interests of the investors (the "Investors") in Accelerated Benefits Corporation ("ABC"). On February 6, 2002, the Court entered its order establishing a conservatorship (the "Conservatorship") of the assets of ABC, which are comprised of a portfolio of life insurance policies ("Policies" or "Portfolio"), and appointing Mr. Moran to act as Conservator of the ABC Portfolio. On February 21, 2006, the Court entered its order authorizing and establishing a limited liability company, HTM Conservator, LLC ("HTM"), to hold title to the Policies. Pursuant to these Court orders, HTM is the current owner of the Policies.

The Power of a Strategic Partner.®



In 2006, the Court entered its order approving the Option Purchase Agreement ("OPA") between Acheron's predecessor, Lorenzo Tonti, Ltd., and the Conservator.¹ In its order, the Court also approved the Service and Escrow Agreement ("Servicing Agreement") between Acheron's predecessor, the Conservator and HTM. Under the terms of the OPA, Acheron is obligated to pay the ABC Investors \$38,050,000 for the Policies. The total face value of the Policies at the time Acheron entered into the OPA was \$109,528,545. Under the terms of the OPA, Acheron is allowed to pay the purchase price from the death benefits that are paid as the Policies mature. Sixty percent (60%) of the death benefits are paid to the Conservatorship and credited toward the purchase price; the remaining forty percent (40%) is paid to Acheron.² Until the purchase price under the OPA is paid in full, HTM holds title to the Policies and Acheron is contractually obligated to pay the servicing fees for the Policies under the terms of the Servicing Agreement.

B. Performance of the Conservatorship and Investor Return

As of June 16, 2013, there are 5,086 active ABC Investors. Each of the ABC Investors receives a *pro rata* share of the funds distributed by the Conservatorship. Since the inception of the Conservatorship, the Conservator has made twenty-one (21) distributions to ABC Investors, totaling \$34,280,000.³ To date, approximately thirty-three percent (33%) of each Investor's net investment in ABC has been returned to the Investor. Payments will continue until each ABC Investor receives approximately fifty percent (50%) of the amount of his or her net investment.

C. History of Servicing of the Policies

Pursuant to the authority granted by the Court's orders of February 6 and February 21, 2002, the Conservator and HTM engaged Asset Servicing Group ("ASG") to service the Policies.

¹ The Court previously approved option purchase agreements and servicing agreements, which are nearly identical to those with Acheron, with different purchasers. The first agreements were with Infinity Capital Services, Inc. ("Infinity"). The Infinity agreements were executed in March of 2003 and stated a purchase price of \$56,500,000. Prior to Infinity's default in November of 2004, the ABC Investors had received \$14,498,299 of the purchase price under the Infinity OPA. The Conservator executed a second option purchase agreement and servicing agreement with SIG Partners I, LP ("SIG") in May of 2005. The purchase price for the SIG OPA was \$42,061,771. Prior to SIG's default in January of 2006, it had reduced the balance of the purchase price to approximately \$38,000,000. Acheron's purchase price included a \$50,000 earnest money payment of \$50,000 for a total purchase price of \$38,050,000.

² There are two (2) Policies that fall outside of this payment structure under the terms of the OPA. When these two (2) Policies mature, the proceeds will be paid seventy-five percent (75%) to the Conservatorship and twenty-five percent (25%) to Acheron.

³ The most recent distribution was made in June 2013.

The Court and the Department are, and have always been, fully aware of the business relationship between the Conservator and ASG. Acheron was also fully aware of the relationship between the Conservator and ASG prior to entering into the Servicing Agreement. In fact, Acheron's manager, Jean-Michel Paul, was involved in detailed and extensive discussions with Mr. Moran about the prospect of buying ASG. These discussions began in 2006 and continued into 2007. Additionally, Mr. Paul and his associates conducted a due diligence review of ASG's operations, which included periodic on-site visits and meetings with Mr. Moran and the ASG staff. Thus, not only has Acheron known of the relationship between Mr. Moran and ASG since 2006, Acheron has always been very knowledgeable about the servicing provided by ASG under the terms of the Servicing Agreement.

Neither the Court, the Department nor the ABC Investors have ever questioned ASG's performance under the terms of the Servicing Agreement. Neither the Department nor the ABC Investors have ever objected to ASG's servicing fees. Further, the Court has approved all servicing fees requested by ASG in connection with the Policies. Even Acheron, which has chafed at its financial obligations under the Servicing Agreement since its inception, has not voiced any substantive complaints about the servicing provided by ASG until last month. It thus appears that Acheron's complaints have less to do with the actual servicing of the Portfolio than with Acheron's continued attempts to avoid the financial cost of servicing the Policies, which Acheron is obligated to pay despite the less than desired financial performance of the Portfolio.

D. Acheron's Attempts to Renegotiate the OPA and Terminate the Servicing Agreement

Since entering into the OPA and Servicing Agreement, there have been significant changes in the viatical and life settlement markets that may have adversely affected the value of the Portfolio. While this does not impact the amount the ABC Investors are entitled to receive under the terms of the OPA, these market shifts have clearly impacted Acheron's evaluation of its decision to purchase the Portfolio and contractually obligate itself to pay the servicing fees for the Policies. In response, Acheron has repeatedly attempted to renegotiate and revise the contracts – which Acheron entered into voluntarily and with the Court's approval – to Acheron's benefit and the detriment of the ABC Investors.

1. Acheron's Initial Offer to Purchase the Portfolio at a Reduced Amount

In 2007, Acheron made its first attempt to reduce its contractual obligations to the ABC Investors. In a letter to the Conservator from Acheron's Boston counsel, Acheron candidly stated:

The current payment structure under the Purchase Agreement is generating negative cash flow and is not sustainable. My clients therefore believe that the best way to proceed would be to reach an agreement on the prepayment of the balance of the Purchase Price. The Trust is willing to pay the Conservator the

sum of Ten Million Dollars (\$10,000,000) (the Prepayment Amount) in full satisfaction of the balance of the Purchase Price. (Emphasis added.)

After receiving Acheron's proposal in 2007, the Conservator consulted with the Department and had numerous discussions with Acheron's managing director, Jean-Michel Paul, and Acheron's Boston, New York and local attorneys. The Conservator and Department repeatedly told Acheron that they could not recommend prepayment of the Purchase Price in the amount proposed by Acheron, which would have been a substantial discount to the balance owed on the purchase price, and suggested various counter-proposals the Conservator and Department believed would adequately compensate the ABC Investors. Acheron rejected these counter-proposals and instead attempted to circumvent the Court, the Conservator and the Department by contacting the ABC Investors directly and offering to purchase their interests in the Conservatorship at a significant discount.

2. Acheron's Attempt to Purchase the ABC Investors' Interests
for 10% of the Investors' Share of the Balance of the Purchase Price

In 2008, Acheron attempted to purchase the interests of the ABC Investors in the Policies, which Acheron was already contractually obligated to purchase and service under the terms of the OPA and Servicing Agreement. Acheron offered to pay the ABC Investors 10% of their *pro rata* share of the balance of the purchase price. As part of Acheron's "offer," Acheron advised the ABC Investors that the monthly fee under the Servicing Agreement had been \$38,535.36 or \$462,424.32 annually, and continued to be the same amount with contractually-mandated adjustments. The clear, and misleading, inference of Acheron's statements was that the ABC Investors bore these costs. In truth, Acheron is solely responsible for payment of the servicing costs under the terms of the Servicing Agreement. Acheron clearly intended its statements concerning the servicing costs and its omission of any mention that Acheron (not the ABC Investors) is responsible for paying these costs to influence the ABC Investors to relinquish their rights in the Policies and allow Acheron to obtain the Policies for substantially less than Acheron is required to pay to the ABC Investors under the OPA. However, Acheron's statements further revealed what would be the first of numerous attempts by Acheron to terminate its obligations under the Servicing Agreement, which was contributing to the negative cash flow Acheron first sought to remedy with its 2007 offer to pay less than one-third of the purchase price due under the OPA.

Acheron contacted the ABC Investors without first obtaining the Court's approval or notifying the Conservator and Department. Concerned that the ABC Investors were not receiving adequate information to make an informed decision, the Department intervened and directed Acheron to cease its efforts to solicit agreements from individual Investors. However, before the Department intervened, Acheron had persuaded nine (9) of the ABC Investors to sell their interest in the Conservatorship proceeds for a fraction of what these Investors were entitled to receive under the terms of the OPA. In doing so, these ABC Investors forfeited the remaining

proceeds that they would have received from the Conservatorship. Instead, the remaining distributions that would have otherwise gone to these Investors will go to Acheron and serve to offset any of its financial losses on the Portfolio.

Despite Acheron's attempt to gain control over the Portfolio by obtaining ownership of the ABC Investors' interests, Acheron was only able to obtain less than a one percent (1%) share in the Conservatorship proceeds, and only then by engaging in a series of misleading statements to the detriment of these ABC investors.

3. Acheron's First Attempt to Obtain Court Approval to Revise the Terms of the OPA and Terminate the Servicing Agreement

In its first Motion, filed in January 2010, Acheron asked the Court to approve the "sale" of the Portfolio, which Acheron was already contractually obligated to purchase at the agreed-upon and Court-approved price set forth in the OPA, to Acheron on its proposed revised terms. Under Acheron's proposal, it would pay a total of \$10.2 million in a lump sum payment for the Portfolio. At the time, the balance of the purchase price owed by Acheron was \$30,953,473. As part of its proposal, the Servicing Agreement would terminate upon payment of the reduced purchase price. At the hearing on the first Motion, the Court indicated that it did not consider the offer to be sufficient and Acheron subsequently withdrew its Motion.

4. Acheron's Second Attempt to Obtain Court Approval to Revise the Terms of the OPA and Terminate the Servicing Agreement

Acheron filed its second Motion in July 2010, this time requesting the Court's approval to submit a proposed payoff of the OPA to the ABC Investors. In this Motion, Acheron proposed a payoff of \$11.5 million plus allowing the ABC Investors to participate in the 2010 maturities (which the Investors were already entitled to receive under the terms of the OPA) up to \$1.8 million. As with Acheron's first proposal to the Court, the Servicing Agreement would terminate upon payment of the reduced purchase price. The Court set the second Motion for evidentiary hearing on the issue of the reasonableness of Acheron's offer, including a reasonable discount rate for determining the present value of the ABC Investor's share of future maturities under the terms of the OPA. At the evidentiary hearing on October 28, 2010, Acheron announced that it had revised its proposed offer to include an additional \$1.8 million at the closing "if required" by the Court. The total lump sum payoff under the revised offer totaled \$13.3 million reflecting a discount rate of 13.7%.

At the conclusion of the October 28 evidentiary hearing, the Court denied Acheron's Motion to submit its offer to the ABC Investors, finding that the offer was neither reasonable nor fair to the ABC Investors:

When we started this hearing, I announced and I think I've announced it every time we've talked about this case and what I would do with reducing

this to a lump sum payment, that Acheron had an uphill burden; the reason being, there's no doubt in this case, Acheron has bought the investor portion of this portfolio. They've got a contract.

This isn't going on the open market. And as Mr. Page said, and that's why I asked him again if that's what he said, and that would be that the buyer would set the price if they were to buy this portfolio. And Acheron did that when they bought it. They set the price based upon, I guess, an analysis of the value of the portfolio when they jumped in to this mess.

And the Court approved it because everybody had signed off on it and because everybody believed it was in the best interest of the purchaser, that being Acheron, and the best interest of the investors who are the folks relying on us to make sure their investment is protected; although, they had relied on someone at the outset of these investments and they weren't protected.

But the reality of the evidence in this case, there's no evidence indicating in this case that the offer being made by Acheron is fair and sufficient for the investors in this portfolio, that being the folks who bought them initially.

The Court further stated that it would consider an offer by Acheron that used a reasonable discount rate, which the Court explained was a "discount rate is to make the opportunity available to the person getting the discount rate to make that much money in the future." The Court also cautioned that it would not consider any offers of a lump sum payment by Acheron that exceeded an 8% discount rate.

5. Acheron's Third Attempt to Obtain Court Approval to Revise the Terms of the OPA and Terminate the Servicing Agreement

In its third Motion, Acheron stated that it had offered to "accelerate its purchase of the Conservatorship Assets for a total of \$18 million" which "represents a discount rate of 7.8%...." However, Acheron was not offering to actually pay \$18 million, but \$16.2 million. And Acheron's new offer did not represent a 7.8% discount rate, but a nearly 10% discount rate. Again, Acheron's offer (if it had been approved by the Court) anticipated the termination of the Servicing Agreement upon payment of the proposed revised purchase price. The Court again rejected Acheron's request to revise the terms of the OPA and terminate the Servicing Agreement without complying with the terms of these agreements.

II. Response to Acheron's Complaints Regarding Servicing of the Policies

As set forth above, Acheron has expended a considerable amount of time and effort attempting to avoid its obligations to the ABC Investors under the OPA and Servicing Agreement. Yet, none of Acheron's efforts have been directed at addressing any of the purported servicing issues now set out in your letter of July 23rd. While Acheron's attempts to terminate the OPA with revised payment terms and a significantly reduced purchase price have included complaints about the contractual cost of servicing the Policies, Acheron has not voiced any substantive complaints about the manner of servicing by ASG. Considering Acheron's dogged but failed efforts to terminate the Servicing Agreement by accelerating its purchase of the Policies with a reduced payment of the purchase price, it is evident that these complaints are generated in yet another attempt by Acheron to reduce its contractually imposed financial obligations to the ABC Investors. Acheron's complaints are discussed separately below.

A. Acheron's Allegations of Conflict of Interest

ASG is the servicer of the Policies. The Court and Department are, and have always been, aware that ASG is owned by the Conservator. Further, Acheron clearly knew that the Conservator owned ASG before Acheron entered into the Servicing Agreement. Acheron raised no issue concerning any "conflict of interest" when Acheron obtained Court approval for the Conservator and HTM to enter into the Servicing Agreement with Acheron. Nor did Acheron raise any such issue until after Acheron failed repeatedly to terminate the Servicing Agreement by various other means. And, as you know, it is very common for a court-appointed conservator, receiver or trustee to retain themselves or their company to provide professional services. Such an arrangement does not itself create a conflict of interest.

As the Conservator, Mr. Moran is charged with acting in the best interests of the ABC Investors. In performing his duties as the Conservator, he is accountable to the Court. The Conservator's retention of ASG as the servicer was done with the approval of the Court and the Department. Neither the Court nor the Department, both of whom also act in the best interests of the ABC Investors, have ever suggested, much less claimed, that the Conservator had a conflict of interest that would prevent ASG from properly servicing the Policies. The only party to now make such a charge is Acheron, which clearly has a financial incentive to reduce the servicing fees by whatever means available and has made this charge only after repeated failures to terminate the Servicing Agreement.

Based upon the history of this Conservatorship, the only party whose interest has been and continues to be adverse to those of the ABC Investors is Acheron. Acheron has repeatedly attempted to revise the OPA and terminate the Servicing Agreement to reduce the payments Acheron is obligated to make and benefit the ABC Investors. With the changes that have taken place in the viatical and life settlement markets since Acheron agreed to purchase the Portfolio at the agreed-upon price, Acheron may very well be paying more than the current market value for

the Portfolio. The devaluing of the Policies, together with the continuing servicing costs, may have created financial losses that Acheron would like to reverse. However, each of Acheron's attempted remedies to its problem has involved repeated attempts to reduce the amount paid for the Policies and, correspondingly, reduce the amount paid to the ABC Investors.

If any party in this matter has a conflict of interest, it is Acheron. Despite Acheron's repeated attempts to reduce its obligations under the OPA and terminate the Servicing Agreement, Acheron remains contractually obligated to pay the amount due under the OPA as well as the servicing fees for the Policies. Now, Acheron has apparently decided to try to reduce its obligations by attacking ASG and attempting to shift the servicing of the Policies to another company that may charge Acheron less. Acheron's claim that its current tactics are motivated by concern for the best interest of the ABC Investors is no more credible than Acheron's previous claims that its proposals to pay them less than the purchase price under the OPA were in their best interests. As Acheron has made abundantly clear since 2007, the cost of servicing combined with the performance of the Portfolio has created Acheron's negative cash flow. However, Acheron's negative cash flow and any losses are not borne by the ABC Investors. To the contrary, the ABC Investors benefit from the market price that Acheron is obligated to pay for the Policies, just as they benefit from the fact that Acheron is contractually obligated to pay the servicing costs for the Policies.

B. Identification of Policy Maturities

1. Notification of Policy Maturities for Two Insureds

Acheron offers as a reason to terminate the Servicing Agreement the fact that ASG did not discover until 2013 that two (2) insureds had died in 2004 and 2001. One of the insureds was Arturo Jacobs, who was insured under two Policies. In this regard, ASG sent repeated requests for information to numerous addresses for Mr. Jacobs and contacts known to ASG. ASG continually searched for information regarding Mr. Jacobs' whereabouts, and also hired a private investigator to assist in finding information. After much diligence, ASG was able to receive a piece of information from a reluctant contact indicating that Mr. Jacobs had returned to Guatemala, and had possibly met his demise. The contact refused further interaction, and had no details or confirmation. ASG, through exhaustive efforts and research was able to confirm the death. ASG attempted to obtain a death certificate from various governmental agencies in Guatemala, with no response. Additionally, ASG worked with the United States Department of State in an attempt to obtain a death certificate. The Guatemalan government had not reported the death in the United States, so a death certificate was not available through the Department of State. Ultimately, with the assistance of a resident of Guatemala and by hiring local counsel, ASG was able to obtain the death certificate. She was able to hire a local attorney to obtain the death certificate. Much of the cost for this endeavor was not charged to Acheron, despite Acheron's obligation to pay these costs under the terms of the Servicing Agreement. The other insured, Gregory Jamison, was likewise unresponsive despite repeated attempts to reach him and

all known contacts. However, diligent efforts from ASG ultimately resulted in reaching an individual who revealed Mr. Jamison had died from a gunshot wound. Each of these insureds represented extraordinary circumstances, and in each instance ASG's persistence yielded the payment of death claim proceeds to Acheron. In all instances, premium payments paid to the carrier after the date of death were returned. ASG's efforts on behalf of Acheron also yielded interest on a significant portion of the death proceeds. These interest payments totaled \$80,456.38, benefiting Acheron as well as the investors.

The facts surrounding the "late" identification of these insureds' deaths demonstrate the extraordinary efforts that ASG undertakes to identify maturities and obtain the death benefits on policies it services.

2. ASG's Tracking Procedures

Acheron's claim that "ASG does nothing more than conduct electronic database sweeps and mail standardized postcards" is not accurate. First, ASG conducts searches of multiple databases, which are conducted regularly on a weekly or monthly basis. Second, ASG does not mail standardized postcards to the insureds. ASG mails a packet to each insured twice a year. The packet contains a questionnaire and HIPAA form for the insured to complete and return to ASG. If the insured does not respond within thirty (30) days, ASG follows up with a second letter to the insured and mails a different packet to known contacts of the insured. ASG also attempts to reach the insured and known contacts by phone. If ASG has an email address for the insureds, it will attempt to reach them through email.⁴ If the mailings to the insured or contacts are returned, ASG researches for new contact information and attempts to reach the insured and the insured's contacts with the new information. If the insured or contact's phones are disconnected, ASG attempts to determine whether the insured or contact has a new phone number. Additionally, ASG hires a private investigator to assist it in certain instances. Where appropriate, ASG also utilizes social media sources to locate insureds.

The chart on page 6 of your letter indicates that it is "unknown" whether ASG utilizes databases that charge a fee. ASG does (at ASG's expense) and always has, as Acheron well knows from its extensive and detailed review of ASG's operations in 2006 and 2007. However, even if Acheron truly did not know that ASG utilizes these databases, this question could have easily been answered with a simple phone call to ASG's Chief Operating Officer, Sheri Townsend; ASG's Director of Policy Services, Pam Maule; the ABC Portfolio Manager, Christie Reid; or any of the numerous other ASG employees with whom Mr. Paul and his staff communicate on a regular basis. Also, Acheron could have discovered that ASG does much more than mail a postcard to the insureds if Acheron had just picked up the phone and asked Ms. Maule or Ms. Reid. Given how these questions could have been resolved with so little effort by

⁴ However, ASG does not request that the insureds submit any health information by email for privacy reasons.

Acheron, it appears that Acheron would rather have these complaints than ASG's assurances that the tracking procedures Acheron would like to have in place are, in fact, in place.

The reality of servicing any portfolio is that the servicer cannot force the insured to respond to letters or phone calls if the insured chooses not to respond. The same is true of known contacts for the insured. Also, insureds and contacts move without notifying ASG or leaving a forwarding address. They change from land line phones to cell phones, which makes locating them more difficult. Some move out of the country and some become homeless, making contact with them often extremely difficult. Even a private investigator, such as the one retained by ASG to locate Mr. Arturo and Mr. Jamison, may not be able to locate an insured.

While Acheron claims that "ASG has had no contact with an astounding 43 percent of the insureds in the ABC Portfolio within the last 12 months," this statement is simply not accurate.⁵ The actual number of insureds whom ASG has not been able to contact is ten (10), which represents less than three percent (3%) of the total number of insureds for the Policies. However, in an effort to leave no stone unturned, ASG will retain private investigators to locate any insured whom ASG is not able to reach through normal channels (*i.e.*, phone calls, letters, emails, *etc.*). Of course, under the terms of the Servicing Agreement, Acheron is responsible for payment of the expenses of hiring a private investigator to locate these insureds. ASG assumes that Acheron has no objection to this.

3. ASG's Maturity Reporting

Acheron inaccurately claims that ASG's reporting of maturities is "grossly inadequate." To support this statement, Acheron has carved out a two-year period of time out of the seven (7) years ASG has been servicing the Portfolio under the current Servicing Agreement. It is unclear

⁵ It appears that Acheron's calculation is based on a report provided to Acheron on April 30, 2013 and an update to the report by Pam Maule on May 13, 2013. On April 30th, Ms. Maule provided Acheron with a report detailing the current status of the non-responsive insureds. In an e-mail from Ms. Maule to Jean-Michel Paul, dated May 7, 2013, she stated, in part: "The report supplied to you [on April 30th] was a snap-shot of the insureds/contacts who have not responded to the most recent mailer as of that date. We continue to receive responses from insureds and/or their contacts, so the number continues to decline." On May 13, 2013, Ms. Maule sent an update to Mr. Paul informing him that that ASG had had "no contact" with 285 insureds in the past 12 months. By "no contact" Ms. Maule meant that ASG had completed the most recently scheduled mailing, but had not received any response from them at that time. Since the date of Ms. Maule's May 13th email, ASG has continued its attempts to contact and has contacted 175 of these insureds. Of the remaining 110 insureds who have not responded to ASG's continued attempts, ASG is currently unable to locate 10. The remaining 100 insureds are individuals who are wholly non-responsive, but ASG continues to track for alternate contacts or demise through established processes and procedures.

why Acheron chose this two-year period to analyze ASG's reporting time, except for the fact this carefully delineated period of time includes the three (3) Policies discussed above where ASG did not discover until 2013 that one insured had died in Guatemala in 2004 and the other insured had died in 2001. Nonetheless, when the entire 7-year period for which Acheron has paid the servicing fees under the terms of the Servicing Agreement is analyzed, the average number of days between the death of an insured under a Policy and ASG's discovery of the death is twenty-three (23) days – less than the 30-day average cited by Acheron for other servicers.⁶

Not only does Acheron attempt to distort the analysis of ASG's reporting performance by using a period of time of its own choosing, Acheron also ignores the well-known differences in tracking the insureds of life settlement policies as opposed to tracking the insureds in this, and similar, portfolios where the insured's primary diagnosis was AIDS or HIV (which are commonly referred to as viaticals). The insureds of life settlements portfolios are typically older, high net-worth individuals. These insureds have established deeper roots both socially and financially and are generally easier to locate. Conversely, many of the insureds for the ABC Portfolio and similar HIV/AIDS portfolios are more transient, may have lost touch with their own families and may not have established themselves financially. For example, ASG is currently tracking one insured who continues to be uncooperative and has had two sex change operations. ASG has been able to track this individual only through the internet and social media. As a result of these factors, ASG's average reporting time for viaticals is twenty-five (25) days while the average reporting time for life settlements is thirteen (13) days.⁶

The charts contained in page 4 of your letter compare ASG's reporting time on the ABC Portfolio, which consists overwhelmingly of HIV/AIDS Policies, with servicing companies that service primarily life settlement policies. To provide a more accurate analysis of ASG's reporting to that of truly comparable companies, ASG's reporting for HIV/AIDS policies should be compared to other companies' reporting for HIV/AIDS policies, and ASG's reporting for life settlement policies compared to other servicing companies' reporting for life settlements. Instead, Acheron has offered a comparison of ASG's reporting time for the ABC Portfolio, which consists almost entirely of HIV/AIDS Policies, to the reporting time of companies servicing life settlements. Acheron should know, from its experience in the industry, that its purported comparison is not valid.

Finally, with respect to Acheron's complaints regarding ASG's reporting of insureds' deaths, Acheron's statement "ASG has a financial incentive to not identify deaths in a prompt and timely manner" is not correct. To the contrary, Section 2.1 of Schedule 3 to the Servicing Agreement provides for an "Annual Incentive Fee" for ASG to identify deaths promptly. The annual incentive fee is only paid if Acheron's net profits exceed a certain amount in a given

⁶ These averages are computed without the highest and lowest 5% of values to remove statistical anomalies.

year.⁷ Because these profits are directly affected by the amount of death benefits paid each year, ASG has every incentive to identify as many maturities as it can during the year. Acheron hypothesizes that "postponing maturities until later years can create further, artificial surge in maturities in a given year, such that ASG will be in a position to then collect a performance fee of 8% for that year." This theory assumes that ASG would be able to accurately predict that in a given year sometime in the future there will be a sufficient number of maturities upon which to build this "artificial surge" for that year. As Acheron knows, or should know from experience, not even the most knowledgeable and experienced life expectancy actuaries can make this type of prediction. Acheron's suggestion that ASG is intentionally postponing its reporting of maturities to manufacture a surge in maturities in some future year to collect a performance fee (in the extremely unlikely event that ASG would be successful in predicting the year in which the Portfolio has the highest number of maturities) is simply ludicrous.

4. Health Information for Insureds

Many of Acheron's complaints regarding the collection of health information relate to the tracking of insureds and are addressed above in Section II.B.2. Acheron also complains that ASG does not provide health reports or updates regarding the insureds' health status. However, the Servicing Agreement does not require that ASG provide Acheron with health reports or updates. For this reason, ASG has not provided these types of reports during the seven (7) years it has been servicing the Policies under the Servicing Agreement. Nor has Acheron requested health reports or updates. Until last month, this has not been an issue for Acheron.

Acheron further claims that the "losses suffered [as the result of ASG's inadequate tracking of insureds] by the Estate are considerable." According to Acheron, it fears that if all the Policies for which contact with the insureds has been lost have matured, the purchase price for the Policies would have been paid. Currently, there are ten (10) insureds whom ASG has not been able to locate or contact. The total face value of the Policies for these insureds is \$611,923. If each of these Policies has, in fact, matured, the amount that would be credited to the purchase price would only be \$367,153.80. Acheron currently owes \$25,790,689 under the terms of the OPA. Thus, even if each of these insureds have died and each of these Policies have matured, the death benefits for these Policies would still fall far short of the remaining purchase price owed by Acheron.

Acheron also claims that ASG's "inadequate tracking" of the insureds has further injured the ABC Investors because (Acheron claims) ASG has not been able to obtain waivers of premiums or accelerated death benefits for certain policies. First, Acheron is responsible for the payment of premiums for the Policies – not the ABC Investors. Consequently, any waiver of premium inures to Acheron's benefit not the ABC Investor's. Further, the Servicing Agreement

⁷ ASG, however, was not able to locate any documentation that it received an incentive fee for any year.

requires ASG to obtain waivers of premiums in two limited circumstances. The Servicing Agreement requires ASG to (1) continue or renew disability waivers for Policies in which the premiums were being paid as the result of disability waiver at the time of the Servicing Agreement, and (2) apply for a waiver of premium for any Policy in which ASG has "actual knowledge" that the insured has become disabled.

ASG has renewed or attempted to renew⁸ each disability waiver in force at the time the Servicing Agreement went into effect. ASG has not applied for disability waivers for any other Policies because ASG has not received information from other insureds indicating that he or she is disabled.

With respect to accelerated death benefits ("ADB"), ASG is not contractually obligated to apply for these benefits, nor has Acheron ever requested ASG to apply for an ADB for any of the Policies. Further, the absence of the use of an ADB option does not mean that "the investors are paying more and receiving less" as stated. First, the investors are not paying the cost of maintaining the Policies and, secondly, they would still receive the same benefit – just a few months later. An ADB simply means that a *portion* of the death benefit *could* be paid to the beneficiary of the policy several months before the demise of the insured (typically less than 12-24 months in advance) if the insured is terminally ill. The application for these benefits requires that the insured be diagnosed as having a terminal illness and the insured be cooperative. These applications also require a great deal of paperwork (including HIPAA forms, carrier forms and medical records). Many insurance companies require that the insured see a physician of the insurance company's choice. There are also processing and administrative costs involved. Stated differently, if pursued, this process is quite invasive to the insured and expensive for the policy owner or, in this case, to Acheron per the terms of the Servicing Agreement. It is also important to recognize there would be no increase in total maturity proceeds by exercising the ADB, just a slight advance on a portion of the death benefits.

Acheron's statement that ASG's purported failures in tracking and obtaining information concerning the insureds' health "means that investors are paying more and receiving less" is not true. As stated before, Acheron is paying the servicing costs, not the ABC Investors. Despite Acheron's mantra that the ABC Investors' interests are in peril, the fact is that with the OPA the ABC Investors are very likely receiving more for the Policies than they would receive in the current market while the costs of maintaining and servicing the Policies is paid by Acheron. The fact that Acheron has buyer's remorse over the agreements it made with the Conservator, which were approved by the Court, does not justify the termination of ASG as servicer, which has performed well, and without complaint, in the opinion of those who are truly concerned with what is in the best interest of the ABC Investors.

⁸ ASG's ability to renew a disability waiver depends on an insured's cooperation. In those instances when an insured will not cooperate, ASG cannot as a practical matter renew the waiver.

5. CPI Adjustments to Servicing Fees

Acheron has received monthly invoices from ASG since May 2006. Yet, your letter of July 23rd was the first inquiry ASG received from Acheron as to how adjustments in the consumer price index ("CPI") have been applied to recalculate servicing fees. Again, if Acheron had called or sent ASG an email, ASG would have immediately looked into Acheron's concerns. Upon receipt of your letter, ASG conducted a detailed audit of the monthly invoices to Acheron to determine how the CPI adjustments had been applied to the servicing fees. This audit revealed that an error had occurred in calculating the CPI and Policy count adjustments when the formula set forth in the previous Servicing Agreement between the Conservator and SIG was inadvertently used to calculate the CPI adjustments for Acheron's servicing fees. In relying on the SIG Servicing Agreement, ASG adjusted the CPI and Policy counts on a different adjustment schedule than set forth in Schedule "3" of Acheron's Servicing Agreement, causing every invoice after May 2006 to be slightly off. ASG is in the process of auditing the net over- and under-invoiced amounts through July 31, 2013. It currently appears that Acheron will be due a refund for servicing fees, which should be completed shortly.

6. Charges for Policy Riders

As with a number of the issues that Acheron raises in your letter of July 23, the charges for policy riders also could have easily been addressed with phone calls or emails between Acheron and ASG. Currently, there are five (5) Policies that have a total of eight (8) riders. When the insurance carriers issued these riders, they issued each under a new policy number. ASG's billing system automatically bills for each policy within a portfolio and calculates the servicing fees per policy. Several of these riders were listed on Exhibit A to the OPA.

Of the eight (8) riders, three (3) were issued in 2007 by Allstate (the "Allstate Riders") in connection with a class action lawsuit. In addition to the initial review and set up of each policy, which is typically time-consuming, the file continues to be maintained both electronically and in hard-file format. Each of the Allstate Riders is an individual policy and is set up as such in the database, which triggers certain follow-up and requires that ASG review each periodically. By way of example, ASG periodically obtains verifications of coverage for each of the Allstate Riders, the most recent of which ASG obtained this year. However, in an effort to move forward in a constructive fashion, ASG will not bill in the future for servicing fees in connection with the Allstate Riders. The most recent invoice to Acheron did not include any servicing fees for the Allstate Riders.

III. Conclusion

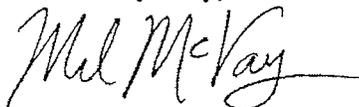
While the Conservator understands Acheron's concerns over the rate of return on its purchase of the Portfolio, the Conservator's duty is to protect the interests of the ABC Investors. And while the Conservator has and will continue to address any concerns Acheron has with the servicing of the Policies, the Conservator does not believe it is in the best interests of the ABC

John Hermes
August 30, 2013
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Investors to change the servicing of the Policies to a Florida servicing company that has no experience with this Portfolio, the ABC Investors, the decade-old Conservatorship, the Court or the Department. Even if the Conservator were to consider a possible change in servicing companies, the Conservator would likely obtain proposals from various qualified servicers for the Conservator and the Court to consider. And in analyzing any such proposals, the primary consideration would be what is in the best interests of the ABC Investors and based upon experience and quality of servicing, which very well could result in higher servicing fees than those currently being paid by Acheron.

If you or Acheron would like to further discuss any of the issues raised by Acheron, we remain available to meet with you at a mutually convenient time.

Yours very truly,



Melvin R. McVay, Jr.
For the Firm

cc: Tom Moran, Conservator
Shannon K. Emmons, Esq.

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**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.

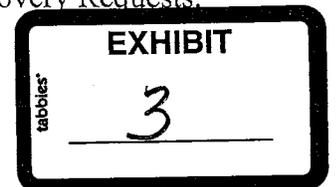
Acheron Portfolio Trust,

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 SUPPLEMENTAL
ANSWERS AND REPONSES TO ACHERON
PORTFOLIO TRUST'S 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 supplemental responses and objections to Acheron Portfolio Trust's Discovery Requests to ASG ("Discovery Requests"). All responses contained herein are based only upon such information and documents presently available to ASG. Additional discovery, investigation, research and analysis may supply additional facts and documents and/or add meaning to known facts. Accordingly, the responses below are given without prejudice to ASG's right to later produce additional information and documents. In submitting the following supplemental responses, ASG incorporates by reference, as if fully set forth herein, its previous objections to Acheron's Discovery Requests.



SUPPLEMENTAL RESPONSES TO INTERROGATORIES

Interrogatory No. 7: Identify every third-party database you subscribe to or utilize, or have in the past subscribed to or utilized in providing policy management services to the ABC Portfolio, and provide the time period in which each was used.

Supplemental Response to Interrogatory No. 7: ASG objects to this Interrogatory for the reasons it calls for the production of information that is proprietary, constitutes trade secrets of ASG and is protected from discovery. Notwithstanding these objections, and without waiving the same, ASG will reconsider its objections provided the Agreed Protective Order is amended by the Court to specifically prohibit the disclosure of information produced in response to this Interrogatory to any competitor or potential competitor of ASG's and such disclosure is limited to Acheron's counsel and its expert witnesses, if any.

~~Interrogatory No. 14: Identify each Policy for which ASG has sought to continue or renew a disability waiver, and describe the steps ASG has taken to renew such waiver, and the date(s) on which ASG took such steps.~~

Response to Interrogatory No. 14: See Exhibit 1 to these Responses, which lists each Policy, from the date of the Servicing Agreement at issue to the present, for which there is or was a disability premium waiver ("DPW"). ASG previously provided Acheron with a list of active Policies with a DPW. Exhibit 1 to these Responses includes any Policies that have, since January 2006, had a DPW, including Policies that have matured or are no longer eligible for a DPW.

With respect to the steps ASG has taken to renew DPWs, ASG confirms all active DPWs annually. For each Policy, ASG tracks the renewal date and, prior to the renewal date, contacts the insurance carrier to confirm that the DPW is still active. ASG is able to confirm most DPWs

by calling the carrier. ASG will also submit forms to carriers requesting confirmation. Additionally, ASG will determine what (if any) information the carrier may need concerning the Insured's disability status. *See also* the documents produced by ASG in response to Request for Production No. 11.

Interrogatory No. 15: Identify each Policy for which ASG has sought to apply for a waiver of premium, and state the date upon which such waiver was first sought by ASG, and identify all documents evidencing or supporting any such request.

Supplemental Response to Interrogatory No. 15: ASG objects to this Interrogatory for the reasons it calls for information that is neither relevant nor likely to lead to the discovery of relevant information. The Servicing Agreement requires only that ASG continue or renew waivers for Policies for which the premiums were being paid as of the effective date of the Servicing Agreement as a result of a disability rider. Consequently, it is immaterial whether ASG sought to apply for a waiver of premium for any of the Policies.

Notwithstanding these objections and without waiving the same, *see* Supplemental Response to Interrogatory No. 14 and the documents produced by ASG in response to Request for Production No. 11.

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 230 Policy maturities. Of these 230 Policy maturities, Acheron initially alleged that the deaths of two (2)

Insureds were not timely identified. ASG has provided an explanation of how it 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. ASG also produced the Policy files for these Insureds. Acheron subsequently provided ASG with a list of 6 additional "Insureds whose death was not timely identified by ASG." ASG has produced the Policy files for each of these Insureds. To date, ASG has produced the Policy file for each of the 13 maturities that Acheron claims ASG did not timely discovery.

Acheron's request that ASG provide an explanation, specific to each maturity, as to how ASG learned of each of the 217 other Policy maturities is overly broad and calls for information that is neither relevant nor likely to lead to the discovery of relevant information. Although ASG currently maintains a report showing how it learned of each Policy maturity, this report contains sensitive information concerning ASG's tracking procedures. 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, its disclosure would be harmful to ASG and its ability to compete in the life settlement/viatical servicing industry.

Additionally, prior to September 2009, ASG maintained the requested information for a Policy maturity in the file that Policy. Thus, to determine how it learned of maturities prior to September 2009, ASG would have to expend approximately 100-150 hours to review each of these 94 files and, based on this time-consuming review, compile the requested descriptions for these other Policy maturities. Acheron's request is overly burdensome, especially in light of the lack of relevance or possible relevance of the information requested.

Notwithstanding, ASG will reconsider its objections provided that (1) Acheron will limit its

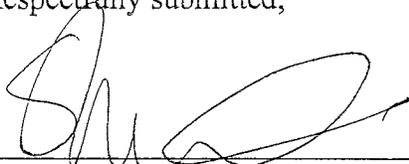
request to information that is readily available to ASG electronically, even if that information is limited in terms of time or is not available electronically for some Policy maturities; and (2) the Agreed Protective Order is amended by the Court to specifically prohibit the disclosure of information produced in response to this Interrogatory to any competitor or potential competitor of ASG's and limit disclosure of this information to Acheron's counsel and expert witnesses, if any.

SUPPLEMENTAL RESPONSES TO 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.

Supplemental 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. ~~Notwithstanding, and based on~~ Acheron's agreement to limit this Request to only those Policies that currently have or at any time since 2006 have had a DPW in effect ("DPW Policies"), the requested documents, if they have not already been produced, are being produced with this Supplemental Response. (ASG previously produced the requested documents for 42 of the DPW Policies, which contain the requested documents for those Policies.)

Respectfully submitted,



Melvin R. McVay, Jr., OBA No. 06096
Shannon K. Emmons, OBA No. 14272
PHILLIPS MURRAH P.C.
Corporate Tower / Thirteenth Floor
101 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4133
mrmcvay@phillipsmurrah.com
skemmons@phillipsmurrah.com

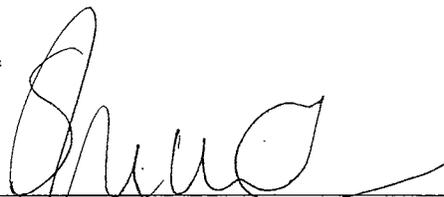
*Attorneys for H. Thomas Moran, II, Conservator
of certain assets of Accelerated Benefits
Corporation, HTM Conservator, L.L.C. and Asset
Servicing Group, L.L.C.*

CERTIFICATE OF SERVICE

The undersigned certifies that on the 16th day of April, 2015, a true and correct copy of the foregoing was served by certified mail, return receipt requested, to:

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

John N. Hermes
Patrick L. Stein
McAfee & Taft A P.C.
10th Floor, Two Leadership Square
211 North Robinson
Oklahoma City, OK 73102-7103
Attorneys for Acheron Portfolio Trust



Shannon K. Emmons