

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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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.)

ANSWER

H. Thomas Moran, II, Conservator of certain assets of Accelerated Benefits Corporation (the "Conservator"), HTM Conservator, L.L.C. ("HTM") and Asset Servicing Group, L.L.C. ("ASG"), for their answer to Acheron Portfolio Trust's ("Acheron") Petition, allege and state as follows:

I. 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 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 entered its order approving the Option Purchase Agreement (“OPA”) between Acheron’s predecessor, Lorenzo Tonti, Ltd., and the Conservator. In its order, the Court also approved the Service and Escrow Agreement (“Service Agreement”) between Acheron’s predecessor, the Conservator and HTM. Under the terms of the Service Agreement, Acheron’s predecessor expressly agreed that HTM could retain ASG to provide servicing for the Portfolio. 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. 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 Service Agreement. Once the purchase price is paid in full by Acheron, title to the Policies will be conveyed by HTM to Acheron.

II. Performance of the Conservatorship and Investor Returns

As of June 16, 2013, there were 5,086 active Investor accounts. 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. 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 in ABC.

III. History of Servicing of the Policies

Pursuant to the authority granted by the Court's orders of February 6 and February 21, 2002 and June 7, 2006, the Conservator and HTM engaged ASG to service the Policies. 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 Service 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 Service Agreement.

Neither the Court, the Department nor the ABC Investors have ever questioned ASG's performance under the terms of the Service 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 Service Agreement since its inception, did not voice any substantive complaints about the servicing provided by ASG until July, 2013. It thus appears that Acheron's new found 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 perhaps less than desired financial performance of the Portfolio.

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

Since entering into the OPA and Service 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 these contracts – which Acheron entered into voluntarily and with the Court's approval – to Acheron's benefit and the detriment of the ABC Investors.

A. 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.

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

C. Acheron's Second Attempt to Obtain Court Approval to Revise the Terms of the OPA and Terminate the Service 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 Service 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. The Court stated:

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.

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

V. Acheron's Petition

A. Relevant Procedural History

1. The Conservator, HTM and ASG admit the allegations contained in paragraph 1 of Acheron’s Petition.

2. The Conservator, HTM and ASG admit the allegations contained in paragraph 2 of Acheron’s Petition.

3. The Conservator, HTM and ASG admit the allegations contained in paragraph 3 of Acheron’s Petition.

4. For their answer to paragraph 4 of Acheron’s Petition, the Conservator, HTM and ASG state that after entering into two previous agreements with other institutional investors who breached those agreements, the Conservator entered into the OPA with Lorenzo Tonti, Ltd. For their answer to the remaining allegations contained in paragraph 4 of Acheron’s Petition, the Conservator, HTM and ASG state that the OPA speaks for itself.

5. For their answer to paragraph 5 of Acheron's Petition, the Conservator, HTM and ASG admit that contemporaneously with the execution of the OPA, the Conservator, Lorenzo Tonti, Ltd. and HTM entered into the Service Agreement. For their answer to the remaining allegations contained in paragraph 5 of Acheron's Petition, the Conservator, HTM and ASG state that the Service Agreement speaks for itself.

6. For their answer to paragraph 6 of Acheron's Petition, the Conservator, HTM and ASG admit that Acheron is Lorenzo Tonti, Ltd.'s successor-in-interest under the OPA and Service Agreement. The Conservator, HTM and ASG further state that HTM engaged ASG to perform servicing functions under the express provisions of the Service Agreement. In response to Acheron's allegations that the Conservator has a conflict of interest, the Conservator states that the Court and Department are, and have always been, aware that ASG is owned by the Conservator. Acheron clearly knew that the Conservator owned ASG before Acheron entered into the Service Agreement. Acheron raised no issue concerning any "conflict of interest" when Acheron obtained Court approval for the Conservator and HTM to enter into the Service Agreement with Acheron. Nor did Acheron raise any such issue until after Acheron failed repeatedly to terminate the Service Agreement by various other means. Further, 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 Service 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 Service Agreement to reduce the payments Acheron is obligated to make to 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 Service 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. The Conservator, HTM and ASG deny the remaining allegations contained in paragraph 6 of Acheron's Petition.

B. Party and Jurisdictional Allegations

7. The Conservator, HTM and ASG do not have sufficient knowledge or information to either admit or deny the allegations contained in paragraph 7 of Acheron's Petition.

8. The Conservator, HTM and ASG admit the allegations contained in paragraph 8 of Acheron's Petition.

9. For their answer to paragraph 9 of Acheron's Petition, the Conservator, HTM and ASG admit that they are Oklahoma limited liability companies, and that HTM and ASG are owned by Mr. Moran who serves as conservator in this case. Further, the Conservator, HTM and ASG admit that HTM engaged ASG to provide servicing functions under the express provisions of the Service Agreement and approval of the Court. For their answer to the remaining allegations contained in paragraph 9 of Acheron's Petition, the Conservator, HTM and ASG state that the Service Agreement speaks for itself.

10. The Conservator, HTM and ASG admit the allegations contained in paragraph 10 of Acheron's Petition.

C. The Servicer's Obligations under the Service Agreement

11. For their answer to paragraph 11 of Acheron's Petition, the Conservator, HTM and ASG state that the OPA and Service Agreement speak for themselves.

12. For their answer to paragraph 12 of Acheron's Petition, the Conservator, HTM and ASG state that the Service Agreement speaks for itself.

13. The Conservator, HTM and ASG deny the allegations contained in paragraph 13 of Acheron's Petition.

D. Claim 1 – Breach of Service Agreement

14. For their answer to paragraph 14 of Acheron's Petition, the Conservator, HTM and ASG state that to the extent paragraph 14 refers to the servicer's obligations, the Service Agreement speaks for itself. The Conservator, HTM and ASG deny Acheron's allegations that ASG has failed to identify Policy maturities in a timely manner. In response to Acheron's specific allegations that "in at least two circumstances, it took ASG over 9 years to learn an insured had died," the Conservator, HTM and ASG state 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. 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 Service 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.

Further, in claiming that ASG's reporting of maturities is inadequate, Acheron has carved out an approximately two-year period of time out of the seven (7) years ASG has been servicing the Portfolio under the current Service Agreement. It is unclear 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 Policies discussed above. Nonetheless, when the entire 7-year period for which Acheron has paid the servicing fees under the terms of the Service 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 (this average is computed without the highest and lowest 5% of values to remove statistical anomalies).

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 is a terminal disease (which are commonly referred to as viaticals). The insureds of life settlement 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 viatical portfolios are suffering from terminal illnesses that are not only debilitating but have a destabilizing impact on the insured's life. The insured may be stressed financially due to the costs of their medical care, may be more transient and may have lost touch with their own families. For example, ASG is currently tracking one insured who continues to be uncooperative and has had two gender changes. 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 (these averages are computed without the highest and lowest 5% of values to remove statistical anomalies).

Finally, with respect to Acheron's complaints regarding ASG's reporting of insureds' deaths, Acheron's statement "Mr. Moran benefits financially by ASG's failure to identify these policies' maturities promptly" is not correct. To the contrary, Section 2.1 of Schedule 3 to the Service 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

year. 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. The Conservator, HTM and ASG deny the remaining allegations contained in paragraph 14 of Acheron's Petition.

15. For their answer to paragraph 15 of Acheron's Petition, the Conservator, HTM and ASG state that to the extent paragraph 15 refers to obligations of the servicer, the Service Agreement speaks for itself. The Conservator, HTM and ASG deny that ASG has failed to adequately track insureds. The Conservator, HTM and ASG state that ASG's tracking of insureds meets or exceeds industry standards. The Conservator, HTM and ASG further state that to the extent that ASG has not contacted insured's physicians, it has not done so due to the lack of a valid medical release and with the knowledge and acquiescence of Acheron. The reality of servicing any portfolio is that the servicer cannot force the insured to respond 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 make locating them more difficult. Some move out of the country and some become homeless, making contact with them often extremely difficult or impossible. Even a private investigator, such as the one retained by ASG to locate Mr. Jacobs and Mr. Jamison, may not be able to locate an insured. While Acheron claims that "ASG has lost contact with an unacceptably high percentage of the Insureds" in the ABC Portfolio, this statement is simply not accurate. The actual number of insureds whom ASG has not been able to contact is ten (10), which represents less than one-and-a-half percent (1 1/2%) of the total number of insureds in the Portfolio. The Conservator, HTM and ASG deny the remaining allegations contained in paragraph 15 of Acheron's Petition.

16. For their answer to paragraph 16 of Acheron's Petition, the Conservator, HTM and ASG state that Acheron has received invoices from ASG since May, 2006; however, the first time they became aware that Acheron had any concern about the calculation of the servicer's monthly base fee, specifically the adjustment to the Consumer Price Index ("CPI"), was when they received a letter from Acheron's counsel on July 23, 2013. Upon receipt of this correspondence, the Conservator required an audit to be conducted to determine how the CPI adjustments had been calculated and applied in establishing the servicing fees. Upon completion of this audit, it was determined that there was an error in calculating the CPI and policy count adjustments when the formula set forth in a previous servicing agreement with a prior purchaser of the Portfolio was used to calculate the CPI adjustments for Acheron's servicing fees. This caused every invoice to Acheron to be slightly off beginning in May, 2006. After making appropriate adjustments it was determined that there had been a total overcharge of \$25,541.52. This amount was credited to Acheron on its October invoice from the Conservator. The Conservator, HTM and ASG deny the remaining allegations contained in paragraph 16 of Acheron's Petition.

17. For their answer to paragraph 17 of Acheron's Petition, the Conservator, HTM and ASG admit that some of the Policies in the Portfolio pay dividends that are re-invested to increase the death benefit of the Policy. However, Acheron's Petition appears to suggest that ASG routinely charges servicing fees for any policy face amount increases (increases in death benefits) resulting from the exercise of policy dividend options. In fact, that is not the case. Presently there are more than 130 Policies with increased face amounts (increased death benefits) in excess of \$3.3 million in additional coverage in which ASG has never charged

Acheron any additional servicing fees. The Conservator, HTM and ASG deny that ASG has ever charged Acheron for the servicing of a rider.

In two circumstances, through the exercise of options, insurance carriers have provided additional coverage which resulted in a new policy being issued, with a new policy number. In both circumstances, prior to accepting the option, approval to do so was granted by a representative of Acheron. Other new policy issuance was necessary to retain coverage at the same level, or granted as an award from the settlement of a class action suit. When any circumstance occurs that generates a separate policy, this new policy is inputted into ASG's data base, serviced individually, and assessed the standard servicing fee on a per policy basis. Acheron complains in its Petition that, in some circumstances, ASG has charged full servicing fees on policies with nominal face values. In response, the Conservator, HTM and ASG state that the three policies referred to were issued in 2007 by Allstate in connection with a class action lawsuit (the "Allstate Policies"). The Allstate Policies were issued as stand-alone policies with separate policy numbers, and required servicing by ASG. Therefore, ASG charged Acheron a servicing fee. The first time ASG learned of Acheron's concern about the servicing fees on the Allstate Policies was when it received a letter from Acheron's Counsel on July 23, 2013. In a showing of good faith, and in an effort to move forward in a constructive fashion, ASG agreed to no longer bill Acheron for the servicing associated with the Allstate Policies, due to their nominal face value, and to refund the servicing fees previously billed for these policies. As such, ASG provided a credit to Acheron in the amount of \$7,889.13 on Acheron's October invoice.

Further, the Conservator, HTM and ASG deny that ASG has ever concealed anything from Acheron. Every monthly invoice from ASG to Acheron lists out every policy and policy

number. ASG has always been ready, willing and able to answer or address any questions or concerns Acheron may have. The Conservator, HTM and ASG deny the remaining allegations contained in paragraph 17 of Acheron's Petition.

18. For their answer to paragraph 18 of Acheron's Petition, the Conservator, HTM and ASG admit that some Policies in the Portfolio contain an accelerated death benefit ("ADB") which can result in a suspension of premiums and a payment of death benefits before an insured has died, in cases of terminal illness. Additionally, for their answer to paragraph 18 of Acheron's Petition, the Conservator, HTM and ASG state that ASG is not contractually obligated to apply for these benefits, nor has Acheron ever requested ASG apply for an ADB for any of the Policies. 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 being cooperative. These applications also require significant 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, Acheron per the terms of the Service Agreement. It is also important to recognize that there would be no increase in total maturity proceeds by exercising the ADB, just an advance on a portion of the death benefits. The Conservator, HTM and ASG deny the remaining allegations contained in paragraph 18 of Acheron's Petition.

E. Claim 2 – Breach of Fiduciary Duty

19. For their answer to paragraph 19 of Acheron’s Petition, the Conservator, HTM and ASG state that the Service Agreement speaks for itself. The Conservator, HTM and ASG additionally state that the duties and responsibilities of the servicer under the Service Agreement have been properly performed and that the investors of ABC have realized the returns for which they are entitled. Further, the Conservator, HTM and ASG deny that they owe any fiduciary duty to Acheron.

20. The Conservator, HTM and ASG deny the allegations contained in paragraph 20 of Acheron’s Petition.

21. The Conservator, HTM and ASG deny the allegations contained in paragraph 21 of Acheron’s Petition.

F. Claim 3 – Termination of Service Agreement and Appointment of New Servicer

22. The Conservator, HTM and ASG deny the allegations contained in paragraph 22 of Acheron’s Petition.

23. For their answer to paragraph 23 of Acheron’s Petition, the Conservator, HTM and ASG state that Acheron is not entitled to any of the relief requested as set forth in paragraphs A. – H. for all of the reasons as set forth above. Moreover, the Conservator, HTM and ASG are entitled to the dismissal with prejudice of Acheron’s Petition, recovery of their attorney fees and costs, and such other and further relief as this Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Failure to state a claim upon which relief may be granted.
2. Acheron’s claims are barred by the applicable statutes of limitations.
3. Acheron’s claims are barred by estoppel, laches and waiver.

4. The Conservator, HTM and ASG at all times have acted in good faith and in the best interest of the Investors.

5. HTM and ASG did not engage in any act or omission that was malicious, wanton, reckless, or grossly negligent, and therefore any award of punitive damages is barred.

6. Acheron's claims for punitive damages are in contravention of HTM's and ASG's rights under each of the following constitutional provisions:

(a) the Commerce Clause of Article I, Section 8 of the United States Constitution;

(b) the Contracts Clause of Article I, Section 10 of the United States Constitution; the prohibition against ex post facto laws embodied in Article I, Section 10 of the United States Constitution;

(c) the Supremacy Clause of Article VI of the United States Constitution;

(d) the Free Speech Clause of the First Amendment of the United States Constitution;

(e) The Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution;

(f) the Takings Clause of the Fifth Amendment of the United States Constitution;

(g) the Excessive Fines Clause of the Eighth Amendment of the United States Constitution;

(h) the Equal Protection Clause of the Fourteenth Amendment of the United States

Constitution; and

(i) similar or corresponding provisions of the Oklahoma Constitution.

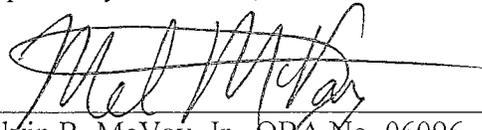
7. Acheron's demand for punitive damages is subject to any and all standards or limitations regarding the determination and enforceability of punitive damage awards which arose in the decisions of *BMW of North American, Inc. v. Gore*, 116 S. Ct. 1589 (1996); *State*

Farm Mutual Automobile Insurance Company v. Campbell, 123 S. Ct. 1513 (2002); *Phillip Morris USA v. Williams*, 127 S. Ct. 1057 (2007); *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605 (2008) and similar State cases.

8. The Conservator, HTM and ASG reserve the right to supplement their affirmative defenses as discovery proceeds.

Submitted this 18th day of November 2013.

Respectfully submitted,



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Corporation, HTM Conservator, L.L.C. and Asset
Servicing Group, L.L.C.***

CERTIFICATE OF MAILING

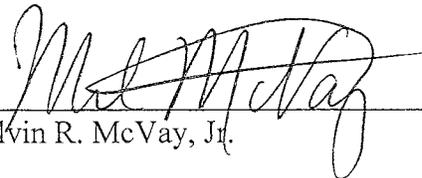
The undersigned certifies that on the 18th day of November 2013, a true and correct copy of the foregoing was mailed, first-class with postage prepaid, to:

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