



The original sales price for the Policies in 2003 was Fifty-Nine Million Dollars (\$59,000,000). The Court approved this sale as being in the best interest of the ABC Investors after a bidding process to sell the Policies was concluded. At the time of the Order, the Court had an opportunity to review a 2002 report of Lewis & Ellis, an actuarial firm engaged by the Conservatorship, to compare the offers. Interestingly, the report included the finding that in twenty (20) years, approximately twelve percent (12%) of the Policies would not have matured. After the Court considered the offers, the portfolio was sold to a predecessor in interest of Acheron. The balance currently owed by Acheron for the Policies is approximately Thirty-One Million Dollars (\$31,000,000).

On January 15, 2010, Acheron filed the Motion in an attempt to obtain an order excusing its obligation under the Option Purchase Agreement (OPA) and replacing that obligation under the OPA with a lump-sum cash payment. The Department responds by urging the Court to deny the request for the following reasons:

#### **ACHERON'S OFFER IS NOT IN THE BEST INTEREST OF INVESTORS**

Under the OPA, ABC Investors were promised to be paid Thirty-Eight Million Fifty Thousand Dollars (\$38,050,000) by Acheron through the Conservatorship. Of that amount, the remaining balance is almost Thirty-One Million Dollars (\$31,000,000). To consider a reduction in this restitution amount, a compelling argument would have to be made. Granted, a cash offer, one that does not require a multiple year payout, would be preferred. However, the value of the cash offer would have to be adequate to replace the more generous balance owing. The adequacy of the offer is directly tied to the present value of the remaining purchase price. The Department does not believe the Ten Million Dollars (\$10,000,000) offer is a reasonable

exchange for the Thirty-One Million Dollars (\$31,000,000) to which Acheron is currently obligated given present value considerations.

Further, a determination has already been made by this Court that the sale was in the best interest of the ABC Investors. Not only was the sales price found to be fair and the sale approved, but the ABC Investors were relieved from the risk of the Policies lapsing as Acheron agreed to pay the premiums and servicing costs. Those costs were specifically absorbed in the OPA and are not a consideration for a best interest analysis. In addition, despite the number of years predicted by Lewis & Ellis to conclude the payout to the ABC Investors, the Court approved the sale.

Acheron is contractually obligated to pay the remaining balance on the purchase price. Unfortunately for Acheron, the economy has not been kind following its purchase of the Policies. Acheron states it is experiencing a negative cash flow but that it “has every intention of continuing with its servicing and premium payment obligations.” Therefore, the negative cash flow it states it is experiencing is not a factor to consider in the review of the Motion as it has no impact on the ABC Investors or the OPA. Current market conditions are not relevant to the contractual obligation Acheron has to the ABC Investors. Further, the ABC Investors received approximately Three Million Seven Hundred Thousand Dollars (\$3,700,000) in 2009 alone as Policies matured at a rapid level. This provides a compelling reason to reject the Ten Million Dollar (\$10,000,000) offer.

**ANY CASH OFFER MUST BE EVALUATED BY PRESENT VALUE**

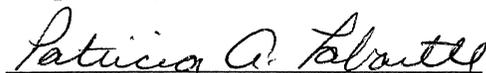
If the Court believes a cash offer should be considered at this time, it is critical to determine whether the Ten Million Dollars (\$10,000,000) offer creates a reasonable basis for a revision to the OPA. The Department asserts it does not. Over the last months, Acheron has not

indicated that it is willing to negotiate the amount of the cash offer as the same cash offer has been proposed for over two years. In determining the present value of the remaining purchase price, the proper discount rate to be applied to the Policies must be considered. It would be up to this Court to determine the fairness verdict. Considering the Lewis & Ellis valuations from the time of the original sale and those recently performed by that firm for Acheron and the Conservator, it does not appear that the current Acheron offer can be justified. The Department would agree to a cash sale that would “allow this Court to close the proceeding, end the Conservatorship created in 2002, and bring closure for the Investors who seek finality after ten long years.” This offer is not the way to accomplish these goals. The Department asserts that the current offer by Acheron to pay cash to end the Conservatorship, and its own obligations thereunder, is not reasonable.

#### CONCLUSION

For the reasons stated herein, the Department respectfully requests that this Court deny the Motion for an Order Approving Sale of Conservatorship Assets.

Respectfully submitted,



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## CERTIFICATE OF MAILING

The undersigned certifies that on the 17<sup>th</sup> day of February, 2010, a true and correct copy of the foregoing was mailed via First Class Mail, postage prepaid, to the following:

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