

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

SEP - 8 2010

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

Oklahoma Department of Securities )  
ex rel. Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Accelerated Benefits Corporation, a )  
Florida corporation, *et al.*, )  
 )  
Defendants. )

Case No. CJ-99-2500-66

**RESPONSE OF OKLAHOMA DEPARTMENT OF SECURITIES TO  
MOTION FOR AUTHORIZATION TO OFFER TO PURCHASE ABC INVESTORS'  
INTEREST IN CONSERVATORSHIP ASSETS**

Plaintiff, Oklahoma Department of Securities ("Department"), in response to the Motion for Authorization to Offer to Purchase ABC Investors' Interest in Conservatorship Assets (Motion), does hereby state:

**INTRODUCTION**

On June 6, 2006, this Court issued an *Order Approving Option Purchase Agreement and Service and Escrow Agreement with Lorenzo Tonti, Ltd.* (Order). Pursuant to the Order, Lorenzo Tonti Ltd., the predecessor of Acheron Portfolio Trust (collectively, "Acheron"), became obligated to pay Thirty-Eight Million Fifty Thousand Dollars (\$38,050,000) for the acquisition of the portfolio of life insurance policies (Policies) owned by Accelerated Benefits Corporation (ABC). Under the Option Purchase Agreement (OPA) that is the subject of the Order, the remaining balance owed by Acheron to ABC Investors is almost Thirty-One Million Dollars (\$31,000,000).

Investors in ABC (ABC Investors) paid approximately One Hundred Seven Million Five Hundred Fourteen Thousand Seven Hundred Forty-Two Dollars (\$107,514,742) for their interests in the proceeds of the Policies. The Policies were, and continue to be, subject to a conservatorship order issued by this Court on February 6, 2002. 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 and the predecessor in interest of Acheron was selected. If paid out over the projected fifteen (15) to twenty (20) years under the OPA, the ABC Investors would recover just under 55% of their original investment.

On July 16, 2010, Acheron filed the Motion to obtain this Court's authorization to offer to complete the purchase of the ABC Investors' interests in the proceeds of the Policies by making an immediate lump-sum cash payment to the ABC Investors. The Department responds as follows:

#### **FAIRNESS OF THE OFFER**

The Department's primary concern with respect to any offer that would change the terms of the OPA is that the offer is fair to and affords equal treatment to all ABC Investors. Acheron's contractual obligation to the ABC Investors creates great variance in annual payments made and is tied directly to the unknown factor of the timing of maturities. For example, 2009 was a year of large payments to the ABC Investors as their 60% share paid on matured policies was Three Million Seven Hundred Thousand Dollars (\$3,700,000.) However, in 2010, the 60% share paid on matured policies has been substantially less and the ABC Investors have received less than Four Hundred Thousand Dollars (\$400,000) to date. A lump-sum cash payment would eliminate this uncertainty.

Acheron's contractual obligation also provides for a payout over a period of possibly 15 to 20 more years.<sup>1</sup> In 2006, 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. The report included the finding that in twenty (20) years, approximately twelve percent (12%) of the Policies would not have matured. A lump-sum cash payment at this time would also eliminate this time delayed payout.

Further, the consideration of what will be the ultimate percentage return paid to the ABC Investors can only be made by considering all sources of payment towards the final return, that is, all payments by any predecessor purchasers of the Policies, the sums paid by and currently offered to be paid by Acheron, and all escrow deposits or other funds held by the Conservator. If the current Acheron offer is approved by this Court, the payment to ABC Investors in 2010 could be as much as Fifteen Million One Hundred Thousand Dollars (\$15,100,000) - the total of Acheron's lump sum payment offer of "up to \$11,500,000," the release of funds held by the Conservator in a premium reserve account of One Million Eight Hundred Thousand Dollars (\$1,800,000), and a share in the 2010 maturities of "up to \$1,800,000." If the Court finds that a cash offer should be considered at this time, it is critical to determine whether the current Acheron offer creates a reasonable basis to support a communication with the ABC Investors.

### **THE BEST INTEREST OF INVESTORS**

The Department believes a lump-sum payment is in the best interest of ABC Investors and believes that ABC Investors would be agreeable to an immediate payout. Many of the ABC

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<sup>1</sup> Acheron is contractually obligated to pay the remaining balance on the purchase price for the Policies, after taking over a prior defaulting party's obligation under the OPA. At no time has Acheron indicated it may default on its obligation to ABC Investors. In fact, Acheron states in its Motion, that it "has every intention of continuing with its servicing and premium payment obligations." Therefore, a default on the terms of the OPA is not a factor the Department has considered in formulating a response to the Motion.

Investors are elderly. However, the parties have been unable to agree on a dollar amount that would satisfy the best interest of ABC Investors. The Department does not have the expertise to express an opinion on the sufficiency of the dollar or percentage amount offered, but believes that the valuations by those with financial expertise, like Acheron, the Conservator and Lewis and Ellis, can provide the Court with competent information on which to make a determination of whether the Acheron offer is sufficient to submit to the ABC Investors. Consequently, the Department encourages the Court to hold an evidentiary hearing on the sufficiency of the amount of Acheron's offer. However, before such a hearing can occur, Acheron must make the amount of its offer more definite and certain. A determination cannot be made by the Court based on a proposed payment of "up to \$11,500,000" and a share in the 2010 maturities of "up to \$1,800,000."

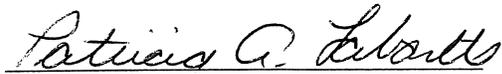
#### **POLLING THE ABC INVESTORS**

Acheron requests the approval of this Court to offer, directly to the ABC Investors, an immediate lump-sum cash payment. The contentious issue raised by the Motion is determining the amount that would justify seeking the preference of the ABC Investors through a notice process. If this Court approves a communication with ABC Investors to determine such preference, the Department would support the creation of a disclosure document that is prepared and circulated by the Conservator with the disclosures having the prior approval of the Court. The Conservator is the agent of the Court and is responsible for the servicing of the Policies. As such, he has been the person to correspond with the ABC Investors in this case and would most effectively provide information and disclosures regarding a payment offer.

**CONCLUSION**

For the reasons stated herein, the Department respectfully requests that this Court consider the Motion by first setting a hearing to fully explore the sufficiency of Acheron's lump-sum payment offer should the Court determine that a lump-sum payment is in the best interest of the ABC Investors at this time.

Respectfully submitted,



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## CERTIFICATE OF MAILING

The undersigned certifies that on the 8th day of September, 2010, a true and correct copy of the foregoing was mailed via First Class Mail, postage prepaid, to the following:

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