

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
 STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
 OKLAHOMA COUNTY, OKLA.

JAN 8 1 2006

PATRICIA PRESLEY, COURT CLERK
 by _____ Deputy

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

Case No.: CJ-99-2500-66
 Judge Daniel L. Owens

**CONSERVATOR'S NOTICE OF RESPONSE IN OPPOSITION TO
 KEITH LAMONDA'S MOTION FOR LEAVE TO ISSUE SUBPOENA
 DUCES TECUM FOR THOMAS MORAN, CONSERVATOR OF
 CERTAIN ASSETS OF ACCELERATED BENEFITS CORPORATION**

COMES NOW Tom Moran, Conservator of Certain Assets of Accelerated Benefits Corporation ("ABC") and it agents, (the "Conservator") and hereby notifies the Court of his filing of a Response In Opposition To Defendants' Unopposed Motion For Leave To Issue Subpoena *Duces Tecum* For Thomas Moran, Conservator of Accelerated Benefits Corporation, in the criminal proceeding bought against C. Keith LaMonda ("LaMonda"), Jesse W. LaMonda and John L. Maynard (collectively the "Criminal Defendants") by the United States of America. In support thereof, the Conservator would show the Court as follows:

1. On July 13, 2005, the Criminal Defendants were indicted by the U.S. Attorney's office in the Middle District of Florida, Orlando Division, in Case No. 6:05-cr-131-ORL-19KRS on Fifteen Counts, including mail fraud, wire fraud and criminal tax violations. On September 28, 2005, the First Superseding Indictment was filed by the United States (the "Indictment").

2. The Indictment alleges that LaMonda directed and controlled ABC's activities and owned ABC through various entities. The Indictment further alleges that LaMonda, as part of a scheme and conspiracy to defraud the ABC investors, diverted \$1.25 million dollars from premium reserve monies collected from ABC investors to make personal investments in an oil and gas exploration project.

3. On or about January 23, 2006, counsel for the Conservator was served with Defendants' Unopposed Motion For Leave To Issue Subpoena *Duces Tecum* For Thomas Moran, Conservator of Accelerated Benefits (the "Motion"). See Exhibit "1," Defendants' Unopposed Motion For Leave To Issue Subpoena *Duces Tecum* For Thomas Moran, Conservator of Accelerated Benefits Corporation.

4. Attached to the Motion was a proposed subpoena *duces tecum* (the "Subpoena"), which sought production of virtually every document in the possession of the Conservator. See Exhibit "2," Proposed Subpoena *Duces Tecum*.

5. The Conservator was ordered to respond to the Motion by January 30, 2006.

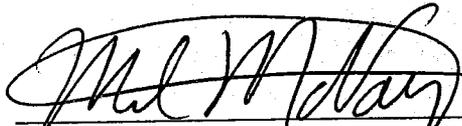
6. The Conservator's Response in Opposition to Defendants' Unopposed Motion For Leave To Issue Subpoena *Duces Tecum* For Thomas Moran, Conservator Of Accelerated Benefits Corporation, was timely filed on January 30, 2006, in the United States District Court for the Middle District of Florida, Orlando Division. See Exhibit "3," Response In Opposition To Defendants' Unopposed Motion For Leave To Issue Subpoena *Duces Tecum* For Thomas Moran, Conservator Of Accelerated Benefits.

7. The Conservator has objected to the issuance of the Subpoena on the basis that the Criminal Defendants have failed to meet their burden of demonstrating that the documents sought are relevant, that they cannot be procured in any other manner, and that the request was made in good

faith. Further, the Conservator believes that the scope of the document requests contained in the Subpoena demonstrates that the request is nothing more than a fishing expedition and that the Subpoena is so over-broad as to constitute an unreasonable and oppressive request. *Id.*

WHEREFORE, premises considered, the Conservator submits the foregoing in order to keep the Court fully apprised of all matters relating to the Conservatorship.

Respectfully submitted,



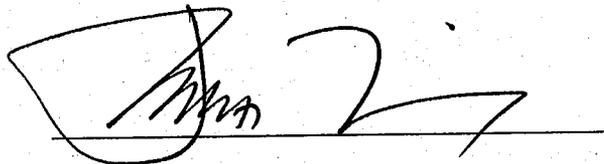
Melvin R. McVay, Jr., OBA No. 6096
Thomas P. Manning, OBA No. 16117
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4133
ATTORNEYS FOR CONSERVATOR,
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 31st day of January, 2006, a true and correct copy of the foregoing document was sent postage prepaid by first-class mail, to:

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

William H. Whitehill, Jr., Esq.
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
100 North Broadway Avenue, Suite 1700
Oklahoma City, OK 73102
*Attorney for Defendants,
Accelerated Benefits Corporation and
American Title Company of Orlando*

A handwritten signature in black ink, appearing to read "Patricia A. Labarthe", is written over a horizontal line.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Case No.: 6:05-cr-131-Orl-19KRS

v.

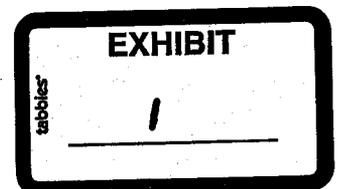
C. KEITH LAMONDA,
JESSE W. LAMONDA, and
JOHN L. MAYNARD,

Defendants.

**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO ISSUE SUBPOENA DUCES
TECUM FOR THOMAS MORAN, CONSERVATOR OF
ACCELERATED BENEFITS CORPORATION**

COME NOW DEFENDANTS, C. Keith LaMonda, Jesse W. LaMonda, and John L. Maynard (hereinafter referred to as "Defendants"), by and through their undersigned counsel, and respectfully move this Court for an order granting the Defendants leave to have issued and served a subpoena duces tecum to Thomas Moran, Conservator of Accelerated Benefits Corporation (the "Conservator"), pursuant to Rule 17(c) Fed. R. Crim. P., for the inspection of documents, and in support thereof, state as follows:

1. At present, this case will be set for trial during the Court's July 2006 trial term.
2. Among the issues involved in this matter are the activities of the Defendants and Accelerated Benefits Corporation ("ABC"), through which Defendants are alleged to have undertaken many of the acts set forth in the First Superseding Indictment filed by the Government on September 28, 2005.
3. On February 6, 2002, upon the motion of the Oklahoma Department of Securities, Judge Daniel Owens, of the Oklahoma County District Court, issued an *Order Appointing*



Conservator and Transferring Assets. ABC was ordered to transfer the following assets, among others, to the Conservator, which assets were so transferred by ABC to the Conservator. Among the assets transferred to the Conservator pursuant to Judge Daniel's Order were:

- a. all life insurance policies owned or held beneficially, directly or indirectly, by or for the benefit of ABC and/or the ABC Investors, that were purchased from the date of inception of ABC through September 30, 2000 ('Policies');
- b. all assets of ABC necessary to accomplish the objectives of the Conservatorship listed below including, but not limited to, computer hardware, databases, software, ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee, filing cabinets, office supplies, the lease to office space at 105 East Robinson Street, Suite 320, Orlando, Florida 32801, and telephone systems;
- c. all premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from Policies have been deposited; and
- d. the right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies.

4. Rule 17(c)(1) of the Fed. R. Crim. P. provides that:

A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

5. A copy of the subpoena the Defendants intend to issue to the Conservator is attached hereto as Exhibit "A" (the "Subpoena").

6. The documents described in the Subpoena are relevant and evidentiary, in that such

documents will be sought to be introduced into evidence at the trial on this matter, as the issuance, resale and purchase of life insurance policies and the receipt and payment of money in connection with such policies is an integral part of the acts specified by the Government in the First Superseding Indictment.

7. The documents sought by the Subpoena are not otherwise procurable reasonably in advance of the trial in this matter other than pursuant to the Subpoena.

8. The Defendants need the documents sought by the Subpoena in order to properly prepare for trial and the failure to obtain such inspection of the documents may unreasonably delay the trial in this matter and cause serious prejudice to the defense of the Defendants.

9. The Defendants make this motion for leave to issue the Subpoena in good faith and not as a general "fishing expedition."

10. For the convenience of all of the parties, the Subpoena directs that documents be produced to Defendants' counsel, who will coordinate the inspection of the documents produced pursuant to the Subpoena.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE
TO ISSUE SUBPOENA DUCES TECUM FOR THOMAS MORAN,
CONSERVATOR OF ACCELERATED BENEFITS CORPORATION**

Rule 17(c)(1) of the Fed. R. Crim. P. facilitates trials by "providing a time and place before trial for the inspection of the subpoenaed materials." Bowman Dairy Co. v. United States, 341 U.S. 214, 220, 71 S.Ct. 675, 95 L.Ed. 879 (1951). In order to obtain production of materials before trial under Rule 17(c), a defendant must show (1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by the exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance

of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general "fishing expedition." United States v. Nixon, 418 U.S. 683-699-700, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974).

WHEREFORE, for the foregoing reasons, Defendants respectfully request that this Court enter an Order allowing Defendants to have issued and served a Subpoena Duces Tecum upon Thomas Moran, Court Appointed Conservator of Accelerated Benefits Corporation, for the inspection of documents, at a time and place that is convenient to all parties.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 3.01(g)

Defendant C. Keith LaMonda's counsel, Bernard H. Dempsey, Jr., Esquire, hereby certifies that on the January 11, 2006, he spoke with Karen L. Gable pursuant to Local Rule 3.01(g) to determine the Government's position regarding this Motion for Leave to Issue Subpoena. Ms. Gable stated that the Government does not oppose this motion. Further, Mr. Dempsey has had two telephone conversations and has communicated by email with counsel for Conservator Thomas Moran, Melvin R. McVay, Jr., Esquire. Counsel for Mr. Moran objects to the issuance of the subpoena based on a number of concerns and objections, but believes that additional negotiation and discussion could result in a resolution.

Respectfully submitted this 18th day of January, 2006.

s/Bernard H. Dempsey, Jr.
BERNARD H. DEMPSEY, JR.
Florida Bar No.: 107697
Dempsey & Associates, P.A.
Mercantile Bank Plaza
1560 Orange Avenue, Suite 200
Winter Park, Florida 32789
Telephone: (407) 422-5166
Facsimile: (407) 422-8556
E-mail: bhd@dempsey-law.com

Attorney for C. Keith LaMonda

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of electronic filing to the following:

Karen L. Gable, Esquire
Assistant United States Attorney
Office of the United States Attorney
501 West Church Street, Suite 300
Orlando, Florida 32805
karen.gable@usdoj.gov

Chandler R. Muller, Esquire
Muller & Sommerville, P.A.
P.O. Box 2128
Winter Park, Florida 32790-2128
cmuller@cmullerlaw.com

H. Manuel Hernandez, Esquire
H. Manuel Hernandez, P.A.
P.O. Box 91692
Longwood, Florida 32791
hmh4law@cfl.rr.com

I further certify that I have mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

Melvin R. McVay, Jr., Esquire
Phillips, McFall, McCaffery, Mcvay & Murrah, P.C.
One Leadership Square, 12th Floor
Oklahoma City, Oklahoma 73102

s/ Bernard H. Dempsey, Jr.
Bernard H. Dempsey, Jr.
bhd@dempsey-law.com
Florida Bar No.: 107697
DEMPSEY & ASSOCIATES, P.A.
Mercantile Bank Plaza
1560 Orange Avenue, Suite 200
Winter Park, Florida 32789
Telephone: (407) 422-5166
Facsimile: (407) 422-8556

AO89 (Rev. 7/95) Subpoena in a Criminal Case

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

V.

C. KEITH LAMONDA, et al.

SUBPOENA IN A
CRIMINAL CASE

Case Number: 6:05-cr-131-Orl-19 KRS

TO: Thomas Moran, Conservator
c/o Melvin McVay, Jr., Esquire
Phillips, McFall, McVay, McCaffery & Murrah, P.C.
One Leadership Square, 12th Floor
Oklahoma City, Oklahoma 73102

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below, or any subsequent place, date and time set by the court, to testify in the above referenced case. This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

PLACE United States District Courthouse 80 North Hughey Avenue Orlando, Florida 32801	COURTROOM
	DATE AND TIME

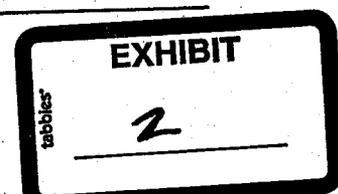
YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

See Attachment A. In lieu of appearing in the United States District Courthouse, you may appear to furnish the documents and items set forth on Attachment A, to Bernard H. Dempsey, Jr., Esquire, Dempsey & Associates, P.A., Mercantile Bank Plaza, 1560 Orange Avenue, Suite 200, Winter Park, Florida 32789, (407) 422-5166, Attorney for C. Keith LaMonda.

U.S. MAGISTRATE JUDGE OR CLERK OF COURT	DATE
(By) Deputy Clerk	

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER:

Bernard H. Dempsey, Jr., Esquire
Mercantile Bank Plaza, 1560 Orange Avenue, Suite 200, Winter Park, Florida 32789
P:(407) 422-5166 / F:(407) 422-8556
Attorney for C. Keith LaMonda



ATTACHMENT A

Definitions

The following definitions apply to this request:

1. "You" and "your" shall refer to THOMAS MORAN, as Conservator for Accelerated Benefits Corporation, and/or his agents, employees or other persons or entities related to it or acting on its behalf during the relevant period, and its officers, employees, agents, attorneys and representatives.
2. "Document" or "documents" means the original (or if unavailable, a copy of the original) of all written, printed, typed, reported, recorded, or graphic matter and all photographic matter or sound reproduction tapes, records, or other devices, however produced or reproduced, including, but not limited to, electronic data, now or formerly in your actual or constructive possession, custody or control, or of which you have knowledge. For any document related to the matters described herein which is not in your possession but which you know to exist, you are requested to identify any such document and indicate to the best of your ability that document's present or last known location or custodian.
3. "Electronic data" shall include, but is not limited to, all text files (including word processing documents), spreadsheets, e-mail files and information concerning e-mail (including logs of e-mail history and usage, header information and deleted files), internet history files and preferences, graphical image format files, data bases, calendar and scheduling information, computer system activity logs, and all file fragments and backup files containing electronic data.
4. "And/or" shall be construed either conjunctively and/or disjunctively to bring within the scope of this request any information which might otherwise be construed to be

outside the scope.

5. "Relating to," "relate to," "regarding" and "concerning" shall be construed in their broader sense and shall mean directly or indirectly describing, setting forth, discussing, mentioning, commenting upon, supporting, contradicting, or referring to the subject or topic in question, either in full or in part.

6. The relevant time period for these requests shall be from the inception of Accelerated Benefits Corporation to the present, unless otherwise specified.

SPECIFIC REQUESTS

1. Any and all documents that are life insurance policies owned or held beneficially, directly or indirectly, by or for the benefit of Accelerated Benefits Corporation and/or the purchasers of interests in the right to receive the proceeds from the viatical and/or life settlement policies effectuated by Accelerated Benefits Corporation Purchase Request Agreements ("ABC Investors"), that were purchased from the date of inception of Accelerated Benefits Corporation through September 30, 2000 ("Policies").

2. Any and all documents that are ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee records.

3. Any and all documents that are premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from Policies have been deposited and/or documents related thereto.

4. Any and all documents that are books and records of any kind pertaining to the Conservatorship Assets (as that term was defined in the February 6, 2002, Order of Judge Daniel

Owens, of the Oklahoma County District Court regarding Accelerated Benefits Corporation, Case No. CJ-99-2500-66), to the ABC Investors, or to the viators whose lives are insured by the Policies.

5. Any and all documents not set forth above that you obtained as a result of the February 6, 2002, Order of Judge Daniel Owens, of the Oklahoma County District Court regarding Accelerated Benefits Corporation, Case No. CJ-99-2500-66.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA,)
)
v.)
)
C. KEITH LAMONDA,)
JESSE W. LAMONDA, and)
JOHN L. MAYNARD,)
)
)
Defendants.)

Case No.: 6:05-cr-1310Orl-19KRS

**RESPONSE IN OPPOSITION TO DEFENDANTS' UNOPPOSED¹ MOTION
FOR LEAVE TO ISSUE SUBPOENA *DUCES TECUM* FOR THOMAS MORAN,
CONSERVATOR OF ACCELERATED BENEFITS CORPORATION**

COMES NOW, H. Thomas Moran, II, the Conservator for certain assets of Accelerated Benefits Corporation (the "Conservator"), and objects to the defendants' motion for leave to issue a subpoena *duces tecum* ("Unopposed Motion") and states as follows:

I. FACTS

In 1999, the Oklahoma Department of Securities (the "ODS") brought a securities fraud action in the District Court of Oklahoma County, State of Oklahoma, Case No. CJ-99-2500-66, against Accelerated Benefits Corporation ("ABC") and several Oklahoma resident brokers. The lawsuit arose from ABC's purchase of life insurance policies from the terminally ill and elderly (viators) and the sale of investments in the policies, or viaticals.²

¹ The Conservator's counsel informed the defendants' counsel that he objected to the issuance of a subpoena *duces tecum*.

² Viaticals represent interests in the proceeds of unmaturing life insurance policies transferred by their original owners, or viators, to ABC in exchange for cash. ABC solicited investments from individuals, many of whom were elderly and/or unsophisticated. ABC promised investors a specified return on their investment on maturity of the viatical with which they were matched. ABC represented that it would fund future premium payments on policies by setting aside a portion of the investors' funds. In many instances, the purchase agreements guaranteed that ABC

EXHIBIT

3

The District Court determined that the Oklahoma resident brokers had illegally sold unregistered securities and that ABC had committed securities fraud. The District Court ultimately entered judgment against ABC ordering it to pay restitution to Oklahoma investors. Concerned that requiring restitution from ABC would lead to its insolvency and consequent inability to pay premiums on the ABC policy portfolio, the ODS offered, in lieu of restitution, to allow it to transfer certain assets, including all insurance policies, to a conservator.

Extensive negotiations between ODS, ABC, C. Keith LaMonda ("LaMonda"), American Title Company of Orlando ("ATCO") and David Piercefield ("Piercefield"), resulted in an agreed Conservatorship Order (the "Conservatorship Order")³ which the District Court entered on February 6, 2002. Although not defendants in the securities fraud case, LaMonda, ATCO and Piercefield were parties to the agreed Conservatorship Order which named H. Thomas Moran, II, Conservator of certain assets of ABC and its agents. The Conservatorship Order, further, defined Conservatorship Assets as:

- a. All life insurance policies 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.
- b. All assets of ABC necessary to accomplish the objectives of the Conservatorship, including, but not limited to, computer hardware, databases, software, ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee, filing cabinets, office supplies, the lease to office space at 105 East Robinson Street, Suite 320, Orlando, Florida, and telephone systems;

would pay premiums due on the insurance policies underlying the viaticals without further obligation to the investors. ATCO held title to the policies as escrow agent for ABC. Additionally, ATCO was named the sole beneficiary on all but sixty-three of the approximately one thousand four hundred insurance policies in the ABC portfolio.

³ The defendants incorrectly stated that the ODS moved for the appointment of a conservator. See Unopposed Motion at 1.

c. All premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from the Policies have been deposited; and

d. The right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies.

See Order Appointing Conservator attached as Exhibit "1."

In view of the explicit language of the Conservatorship Order, the defendants' counsel mischaracterized Mr. Moran as the Conservator for ABC in the motion for leave to issue subpoena *duces tecum*. *See* Unopposed Motion at 1. Mr. Moran serves solely as Conservator for those assets of ABC over which the Oklahoma court exerted judicial control. Similarly, although the defendants' attorney represented that the Oklahoma defendants transferred all assets as ordered by the Oklahoma court, Mr. Moran cannot assure that they fully complied with the Conservatorship Order. However, in complying with the Conservatorship Order, Mr. Moran has taken control of all known Conservatorship Assets.

On July 13, 2005, almost two and one half years after the Oklahoma court appointed the Conservator, the United States indicted the defendants for activities arising from the operation of ABC and ATCO. The United States filed the First Superseding Indictment ("Indictment") approximately two months later. The Indictment alleges Fifteen Counts including mail fraud, wire fraud, and criminal tax violations.

II. ARGUMENTS AND AUTHORITIES

A. GENERAL PRINCIPLES

The defendants seek the issuance of a subpoena *duces tecum* pursuant to Fed. R. Crim. P. 17(c) which provides:

(1) In General. A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are

to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

(2) Quashing or Modifying the Subpoena. On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

Well-established case law holds that Rule 17(c) may not be used to conduct discovery in a criminal case. *See U.S. v. Nixon*, 418 U.S. 683, 698 (1974). Rather, Rule 17(c) is designed to advance the case to trial in a timely manner. *Id.* The court may quash a subpoena "if compliance would be unreasonable or oppressive, but not otherwise." *Id.*

To obtain production of documents in a criminal case pursuant to a subpoena *duces tecum* the moving party must demonstrate first that the documents are evidentiary and relevant. *Id.* at 699. Stated another way, to meet his or her burden of proof, the moving party must show (1) relevancy; (2) admissibility; and (3) specificity. *Id.* *See also U.S. v. Salvagno*, 267 F.Supp.2d 249, 252 (N.D.N.Y. 2003). The moving party must also demonstrate that the documents are not otherwise reasonably procurable, the party cannot adequately prepare for trial without production and inspection, and the application is made in good faith "and is not intended as a general fishing expedition." *Id.* at 699.

The moving party must include in his or her motion for leave to issue a subpoena *duces tecum* a description of "what material is sought or how this material would be relevant." *U.S. v. McGuire*, 21 F.Supp.2d 1264, 1265 (D. Kan. 1998). Moreover, the subpoena *duces tecum* must specifically request identified records and provide the reason why the movant needs them. *Id.* Requesting entire files instead of specific documents indicates a fishing expedition for unknown evidence – a practice prohibited by Supreme Court precedent. *See U.S. v. Reed*, 726 F.2d 570, 577 (9th Cir. 1984). Finally, the proponent of a subpoena *duces tecum* cannot meet his or her

burden of proof by relying on mere conclusory statements. *See U.S. v. Eden*, 659 F.2d 1376, 1381 (9th Cir. 1981).

B. THE DEFENDANTS HAVE FAILED TO MEET THEIR BURDEN OF SHOWING THAT THEY SHOULD BE ALLOWED TO ISSUE A SUBPOENA *DUCES TECUM* TO THE CONSERVATOR

In their motion for leave to issue a subpoena *duces tecum*, the defendants claim that because they conducted the alleged criminal acts through ABC (*see* Unopposed Motion at ¶ 2), the wide range of documents they seek: (1) are relevant and evidentiary because evidence as to the "issuance, resale and purchase of life insurance policies and the receipt and payment of money in connection with such policies is an integral part of the acts specified by the Government in the First Superseding Indictment;" (2) are not otherwise procurable; and (3) are necessary for their trial preparation. *See* Unopposed Motion at ¶¶ 6-8. Here, the defendants supported their request for the issuance of a subpoena *duces tecum* with nothing but conclusory allegations regarding those elements they must prove. Therefore, the defendants Unopposed Motion should be denied.

1. Counts One through Twelve

Pursuant to *Nixon, supra*, the defendants are required to show that the documents they seek are relevant. Assuming that the defendants can demonstrate the relevance of some documents, they must establish that they are unable to procure the documents from any other source and that the documents are necessary to their defense. Applying the *Nixon* test to the proposed subpoena in this case reveals that the defendants are not entitled to the documents requested.

a. Relevance

In Counts One through Twelve of the Indictment, the Government alleges that the defendants committed mail and wire fraud by participating in a scheme to purchase eighteen specifically-identified contestable insurance policies knowing that the purchasers had misrepresented their health status. The Government further alleges that the defendants, through a series of actions, fraudulently concealed their purchases from the issuing insurance companies to avoid cancellation of the policies during the contestability period. Finally, the Indictment generally states that the alleged criminal acts occurred from June 1996 through March 2001, but the overt acts pled relate solely to the identified contestable policies purchased from June 1996 through January 1999 with transactions relating to those policies dated from April 1997 to December 2000.

To prevail on Counts One through Twelve, the Government must prove: (1) that the defendants knowingly devised or participated in the scheme regarding the eighteen contestable policies; (2) their misrepresentations regarding ownership of the policies were material; (3) they acted willfully with intent to defraud; and (4) they transmitted through the mails or wires in interstate commerce the premium payments in furtherance of the scheme. *See, e.g.*, Eleventh Circuit Pattern Criminal Jury Instructions No. 50.1 and 51.1. The only evidence arguably relevant to Counts One through Twelve includes documents pertaining to the eighteen specifically-identified policies,⁴ the viators of those policies, records related to the contestable

⁴ With the exception of several Excel spreadsheets that list the contestable policies, the Conservator maintains no information relating to the contestable policies. *See* Exhibit "2" at ¶15.

policy computer database,⁵ and SunTrust Bank records relating to a checking account in the name of Jennifer A. Grinstead.

The records regarding whether the criminal acts occurred must, according to the Indictment, be related to the time period of June 1996 through December 2000. Even so, in their motion for leave to issue subpoena *duces tecum*, the defendants offer no explanation as to why they are seeking essentially all ABC documents dated from the beginning of its existence, through the termination of their association with ABC with the appointment of the Conservator in 2002, to the present day. Further, included in the proposed subpoena *duces tecum* are *all* insurance policies held in the Conservatorship, *all* viators' records, *all* bank accounts, *any* records related to the distribution of any proceeds, information related to *any* investor, or *any* information obtained by the Conservator as a result of the Conservatorship Order. Similarly, the defendants present no rationale whatsoever for their claim that all of these documents are relevant to the allegations contained in the Indictment.

b) Remaining Elements

Even more deficient are the defendants' arguments regarding the remaining elements they must prove in order to issue a subpoena *duces tecum*. First, while it is undoubtedly true that the defendants cannot obtain all of the documents maintained by the Conservator from any other source, the proper inquiry is whether they can procure the *relevant and admissible* documents from any other source. The Conservator believes that the Federal Bureau of Investigation ("FBI") raided both the ATCO and ABC offices. See Exhibit "2" at ¶ 17. The FBI took possession of all ATCO files and many ABC files. *Id.* Therefore, the Conservator never had possession of those documents. Further, the Government has or will produce all relevant

⁵ The Conservator has no knowledge of a "contestable policy viator database." See Exhibit "2" at ¶ 16.

documents in its possession during discovery. As the Conservator has stated, given the nature of the Government's case, the documents already available will either prove or disprove the stated Counts.

2. Count Thirteen

Applying the *Nixon* test to Count Thirteen of the Indictment, the defendants are not entitled to the documents sought in the proposed subpoena *duces tecum*. Count Thirteen alleges that the defendants used the mails and wires to send investor handbooks, advertisements, purchaser request agreements and letters to ABC investors for purpose of defrauding them. According to the Government, during the time period from January 1996 to March 2002, the defendants conspired to fraudulently induce individuals to invest funds – \$1.25 million of which was subsequently diverted for defendants' personal investments – through numerous misrepresentations. – Further, ABC was unable to maintain the Isaac policy as a result of the diversion of funds.

a. Relevance

As previously noted, the Government must prove that defendants knowingly undertook the scheme with the intent to defraud the investors, and that they used the mails or wires to accomplish the scheme. Documents arguably relevant to proving or disproving the allegations in Count Thirteen could include a small amount of information contained in the Conservatorship records such as copies of investor handbooks and advertisements. Also arguably relevant are ATCO documents relating to its one-time transfer of \$1.25 million, records from the specific Merrill Lynch account, records of the SouthTrust Bank account number 70-998-295, the alleged bogus promissory note, and records relating to the Isaac policy.

Once again, the defendants have presented no justification for seeking production of any document which the Indictment does not specifically reference. Count Thirteen deals with only one insurance policy, but does not relate to any viator, or distribution of proceeds. Investor information is relevant only to the extent that any particular investor states that he or she relied on misrepresentations made by the defendants. Consequently, the Conservatorship files – which contain information regarding an investor's name, personal information, and the type of investment he or she requested – are not subject to production. Additionally, only documents dated from January 1996 to March 2002, the dates pled in the Indictment, are relevant. The proposed subpoena *duces tecum* requests information generated after the relevant dates in the Indictment, including documents generated after the defendants were no longer associated with ABC's assets. Given the nature of the allegations, even if allowed their fishing expedition, the defendants' review of every document available would not net them any exculpatory evidence.

b. Remaining Elements

As noted in proposition B.1.b., *supra*, the defendants will be able to procure the relevant and admissible documents from the Government. Thus, not only is the "discovery" the defendants are attempting to procure from the Conservator prohibited by Rule 17(c), but the defendants have failed to adequately demonstrate that the documents they seek are necessary for the preparation of their case.

3. Counts Fourteen and Fifteen

Counts Fourteen and Fifteen of the Indictment claim that the defendants failed to file income tax and/or filed false income tax returns. The Indictment states that the defendants, prior to the appointment of the Conservator, attempted to conceal from the IRS their receipt of substantial funds from ABC. The Indictment places at issue: (1) a \$2.1 million transfer from

ABC to the Smith Trust Account; (2) the \$1.25 million transfer for personal investment addressed in Count Thirteen; (3) a \$261,500 transfer from ABC to the Smith Trust Account; (4) the formation of nominee corporations; (5) the opening of bank accounts; (6) the creation of false documents; and (7) the intentional omission of the transactions from ABC's books and ledgers.

a. Relevance

Again, pursuant to *Nixon, supra* the defendants must prove certain elements to obtain permission to issue the proposed subpoena *duces tecum*. The conclusory rationalization regarding the relevancy of the documents the defendants hope to obtain via the proposed subpoena *duces tecum* is insufficient to meet their burden of proof. A review of the date and account-specific allegations in the Indictment demonstrates that only a narrow class of documents is relevant and admissible either to prove or defend against the alleged tax violations. Because the alleged fact specific violations occurred during the period pre-dating the appointment of the Conservator in February 2003, the defendants' tacit assertion that each and every document the Conservator maintains is relevant cannot bear scrutiny. Moreover, the defendants have presented no argument supporting their claim that insurance policy files, viators files, investors files or the like are relevant to the alleged tax violations.

b. Remaining Elements

The alleged criminal activities in the Indictment occurred on specific dates and during identified transactions. The Government, not the Conservator, is the proper source for the defendants to acquire documents within the scope of the Indictment. The documents already available will either prove or disprove the stated Counts. The defendants cannot establish that their trial preparation will be delayed without access to the Conservatorship documents.

Because the defendants have wholly failed to meet their burden of showing that the information they seek via the proposed subpoena *duces tecum* is relevant, admissible, otherwise unprocurable and necessary, this Court must deny their Unopposed Motion.

C. BECAUSE THE PROPOSED SUBPOENA *DUCES TECUM* IS UNREASONABLE, OPPRESSIVE, AND OVER-BROAD, THE DEFENDANTS HAVE FAILED TO ESTABLISH THAT THEY ARE ENTITLED TO ISSUE A SUBPOENA TO THE CONSERVATOR

The proposed subpoena *duces tecum* provided for this Court's review demonstrates that, contrary to their express statements, the defendants are on a general fishing expedition for documents. Immediately conspicuous are the defendants' requests for entire classes of files instead of specific documents. Consequently, this Court may refuse to issue the subpoena *duces tecum* because it is impermissibly over-broad.

In *U.S. v. Salvagno, supra*, the court granted a motion to quash a subpoena in a criminal racketeering case arising out of their asbestos abatement business. Defendants issued a subpoena to a private environmental consulting firm seeking "all documents" relating to asbestos abatement services or projects. *Id.* at 254. The non-party consulting firm argued that the request would require it to copy virtually every piece of paper in its office which it estimated would fill over forty banker's boxes. *Id.* Additionally, of the thousands of responsive documents, only a few could be considered relevant to the actions alleged in the indictment. *Id.* The court held, "[d]efendants have failed to show that all of the documents requested are relevant to the conduct charged in the indictment. . . defendants' subpoena is unreasonable, oppressive, and over-broad." *Id.* See also *U.S. v. Kalter*, 5 F.3d 1166 (8th Cir. 1993)(the district court did not err in quashing defendant's subpoena after determining that the burden of producing all police reports of persons arrested during a certain time frame greatly outweighed any relevance the reports could have).

As in *Salvagno* and *Kalter*, the proposed subpoena *duces tecum* in this case is fatally over-broad. The Indictment plainly limits the alleged criminal acts of the defendants to a period from January 1996 to March 2, 2002 and further details each alleged criminal transaction by date. At issue are eighteen specifically listed contestable insurance policies purchased between June 27, 1996 and January 20, 1999, and one traditional policy, the Isaac policy. To the extent that the Government did not include dates certain in several Counts of the Indictment, the scope of the Indictment is clearly limited to discrete transactions.

Notwithstanding the carefully crafted Indictment, the defendants' proposed subpoena *duces tecum* essentially requests each and every document maintained by the Conservator. The Conservator's specific responses to the specific requests contained in defendants' proposed subpoena *duces tecum* are as follows:

REQUEST 1: Any and all life insurance policies owned or held beneficially by or for the benefit of ABC and/or its investors purchased through September 30, 2000.

RESPONSE: The Indictment implicates only nineteen of over 1300 policies⁶ in the ABC portfolio – eighteen specifically named contestable policies and the Isaac policy, a policy which ABC allowed to lapse. Because the Government never placed all the policies in the ABC portfolio at issue, the defendants' request is over-broad.

REQUEST 2: Any and all ABC investor files relating to the life insurance policies.

RESPONSE: The Indictment does not refer to any of the approximately 4500 ABC investors.⁷ In fact, but for allegations regarding the nature of the fraudulent scheme against

⁶ See Affidavit of H. Thomas Moran, II attached as Exhibit "2" at ¶ 6.

⁷ See Exhibit "2" at ¶7.

the investors as a whole, the investor files – which contain personal information such as amounts personally invested, contact information, and personal identification information – are neither mentioned nor impliedly addressed by the allegations in the Indictment. The request is, therefore, over-broad.

REQUEST 3: Any and all viator files relating to the life insurance policies.

RESPONSE: The Indictment claims that the defendants prompted the viators of eighteen specifically named contestable policies to aid in defrauding the insurance companies. Otherwise, the pleading does not implicate ABC viators. The viator files, like the investor files, contain very personal information. Additionally, the viator files contain medical records and information. Not only is viator medical information subject to privacy concerns, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 201 *et seq.*, limits the ability of the Conservator to release the protected health information. Potential penalties for release of health information in violation of HIPAA include civil and criminal fines and imprisonment. *See* 45 U.S.C §§ 1320d-5 & 1320d-6; 45 C.F.R. §§ 160.500 *et seq.*

REQUEST 4: Accounting and financial records pertaining to premium payments on any and all life insurance policies.

RESPONSE: The Indictment addresses premium payments in two ways. First, the Government claims that several premium payments, detailed as to both date and amount, constitute overt acts of mail and/or wire fraud. Second, the Government alleges that the defendants made material misrepresentations regarding investors' responsibility for making premium payments. To defend against these allegations, the defendants do not need records pertaining to all of the premium payments ABC ever made. In the first instance, only information pertaining to the specific premium payments plead is rightfully at issue. In the latter

case, whether investors were forced to make premium payments cannot be proven by reviewing all premium payments. The request, therefore, is over-broad.

REQUEST 5: Accounting and financial records pertaining to the receipt and distribution of proceeds on any and all life insurance policies.

RESPONSE: The Indictment contains no allegations pertaining to the distribution of proceeds from any insurance policy ABC purchased. The information requested here has absolutely no relevance to the allegations in the Indictment and is over-broad.

REQUEST 6: Any and all documents related to premium reserve accounts.

RESPONSE: The Indictment claims that the defendants diverted monies from the premium reserve accounts on certain dates and in certain amounts. Except for the allegation that ABC allowed the Isaac policy to lapse because the premium reserve account was depleted, the only records pertinent to the allegations are those showing that money was transferred out of the premium reserve account. Thus, the defendants' request is over-broad.

REQUEST 7: Any and all documents related to bank accounts into which ABC investor funds or policy proceeds have been deposited.

RESPONSE: The Indictment covers specifically-identified bank accounts, and specifically-identified transactions. Consequently, a request for all documents related to all bank accounts is simply not at issue in the Government's case and not necessary for the defense of the case. The request should be denied as over-broad.

REQUEST 8: Any and all documents related to Conservatorship Assets.

RESPONSE: As noted previously, the subpoena *duces tecum* is over-broad as it relates to the ABC insurance policy portfolio, investor files and viator files, and financial records. Other additional assets of the Conservatorship Assets include computer hardware,

databases, software, filing cabinets, and office supplies. Arguably, the defendants request for all documents related to Conservatorship Assets could encompass these items as well. However, the Indictment contains only one reference to a database – the contestable policy viator database. Therefore, a request for information pertaining to any other additional assets is over-broad.

REQUEST 9: Any and all documents related to ABC investors.

RESPONSE: See ¶ 2, *supra*;

REQUEST 10: Any and all documents related to viators.

RESPONSE: See ¶ 3, *supra*;

REQUEST 11: Any and all documents obtained as a result of the Conservatorship Order.

RESPONSE: This request encompasses all of the documents previously requested in the proposed subpoena *duces tecum*. For the same reasons as set out in response to paragraphs 1-9, *supra*, the request is far too broad. The temporal scope of the request is similarly over-broad. The Oklahoma court appointed the Conservator on February 6, 2002, while the Indictment provides that the last relevant date is March 2002. The request, on the other hand, is not limited in any way. Any document created after the Conservator took control of the ABC assets has absolutely no connection to the defendants' criminal actions at issue in the Indictment. Finally, documents created after the Conservator was appointed may include attorney-client and attorney work product privileged documents which are not subject to discovery.

Even assuming for the sake of argument that the proposed subpoena *duces tecum* did not request documents pertaining to issues beyond the scope of the allegations in the Indictment, the sheer number of documents responsive to the proposed subpoena *duces tecum* would render compliance unreasonable and oppressive. As in *Salvagno, supra*, to produce all documents

requested would require allowing inspection of over one hundred boxes of documents. *See* Exhibit "2" at ¶ 12. The documents are not maintained in such a way as to allow easy access to persons unfamiliar with them. *Id.* at ¶ 13-14. Therefore, one or more of the Conservator's office staff would be required to marshal and copy the documents at a great loss of time and money to the Conservator. *Id.* ¶ 13-14. The Conservator operates with limited funds for the benefit of the ABC Investors. The Investors should not be required to bear the costs of complying with a subpoena *duces tecum* issued by the very persons who bilked them of millions of dollars.

Additionally, the Conservator is in the midst of closing his Florida office. Consequently, the ABC documents that were formerly being stored in Florida are in the process of being shipped to Oklahoma. *Id.* ¶ 13. The defendants' counsel argues that it would be most convenient to all the parties for documents to be produced to him at his office in Florida. *See* Unopposed Motion at ¶ 10 and attached Subpoena. This request completely ignores the great inconvenience and costs to the Conservator of copying and shipping all documents potentially responsive to the proposed subpoena *duces tecum* to Florida.

III. CONCLUSION

To obtain documents from a third party pursuant to Fed. R. Crim. P. 17(c), the moving party must demonstrate that the documents sought are relevant, that they cannot be procured in any other manner, that the documents are necessary to the case, and that the request is made in good faith. Applying this test to the defendants' Unopposed Motion, they have failed to make the requisite showing. Absent from the Unopposed Motion is any specific description of the material sought, any rationale for seeking the information, and, most important, any explanation as to how the information sought is relevant to the allegations in the Indictment.

The scope of the document requests contained in the defendants' proposed subpoena *duces tecum* demonstrates that the defendants are on a fishing expedition. Because the defendants may not utilize Rule 17(c) to obtain discovery from the Conservator, the defendants are not entitled to the documents. Additionally, not only have the defendants fallen short of their burden of proof, even assuming that the documents possessed some relevancy, the proposed subpoena *duces tecum* is so over-broad as to constitute an unreasonable and oppressive request.

Based on the foregoing, this Court should deny the Unopposed Motion. However, should the Court grant, in whole or in part, the defendants' Unopposed Motion, the documents should be produced at the Conservator's Oklahoma City office at a time convenient to the parties and the Conservator. Moreover, any and all costs of any production should be borne by the defendants.

Respectfully submitted,

Date: January 30, 2006

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*Attorneys for Tom Moran, Conservator of
Certain Assets of Accelerated Benefits
Corporation*

CERTIFICATE OF MAILING

I hereby certify that on January 30, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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s/Timothy W. Volpe

1. all life insurance policies owned or held beneficially, directly or indirectly, by or for the benefit of ABC and/or the ABC Investors, that were purchased from the date of inception of ABC through September 30, 2000 ("Policies");

2. all assets of ABC necessary to accomplish the objectives of the Conservatorship listed below including, but not limited to, computer hardware, databases, software, ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee, filing cabinets, office supplies, the lease to office space at 105 East Robinson Street, Suite 320, Orlando, Florida 32801, and telephone systems;

3. all premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from Policies have been deposited; and

4. the right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies.

IT IS FURTHER ORDERED that the Conservator is given directions and authority to accomplish the following:

1. to take custody, possession and control of the Conservatorship Assets as they are transferred to Conservator;

2. to manage all Conservatorship Assets pending further action by this Court including, but not limited to, the evaluation of the Policies, and to take the necessary steps to protect the ABC Investors' interests including, but not limited to, the liquidation or sale of the Policies to institutional buyers and the assessment to ABC Investors of future premium payments;

3. to receive and collect any and all sums of money due or owing on the Policies to ABC or its agents whether the same are due or shall hereinafter become due and payable;
4. to seek the return of any cash, bond or guarantee on deposit with any regulatory agency or other entity on behalf of ABC or its agents;
5. to make such payments and disbursements as may be necessary and advisable for the preservation of the Conservatorship Assets and as may be necessary and advisable in discharging his duties as Conservator including, but not limited to, the timely payment of all premiums for Policies that have not yet matured;
6. to monitor the viators of the Policies by tracking the location of the viators and periodically checking the health of the viators;
7. to receive notice of the death of viators, file death claims on the viators, and collect the proceeds paid on the Policies as such mature;
8. to disburse to each ABC Investor his proportionate share of the proceeds paid on matured Policies, which amount may be reduced by the total amount of any premium payments advanced by ABC or the Conservator on behalf of such ABC Investor;
9. to establish open communication with ABC Investors with proper disclosure of available options and consequences including, but not limited to, notice to ABC Investors of this Conservatorship Order within thirty (30) days of the entry of this Order;
10. to retain and employ attorneys, accountants, computer consultants and other persons as may be advisable or necessary to the exercise of the duties of the Conservator. Conservator may immediately retain or employ such persons, and compensate such persons, all subject to application to and approval by the Court;

11. to open and inspect any and all mail and/or deliveries if same relate to the existence, location, identity and/or collection, preservation, maintenance or operation of Conservatorship Assets, and to notify any insurance company or third party administrator and the United States Postal Service to effect the forward delivery of any mail related to the Conservatorship Assets to a mail depository under the control of the Conservator;

12. to institute, prosecute, defend, intervene in or become party to such actions or proceedings in any state court, federal court or United States bankruptcy court as may in the Conservator's opinion be necessary or proper for the protection, maintenance and preservation of the Conservatorship Assets, or the carrying out of the terms of this Conservatorship Order; and

13. to exercise those powers necessary to implement his conclusions with regard to disposition of this Conservatorship pursuant to the orders and directives of this Court.

IT IS FURTHER ORDERED that ABC and its agents, including American Title Company of Orlando and David Piercefield, shall immediately begin the process of transferring the ownership and beneficial rights to the Conservatorship Assets to the Conservator until all Conservatorship Assets have been transferred. The transfer process shall conclude within ninety (90) days of the execution of this Order. If for any reason any Conservatorship Asset has not been transferred on or before end of the ninety (90) day period, ABC and/or its agents, including American Title Company of Orlando and David Piercefield, shall provide a list to the Conservator of the Conservatorship Assets that have not been transferred and the reasons therefor.

IT IS FURTHER ORDERED that this order supercedes the order of this Court dated May 10, 2001, that prohibited the assessment or collection of future premium payments from ABC Investors.

IT IS FURTHER ORDERED that ABC pay and maintain all office expenses, salaries, and other costs of the Conservatorship until at least seventy-five percent (75%) of all Conservatorship Assets have been transferred to the Conservator.

IT IS FURTHER ORDERED that all persons and entities, including ABC, its subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further including any banks or financial institutions, wherever chartered or located, life insurance companies, federal and state agencies, viators, viatical settlement providers, and viatical settlement brokers who receive actual notice of this Conservatorship Order, by personal service, facsimile transmission or otherwise, shall promptly deliver and surrender to the Conservator:

1. all Conservatorship Assets in the possession of or under the control of any one or more of them; and
2. all books and records of any kind pertaining to the Conservatorship Assets, to the ABC Investors, or to the viators whose lives are insured by the Policies.

IT IS FURTHER ORDERED that all persons and entities, including ABC, its subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further including any banks or financial institutions, wherever chartered or located, life insurance companies, federal and state agencies, viators, viatical settlement providers, and viatical settlement brokers who receive actual notice of this Conservatorship Order, by personal service, facsimile transmission or otherwise, fully cooperate with and assist the Conservator and that they take no action, directly or indirectly, to hinder or obstruct the

Conservator in the conduct of his duties or to interfere in any manner, directly or indirectly, with the custody, possession or control exercised by said Conservator.

IT IS FURTHER ORDERED that the Conservator is authorized, without breaching the peace, to enter and secure any premises under the control of ABC or its agents, wherever located or situated, in order to take possession, custody or control of, or to identify the location or existence of, any Conservatorship Assets.

IT IS FURTHER ORDERED that the Conservator may apply to the Court for compensation, from time to time, in a reasonable sum to be determined by the Court and from such sources as approved by the Court and for reimbursement for reasonable expenses incurred in connection with his duties as Conservator. The fees and expenses of the Conservator shall have priority over any other claims made against ABC. The Conservator shall not be required to give any bond. The Oklahoma Department of Securities shall have the authority to seek removal of the Conservator for cause and upon approval of this Court.

IT IS FURTHER ORDERED that except by leave of Court during the pendency of this Conservatorship, all creditors and other persons seeking money, damages or other relief from ABC or its agents, including American Title Company of Orlando and David Piercefield, and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees, are hereby stayed and restrained from doing any act or thing whatsoever to interfere with ABC or its agents, including American Title Company of Orlando and David Piercefield, in the orderly transfer of the Conservatorship assets or the Conservator or to the possession of or management by the Conservator of the Conservatorship Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over ABC. This

Conservatorship Order shall not stay or restrain any pending or future action whatsoever by any government agency or any representative on behalf of any government.

IT IS FURTHER ORDERED that any Conservatorship Assets remaining at the conclusion of the Conservatorship shall be transferred to ABC.

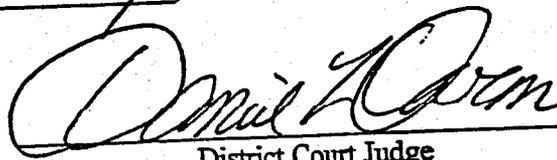
IT IS FURTHER ORDERED that ABC and its agents, including American Title Company of Orlando and David Piercefield, be held harmless from any and all liability, costs and damages arising in connection with each Conservatorship Asset after each such asset has been transferred to the Conservator.

IT IS FURTHER ORDERED that the Conservator be held harmless from any and all liability, costs and damages arising from acts of ABC and its agents, including American Title Company of Orlando and David Piercefield, before Conservatorship Assets have been transferred to the Conservator.

IT IS FURTHER ORDERED that the Conservator may rely on applicable exclusions or exemptions from registration under the Act in connection with the offer and/or sale of securities to institutional buyers in and/or from the state of Oklahoma.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over this matter and ABC for all purposes.

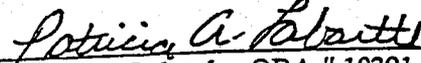
Dated this 6th day of February, 2002.

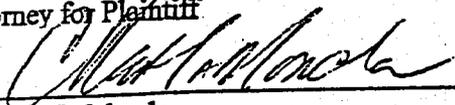


District Court Judge

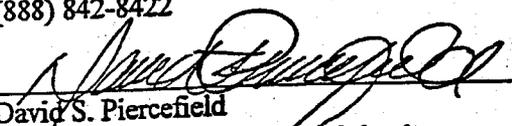
I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office of Oklahoma County, Okla., this 7 day of February, 2002.
By [Signature] PATRICIA PRESLEY, Court Clerk
Deputy

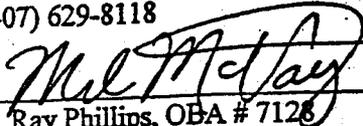
Approved as to form and substance:


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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,)
)
v.)
)
C. KEITH LAMONDA,)
JESSE W. LAMONDA, and)
JOHN L. MAYNARD,)
)
)
)
Defendants.)

Case No.: 6:05-cr-1310Orl-19KRS

AFFIDAVIT

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

The undersigned, H. Thomas Moran, of lawful age, being first duly sworn, deposes and states as follows:

1. That I am the Conservator of certain assets of Accelerated Benefits Corporation ("ABC") pursuant to an Order Appointing Conservator and Transferring Assets entered in the district court of Oklahoma County, Oklahoma, on February 6, 2002 (the "Conservatorship Order").
2. I have personal knowledge of the matters set forth herein.
3. The Conservatorship Order transferred certain assets of ABC and its agents, including, but not limited to, American Title Company of Orlando ("ATCO") and David Piercefield ("Piercefield"), (the "Conservatorship Assets"), including:
 - a. All life insurance policies 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 (the "Policies");



- b. All assets of ABC necessary to accomplish the objectives of the Conservatorship, including, but not limited to, computer hardware, databases, software, ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee, filing cabinets, office supplies, the lease to office space at 105 East Robinson Street, Suite 320, Orlando, Florida, and telephone systems;
- c. All premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from the Policies have been deposited; and
- d. The right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies.

4. I was appointed conservator by the Court to take possession of, and maximize the return for the defrauded ABC investors, of the Conservatorship Assets.

5. As Conservator, I was further given the direction and authority to accomplish the following:

- a. To take custody, possession and control of the Conservatorship Assets as they are transferred to the Conservator;
- b. To manage all Conservatorship Assets pending further action by the Court including, but not limited to, the evaluation of the Policies, and to take necessary steps to protect the ABC Investors' interests including, but not limited to, the liquidation or sale of the Policies to institutional buyers and the assessment to ABC Investors of the future premium payments;
- c. Receive and collect any and all sums of money due or owing on the Policies to ABC or its agents;
- d. Seek the return of any cash, bond or guarantee on deposit with any regulatory agency or other entity on behalf of ABC or its agents;

- e. Make such payments and disbursements as may be necessary and advisable for the preservation of the Conservatorship Assets and as may be necessary and advisable in discharging his duties as Conservator including, but not limited to, the timely payment of all premiums for Policies that have not yet matured;
- f. Monitor the viators of the Policies by tracking the location of the viators and periodically checking the health of the viators;
- g. Receive notice of the death of viators, file death claims on the viators, and collect the proceeds paid on the Policies as such mature;
- h. Disburse to each ABC Investor his proportionate share of the proceeds, after deducting premiums advanced, paid in matured Policies;
- i. Establish open communication with ABC Investors with proper disclosure of available options and consequences including, but not limited to, notice to ABC Investors of the Conservatorship Order within 30 days;
- j. Retain and employ attorneys, accountants, computer consultants and other persons as may be advisable or necessary to the exercise of the duties of the Conservator, and compensate such persons, subject to application and approval by the Court;
- k. Open and inspect any and all mail and/or deliveries related to the existence, location, identity and/or collection, preservation, maintenance or operation of Conservatorship Assets, and to notify any insurance company or third party administrator and the United States Postal Service to effect the forward delivery of any mail related to the Conservatorship Assets to a mail depository under the control of the Conservator;
- l. Institute, prosecute, defend, intervene in or become a party to such actions or proceedings in any state court, federal court or United States Bankruptcy Court as may in the Conservator's opinion be necessary or proper for the protection, maintenance and preservation of Conservatorship Assets, or the carrying out of the Conservatorship Order; and

m. Exercise those powers necessary to implement the Conservator's conclusions with regard to the disposition of the Conservatorship pursuant to the orders and directives of the Court.

6. At the time of my appointment, the Conservatorship Assets consisted of in excess of 1,300 life insurance policies (the "Viaticals").

7. There are approximately 4,500 investors matched by ABC to the Viaticals.

8. In December, 2002, the Oklahoma district court approved the sale of the Viaticals to a third-party.

9. The Conservator has retained title to the Viaticals pending payment in full of the purchase price.

10. The Conservator has contracted with the third-party buyer to monitor the health of the viators, receive and pay premiums on the Viaticals, and collect and distribute the proceeds of any maturities.

11. I have reviewed the proposed subpoena duces tecum sent by counsel for C. Keith LaMonda.

12. The documents requested by the proposed subpoena would occupy in excess of one hundred (100) banker's boxes.

13. The documents requested are located in Oklahoma and Florida.¹

14. The Conservator has limited personnel and financial resources, and any attempt to comply with the subpoena would unduly burden the Conservatorship, as well as disrupt the work being performed by the Conservator and his staff.

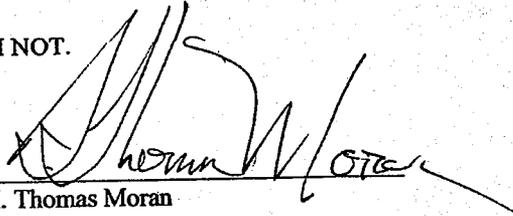
15. With the exception of several Excel spreadsheets that list the contestable policies, the Conservator maintains no information relating to the contestable policies.

¹ Documents now located in Florida will be transferred to Oklahoma in February.

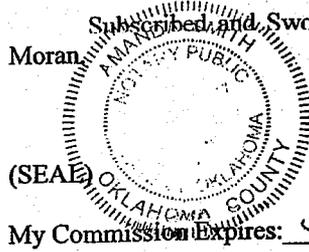
16. The Conservator has no knowledge of a "contestable policy violator database."

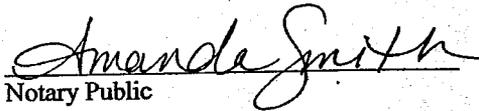
17. The Conservator believes that the Federal Bureau of Investigation ("FBI") raided both the ATCO and ABC offices taking possession of all ATCO files and many ABC files. Therefore, the Conservator never had possession of those documents.

FURTHER AFFIANT SAYITH NOT.

By: 
H. Thomas Moran

Subscribed and Sworn to before me this 27th day of January, 2006, by H. Thomas
Moran.




Notary Public