

IN THE DISTRICT COURT OF OKLAHOMA COUNTY OF OSAGE  
STATE OF OKLAHOMA

JUN 30 2004

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

PATRICIA PRESLEY, COURT CLERK  
By \_\_\_\_\_  
Deputy

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

**CONSERVATOR'S OBJECTION TO DEFENDANTS'  
APPLICATION TO CONTINUE HEARING**

Conservator, Tom Moran ("Conservator"), hereby objects to Defendants' Application to Continue Hearing filed on June 28, 2004 ("Defendants' Application"), and in support thereof offers the following:

1. The Conservator's Motion to Enforce Conservatorship Order and Brief in Support (the "Conservator's Motion") was filed on May 21, 2004.
2. Hearing on the Conservator's Motion was set by the Court on that same day for July 1, 2004.
3. Under Rule 4(e), Rules of the District Court, Defendants' response to the Conservator's Motion was due June 8, 2004.
4. Defendants' response to the Conservator's Motion was not filed until June 28, 2004, or more than 20 days after it was due, and less than five (5) days before the scheduled

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hearing.

5. No requests for extension of time to respond to the Conservator's Motion were ever received by Conservator's counsel or filed with the Court.

6. On or about June 10, 2004, Defendants' counsel contacted Conservator's counsel, via voice mail, and stated that he did not believe Defendants would oppose the Conservator's motion. Defendants' counsel requested that Conservator's counsel contact him to discuss. Conservator's counsel attempted to contact Defendants' counsel on June 11, 18, 21 and 24, leaving voice mail messages asking Defendants' counsel to return the call. The calls were not returned.

7. Defendants' counsel next contacted Conservator's counsel on June 25, 2004 with a proposal to settle the dispute,<sup>1</sup> which was rejected by the Conservator. Defendants counsel then, for the first time, requested a continuance of the scheduled hearing, to which the Conservator refused.

8. Defendants' Application does not comply with Rule 20, Rules for the Seventh Judicial District which requires that "[a]ll motions for continuance of a pre-trial, trial or evidentiary hearing must be signed by the party on whose behalf the motion is made, or contain a certificate of the movant's attorney that the attorney's client has knowledge of and has approved the motion." Defendants Application is not signed by Defendants, nor does it contain the required certificate of counsel.

9. Defendants have also failed to comply with Rule 37, Rules for the Seventh

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<sup>1</sup> Defendants suggested that the Conservator agree to allow Defendants to use the funds at issue to fund new litigation brought by Defendants against Prudential relating to a policy that lapsed prior to the entry of the Conservatorship Order.

Judicial District which requires that "[a]ll briefs shall be filed and a copy delivered to the assigned trial judge at least five (5) days prior to any hearings."

10. Defendants stated reason for requesting the continuance is that "counsel for Defendants will be out of town on July 1, 2004 through July 6, 2004." See Defendants' Application at p. 1. However, there are currently at least three attorneys at Defendants' counsel's firm who are attorneys of record for Defendants in this matter, Dino Viera, William H. Whitehill, Jr. and Lance E. Leffel, any one of which could appear on behalf of Defendants at the scheduled hearing.

11. Since the Court routinely does not take arguments on its motion docket, it would therefore be unnecessary to have counsel present to receive the Court's ruling.

12. Conservator's counsel has consulted with counsel for Plaintiff, Patricia LaBarthe, regarding the Defendants' Application and she also objects to the request for continuance.

13. No compelling reason exists to delay the scheduled hearing.

WHEREFORE, premises considered, Conservator, Tom Moran, respectfully requests that the Court deny Defendants' Application.

Respectfully submitted,



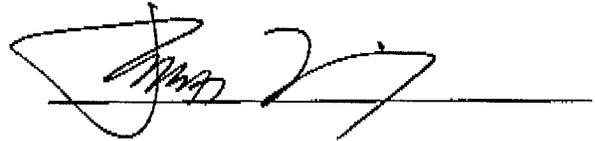
Melvin R. McVay, Jr., OBA No. 6096  
Thomas P. Manning, OBA No. 16117  
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McVAY & MURRAH, P.C.  
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Telephone: (405) 235-4100  
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ATTORNEYS FOR CONSERVATOR,  
TOM MORAN

**CERTIFICATE OF MAILING**

The undersigned certifies that on the 30<sup>th</sup> day of June, 2004, a true and correct copy of the foregoing Application was mailed, via First Class Mail, postage pre-paid, to:

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

Dino E. Viera, Esq.  
Fellers, Snider, Blankenship,  
Bailey & Tippens, P.C.  
100 North Broadway Avenue, Suite 1700  
Oklahoma City, Oklahoma 73102  
*Attorney for Defendants,  
Accelerated Benefits Corporation,  
American Title Company of Orlando,  
C. Keith LaMonda and  
David S. Piercefield*

A handwritten signature in black ink, appearing to read "Dino E. Viera", is written over a horizontal line.