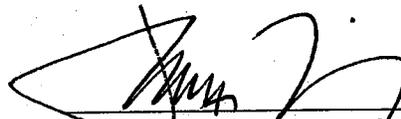


be ordered to disclaim and relinquish any such interest, and execute any and all documents or pleadings necessary to affect such disclaimer. The Conservator further respectfully requests this Court enter an Order enforcing the terms of the Conservatorship Order and ordering ABC and ATCO to cease and desist from taking any position adverse to the ownership of the 16.82699896 percent beneficiary interest in the Akin Policy by the Conservator, and in any and all efforts to further undermine the Conservatorship, or otherwise interfere with the Conservator's duties and the exercise, possession and control of the Conservatorship Assets, including, but not limited to, the Akin Policy.

Respectfully submitted,



Melvin R. McVay, Jr., OBA No. 6096

Thomas P. Manning, OBA No. 16117

PHILLIPS McFALL McCAFFREY

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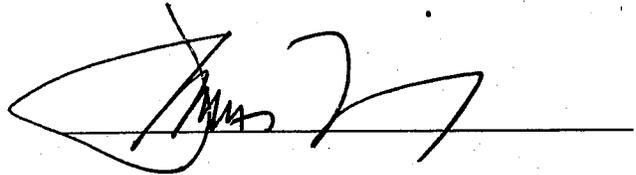
ATTORNEYS FOR CONSERVATOR,
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 24th 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.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,

Plaintiff,

vs.

Case No. CIV-03-1444-HE

(1) BROWN JAMES AKIN III, TRUSTE
OF THE JEAN MARIE AKIN
IRREVOCABLE TRUST,
(2) CHARLES PAYNE AND JUANITA S.
PAYNE,
(3) JOSEPH A. ALDRICH, TRUSTEE OF
THE JOSEPH A ALDRICH TRUST,
(4) EDWARD F. PIENTA,
(5) DON W. HARRIS,
(6) HELEN LIPKIN,
(7) JANET B. COOK, TRUSTEE OF
THE JANET B. COOK TRUST,
(8) OLIVER M. REED,
(9) WALTER BOROWICZ,
(10) MARGARET ALDRICH,
(11) SANDRA CAMPIONE-GRIFFIN,
(12) BRIAN DAVIS
(13) CURTIS MUSGROVE, JR.,
TRUSTEE OF THE LOUISE MUSGROVE
TRUST,
(14) J. CLINTON SCOTT AND MICHAELA G.
SCOTT,
(15) GLORIA B. HOSFORD,
(16) MARLYN R. JOHNS,
(17) STUART K. METHVEN,
(18) PATRICIA L. WILLIFORD,
(19) TERESE K. BLACK,
(20) ROBERT K. BEILHART,
(21) PAULA E. VALENTINE,
(22) RONALD L. VALENTINE,
(23) MARY A. JESSOP,
(24) DAVID L. CREW, SR.,
(25) EUSEBIO AND DALYS LEE TRUST,
(26) WILLIAM R. HOLLAND, TRUSTEE OF
THE WILLIAM R. HOLLAND
REVOCABLE TRUST,
(27) JAMES G. MCDONALD, TRUSTEE OF

FILED

DEC 19 2003

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY _____ DEPUTY



THE JAMES G. MCDONALD TRUST,)
 (28) ANNA S. PRINCE,)
 (29) EMILY Y. DRAGAN, TRUSTEE OF)
 THE JOHN AND EMILY Y. DRAGAN TRUST,)
 (30) BERNICE ZIEMER,)
 (31) KARL A. GUILLORY,)
 (32) WILLIAM WADDLE AND MARY)
 WADDLE LIVING TRUST,)
 (33) JOSEPH GREENBURG,)
 (34) DENNIS SABIA,)
 (35) ROBERT J. HERRIN,)
 (36) DANIEL F. MARCHAND, TRUSTEE)
 UNDER DANIEL F. MARCHAND TRUST,)
 (37) LINDA VIBBART STEPHENSON,)
 (38) DAVID E. LANCASTER,)
 (39) SANDRA J. FOSTER,)
 (40) JOSEPHINE SANTONOCITO,)
 (41) FANOURIOUS FERDERIGOS,)
 (42) BEATRICE NEWMAN, TRUSTEE OF)
 THE BEATRICE NEWMAN REVOCABLE)
 TRUST,)
 (43) LAVINA S. PRIMERANO,)
 (44) SHIRLEY Z. SIROTA,)
 (45) BERNARD DIKSELIS)
 (46) IRENE D. BEACH,)
 (47) JOAN BUBULKA,)
 (48) KENNETH A. HERMENS,)
 (49) ELIZABETH A. BERGER,)
 (50) THOMAS BASKIN,)
 (51) ALFONSE J. CELENTANO,)
 (52) ROBERT HOLLOWAY,)
 (53) CHARLES R. CROUCH AND)
 MERCILL R. CROUCH)
 (54) MILES K. DOYLE AND IVY E.)
 DOYLE, TRUSTEE OF THE DOYLE)
 FAMILY TRUST,)
 (55) AMERICAN TITLE COMPANY OF)
 ORLANDO,)
 (56) TOM MORAN, CONSERVATOR OF)
 ACCELERATED BENEFITS CORPORATION)
)
 Defendants.)

ANSWER

COMES NOW Defendant, Tom Moran, Conservator of certain assets of Accelerated

Benefits Corporation ("ABC"), and its agents, including American Title Company of Orlando ("ATCO"), pursuant to an Order of the District Court of Oklahoma County, Oklahoma, dated February 6, 2002, ("Conservator"), and for his Answer to Plaintiff's Complaint alleges and states as follows:

1. Conservator is without sufficient information to admit or deny the allegations contained in Paragraph No. 1 of Plaintiff's Complaint.

2. Conservator admits the allegations contained in Paragraph No. 2 of Plaintiff's Complaint.

3. Conservator admits in part and denies in part the allegations contained in Paragraph No. 3 of Plaintiff's Complaint. ABC was a Florida-based viatical company which purchased life insurance policies from viators and solicited investments from investors pursuant to certain purchase agreements which contractually-bound ABC to pay to the investors a return on their investment upon the occurrence of the maturity of specific viatical policies to which the investors had been matched. ABC purchased the life insurance policy insuring the life of Jean Marie Akin (the "Akin Policy"). Tom Moran has been appointed conservator of certain assets of ABC and its agents, including ATCO, which assets include, without limitation, the Akin Policy.

4. Conservator admits in part and denies in part the allegations contained in Paragraph No. 4 of Plaintiff's Complaint. Conservator admits that some of the defendants are ABC Investors and parties to "purchase agreements" with ABC. Conservator denies that American Title Company of Orlando was a predecessor of ABC. ATCO was the escrow agent for ABC and was initially designated by ABC as an owner of the Akin Policy.

5. Conservator admits the allegations contained in Paragraph No. 5 of Plaintiff's Complaint.

6. Conservator admits the allegations contained in Paragraph No. 6 of Plaintiff's Complaint.

7. Conservator admits the allegations contained in Paragraph No. 7 of Plaintiff's Complaint.

8. Conservator is without sufficient information to admit or deny the allegations contained in Paragraph No. 8 of Plaintiff's Complaint.

9. Conservator admits the allegations contained in Paragraph No. 9 of Plaintiff's Complaint.

10. Conservator admits the allegations contained in Paragraph No. 10 of Plaintiff's Complaint.

11. Conservator is without sufficient information to admit or deny the allegations contained in Paragraph No. 11 of Plaintiff's Complaint.

12. Conservator is without sufficient information to admit or deny the allegations contained in Paragraph No. 12 of Plaintiff's Complaint.

13. Conservator is without sufficient information to admit or deny the allegations contained in Paragraph No. 13 of Plaintiff's Complaint.

14. Conservator admits in part and denies in part the allegations contained in Paragraph No. 14 of Plaintiff's Complaint. Tom Moran is the court-appointed conservator of certain assets of ABC and its agents. Pursuant to the order appointing conservator, ABC and its agents were ordered to transfer to the Conservator all interest held by them in certain assets, which included the Akin Policy. ABC, either directly or through its agent, ATCO, was the holder of a 16.82699896 percent interest in the Akin Policy. Any interest previously held in the Akin Policy by ABC, or its agents, is now the property of the Conservator.

15. Conservator is without sufficient information to admit or deny the allegations contained in Paragraph No. 15 of Plaintiff's Complaint.

16. Conservator is without sufficient information to admit or deny the allegations contained in Paragraph No. 16 of Plaintiff's Complaint.

17. Conservator is without sufficient information to admit or deny the allegations contained in Paragraph No. 17 of Plaintiff's Complaint.

18. Conservator is without sufficient information to admit or deny the allegations contained in Paragraph No. 18 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

1. Estoppel;
2. Quasi-contract/ unjust enrichment;
3. Conservator is entitled to an offset from the proceeds of the interpled funds for amounts paid by Conservator in premium payments with respect to the Akin Policy;
4. Conservator is entitled to a declaratory judgment setting forth his interest in the Akin Policy; and,
5. Conservator reserves the right to supplement his affirmative defenses with those that may be revealed through the course of discovery.

CROSS-CLAIM

COMES NOW, Defendant/Cross-Claimant, Tom Moran, as Conservator of certain assets of ABC and its agents, including ATCO, and for his Cross-Claim against Defendants, Brown James Akin III, Trustee of the Jean Marie Akin Irrevocable Trust (the "Akin Trust"), Charles Payne and Juanita S. Payne, Joseph A Aldrich, Trustee of the Joseph A. Aldrich Trust, Edward F. Pienta, Don W. Harris, Helen Lipkin, Janet B. Cook, Trustee of the Janet B. Cook Trust,

Oliver M. Reed, Walter Borowicz, Margaret Aldrich, Sandra Campione-Griffin, Brian Davis, Curtis Musgrove, Jr., Trustee of the Louise Musgrove Trust, J. Clinton Scott, Michaela G. Scott, Gloria B. Hosford, Marlyn R. Johns, Stuart K. Methven, Patricia L. Williford, Terese K. Black, Robert K. Beilhart, Paula E. Valentine, Ronald L. Valentine, Mary A. Jessop, David L. Crew, Sr., Eusebio and Dalys Lee Trust, William R. Holland, Trustee of the William R. Holland Revocable Trust, James G. McDonald, Trustee of the James G. McDonald Trust, Anna S. Prince, Emily Y. Dragan, Trustee of the John and Emily Y. Dragan Trust, Bernice Ziemer, Karl A. Guillory, William Waddle and Mary Waddle Living Trust, Joseph Greenburge, Dennis Sabia, Robert J. Herrin, Daniel F. Marchand, Trustee Under Daniel F. Marchand Trust, Linda Vibbart Stephenson, David E. Lancaster, Sandra J. Foster, Josephine Santonocito, Fanourious Ferderigos, Beatrice Newman, Trustee of the Beatrice Newman Revocable Trust, Lavina S. Primerano, Shirley Z. Sirota, Bernard Dikselis, Irene D. Beach, Joan Bubulka, Kenneth A. Hermens, Elizabeth A. Berger, Thomas Baskin, Alfonse J. Celentano, Robert Holloway, Charles R. Crouch, Mercill R. Crouch, Miles K. Doyle and Ivy E. Doyle, Trustees of the Doyle Family Trust, and American Title Company of Orlando (collectively the "Akin Beneficiaries") alleges and states as follows:

1. On or about November 22, 1985, a life insurance policy covering the life of Jean Marie Akin (the "Akin Policy") was issued by Plaintiff, the Prudential Insurance Company of America ("Prudential") in the amount of \$2,000,000.00, in favor of the Akin Trust.
2. On or about December 20, 1995, the Akin Trust sold the Akin Policy to Southwest Viatical, a Texas partnership.
3. On or about February 27, 1996, Southwest Viatical, Inc. and ABC entered into a Portfolio Acquisition Agreement, whereby ABC purchased 67.5 percent of the face value of the

Akin Policy. This interest in the Akin Policy was conveyed to ATCO, as escrow agent on behalf of ABC.

4. ABC was a Florida-based viatical company which purchased life insurance policies (the "Viaticals") from viators and solicited investments from investors ("ABC Investors") pursuant to certain purchase agreements which contractually-bound ABC to pay to the investors a return on their investment upon the occurrence of the maturity of certain viatical policies to which the investors had been matched.

5. On February 6, 2002, Tom Moran was appointed Conservator of certain assets of ABC and its agents, including ATCO, pursuant to the Order Appointing Conservator and Transferring Assets (the "Conservatorship Order") entered by District Court of Oklahoma County, Oklahoma, Case No. CJ-99-2500.

6. The Conservatorship Order directed ABC and ATCO to transfer certain assets, including all ownership and beneficial rights in the Viaticals, to the Conservator.

7. The Conservatorship Order further directed the Conservator to manage all Conservatorship assets by taking the necessary steps to protect the ABC Investors' interests including, but not limited to, the payment of premiums due on the Viaticals and "the liquidation or sale of the Policies to institutional buyers and the assessment to ABC Investors of future premium payments."

8. Jean Marie Akin died on or about January 29, 2003. However, the Conservator did not receive notice of such death until June 18, 2003.

9. Prudential is presently holding net matured death benefits under the Akin Policy, which, according to Prudential, was estimated to be \$1,878,008.61 as of August 1, 2003. According to Prudential, the reduced death benefits on the Akin Policy are the result of loans or

other items charged against or credited to the maturity proceeds on the Akin Policy.

**FIRST CAUSE OF ACTION
(Quasi-Contract/Unjust Enrichment)**

10. The Conservator adopts and incorporates paragraphs 1 through 9 above as though fully set forth herein.

11. During the course of the Conservatorship, the Conservator has paid the premiums due on the Akin Policy in order to protect the interests of the ABC Investors in accordance with the Conservatorship Order.

12. From and after February 6, 2002, the date of the Conservatorship Order, the Conservator paid a total of \$153,047.70 on behalf of the Akin Beneficiaries for premium payments on the Akin Policy.

13. The Conservator's payment of the premiums on the Akin Policy maintained the policy in force; otherwise the Conservator believes that the policy would have completely lapsed and become null and void, resulting in a complete loss by the Akin Beneficiaries.

14. The Conservatorship Order provides that the Conservator is entitled to withhold from the proceeds of the Viaticals, all amounts paid by the Conservator in protecting the Viaticals.

15. The maturity proceeds on the Akin Policy will be paid to the Akin Beneficiaries as determined herein, and as such, the Conservator cannot withhold the amounts due to the Conservator as set forth in the Conservatorship Order.

16. A quasi-contractual relationship exists between the Akin Beneficiaries and the Conservator as a result of the Conservator protecting their interests by paying the premiums on the Akin Policy.

17. The Akin Beneficiaries have been unjustly enriched as a result of the premium

payments made on their behalf by the Conservator.

18. The Conservator is entitled to recover the sum of \$153,047.70 from the proceeds of the Akin Policy, representing the amount of the premium payments made on behalf of the Akin Beneficiaries in preserving the Akin Policy, together with prejudgment interest from the dates the premium payments were advanced to the date of judgment and post-judgment interest thereafter until paid.

**SECOND CAUSE OF ACTION
(Declaratory Judgment)**

19. The Conservator adopts and incorporates paragraphs 1 through 18 above as though fully set forth herein.

20. Prudential has brought this action seeking to interplead the proceeds of the Akin Policy to which there are conflicting claims, and therefore, an actual controversy exists before the Court.

21. According to the records of the Conservator and Plaintiff, ABC and ATCO were the holders of a 16.82699896 percent interest in the Akin Policy.

22. All of ABC's and ATCO's interest in the Akin Policy have been transferred to the Conservator pursuant to the Conservatorship Order.

23. According to the records of Prudential, the Akin Trust, is the holder of a 32.49999881 percent interest in the Akin Policy.

24. According to the records of Prudential, the remaining Akin Beneficiaries, are the holders of a 50.67300223 percent interest in the Akin Policy.

25. The Akin Trust may claim an interest in the Akin Policy in the specific amount of \$650,000.00.

26. While the face amount of the Akin Policy is \$2,000,000.00, the net matured death

benefits total approximately \$1,878,008.61 as of August 1, 2003. According to Prudential, the reduced death benefits on the Akin Policy are the result of loans, or other items charged against or credited to the maturity proceeds of the Akin policy.

27. The net maturity proceeds are further reduced by the amount due to the Conservator, as set forth in the First Cause of Action of Conservator's Cross-Claim.

28. The net maturity proceeds may be further reduced by the costs and attorney's fees sought by Prudential in its Complaint herein.

29. The maturity proceeds are insufficient to pay Defendants all amounts they would have received had the death benefits not been reduced.

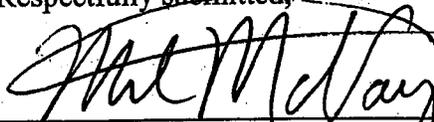
30. It would be inequitable to reduce the recovery of the Conservator and the remaining Akin Beneficiaries from their allotted percentages, by allowing the Akin Trust to take more than 32.49999881 percent of the available net proceeds after final determination herein.

31. Therefore, pursuant to 28 U.S.C.A. §2201, the Conservator seeks declaratory judgment determining the Conservator's interest in the remaining proceeds of the Akin Policy to be 16.82699896 percent.

WHEREFORE, having fully answered, the Conservator respectfully requests the Court enter judgment in his favor on his Cross-Claim, and order Plaintiff to disburse to the Conservator the sum of \$153,047.70 from the proceeds of the Akin Policy, for the repayment of premium payments made by Conservator in preserving the Akin Policy, together with prejudgment interest from the dates the premium payments were advanced to date of judgment, and post-judgment interest thereafter until paid. The Conservator further respectfully requests the Court enter a Declaratory Judgment establishing the Conservator's percentage of the net maturity proceeds from the Akin Policy to be 16.82699896 percent. The Conservator further prays that he be

awarded his attorney's fees and costs of this action, along with such other and further relief as the Court deems just and proper.

Respectfully submitted,



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

CERTIFICATE OF MAILING

The undersigned certifies that on the 22ND day of December, 2003, a true and correct copy of the foregoing Motion and Brief in Support thereof was sent postage prepaid by first-class mail to:

David L. Kearney
 GABLE & GOTWALS
 One Leadership Square, 15th Floor
 211 N. Robinson
 Oklahoma City, OK 73102

Attorneys for Plaintiff
The Prudential Insurance Company of America

and via certified mail, restricted delivery, return receipt requested, to:

Brown James Akin III 5524 East 12th Street P.O. Box 582674 Tulsa, OK 73112	Charles Payne Juanita S. Payne 15583 Bridgewater Dr. Northport, AL 35476	Joseph A. Aldrich, Trustee of the Joseph A. Aldrich Trust 5362 Loggerhead Pl. Ft. Pierce, FL 34949
Edward F. Pienta 5248 Loggerhead Place Ft. Pierce, FL 34949	Don W. Harris 17425 Spencers CV RD Northport, AL 35475-2505	Helen Lipkin 60 Cyunthia Drive Richboro, PA 18954
Oliver M. Reed 4624 LK In The Woods Dr Spring Hill, FL 34607	Walter Borowicz 112 Emerald Ave N. Nokomis, FL 34275	Margaret Aldrich 5361 Loggerhead Place Ft. Pierce, FL 43949
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J. Clinton Scott Michaela G. Scott 1926 Ocean Drive Indian River Shores, FL 32963	Gloria B. Hosford 2858 Campfire Lane Orlando, FL 32822	Marlyn R. Johns 4548 Chandler Missoula, MT
Stuart K. Methven 5411 Turkey Point Rd. North East, MD 21901	Patricia L. Williford 722 Franklin Avenue Baltimore, MD 21221	Teresa K. Black 57 Calle De Lacos Ft. Pierce, FL 34951

Robert K. Beilhart 4606 288 th Toledo, OH 43611	Paula E. Valentine P.O. Box 770 Grant, FL 32949	Raonld L. Valentine 4330 Highway 1 Grant, FL 32949
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Fanourious Ferderigos 1344 Preservation Way Oldsman, FL 34677	Beatrice Newman, Trustee of the Beatrice Newman Revocable Trust 900 NW 73 Terrace Margate, FL 33063	Lavina S. Primerano 323 Holly Ave. Port St. Lucia, FL 34952
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Thomas Baskin 1906 Lampman Road Goldhill, OR 97525	Alfonse J. Celentano 2214 Benson Branch Rd. Ellicott City, MD 21042	Robert Holloway 526 Cocoa Isle Blvd. Cocoa Beach, FL 32931
Charles R. Crouch Mercill R. Crouch 2002 Sepler Drive Fern Park, FL 32730-3111	Miles K. Doyle and Ivey E. Doyle, Trustee of the Doyle Family Trust 321 Colony Lane, Apt. B Ft. Pierce, FL 34982	American Title Company of Orlando c/o David S. Piercefield 230 Lookout Place, Suite 200 Maitland, FL 32751

