

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FEB 21 2019

RICK WARREN  
COURT CLERK

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Oklahoma Department of Securities,	)
<u>ex rel.</u> Irving L. Faught, Administrator,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Accelerated Benefits Corporation, a Florida	)
Corporation, <i>et al.</i> ,	)
	)
Defendants.	)

Case No. CJ-99-2500-66

**AGREED MOTION TO PERMIT CERTAIN  
POLICIES TO LAPSE OR TO TERMINATE SUCH POLICIES**

H. Thomas Moran II, Conservator (the “Conservator”) of certain assets of Accelerated Benefits Corporation, and Acheron Portfolio Trust (“Acheron”) file this Agreed Motion to Permit Certain Policies to Lapse or to Terminate Such Policies (the “Motion”). In support thereof, the parties would show the Court as follows:

**INTRODUCTION**

After more than two years of communication, negotiation, and expert analysis, the parties seek authority, through this Motion, to allow the Conservator to accept a payment of \$425,000.00 from Acheron in exchange for the Conservator lapsing or terminating certain insurance policies contained within the portfolio of life insurance policies owned by the conservatorship estate. After being presented with the concept of permitting certain policies to lapse in exchange for payment from Acheron, the Conservator, in response to Acheron’s Motion to Compel the Lapse or Termination of Certain Policies, obtained an independent valuation from a qualified actuarial firm as to the net present value of the insurance policies proposed to be lapsed. That valuation indicates that Acheron’s proposed payment is fair, reasonable, and in the

best interests of the beneficiaries of the underlying portfolio. Accordingly, the Court should enter an order authorizing the proposed transaction.

### **RELEVANT FACTUAL BACKGROUND**

1. The Oklahoma Department of Securities (the "Department") brought the Conservatorship Action in 1999 to protect the interests of the investors (the "Investors") in Accelerated Benefits Corporation ("ABC").

2. On February 6, 2002, the Court entered its order establishing a conservatorship (the "Conservatorship") of the assets of ABC, which are comprised of a portfolio of life insurance policies ("Policies" or "Portfolio"), and appointing Mr. Moran to act as Conservator of the ABC Portfolio.

3. On February 21, 2006, the Court entered its order authorizing and establishing HTM Conservator, L.L.C. ("HTM") to hold title to the Policies. Pursuant to these Court orders, HTM is the current owner of the Policies.

4. On June 7, 2006, the Court entered its order approving the Option Purchase Agreement ("OPA") between Acheron's predecessor, Lorenzo Tonti, Ltd., and the Conservator. In its order, the Court also approved the Service and Escrow Agreement ("Service Agreement") between Acheron's predecessor, the Conservator and HTM. Under the terms of the Service Agreement, Acheron's predecessor expressly agreed that HTM could retain Asset Servicing Group, L.L.C. ("ASG") to provide servicing for the Portfolio.

5. Under the terms of the OPA, Acheron is obligated to pay the ABC Investors for the Policies. The total face value of the Policies at the time Acheron entered into the OPA was \$109,528,545.

6. Under the terms of the OPA, Acheron is allowed to pay the purchase price from the death benefits that are paid as the Policies mature. Sixty percent (60%) of the death benefits

are paid to the Conservatorship and credited toward the purchase price; the remaining forty percent (40%) is paid to Acheron.

7. Until the purchase price under the OPA is paid in full, HTM holds title to the Policies and Acheron is contractually obligated to pay the servicing fees for the Policies under the terms of the Service Agreement. Once the purchase price is paid in full by Acheron, title to the Policies will be conveyed by HTM to Acheron.

8. Pursuant to the authority granted by the Court's orders of February 6 and February 21, 2002 and June 7, 2006, the Conservator and HTM engaged ASG to service the Policies.

9. In June 2016, Acheron made a proposal to the Conservator to have ASG permit certain policies in the Portfolio to lapse or to terminate (the "Lapse Policies"). Acheron contends that the Lapse Policies have a large, negative value in that their upkeep (*e.g.*, premium payments and servicing fees) outweighs their expected return. A list of the Lapse Policies is attached hereto as **Exhibit A**.<sup>1</sup>

10. Several months later, in October 2016, the Conservator rejected Acheron's offer, asserting that the value of the Lapse Policies was greater than the amount being proposed to be paid by Acheron.

11. Thereafter, Acheron retained Lewis & Ellis, a well-known and regarded actuarial and consulting firm, to review and analyze, from the viewpoint of the Initial Investors, Acheron's proposal as it related to the Lapse Policies. Lewis & Ellis' report concluded that Acheron's "offer of 20% of the net death benefit results in a higher present value at discount

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<sup>1</sup> Acheron originally identified 122 policies that it believed should be lapsed. Presently, the parties agree that 109 policies should be lapsed.



rates of about 2.5% and higher from the original investors' point-of-view." A copy of Lewis & Ellis's report is attached hereto as **Exhibit B**.

12. On October 17, 2018, Acheron filed a Motion to Compel Conservator to Permit Certain Policies to Lapse.

13. After the filing of Acheron's Motion to Compel, the Conservator retained an independent actuarial firm, Actuarial Risk Management, LTD ("ARM"), to review and analyze Acheron's Proposal regarding the Lapse Policies. On November 26, ARM prepared and issued a report concluding that the net present value of the Lapse Policies was greater than the amount being offered by Acheron in its Motion to Compel, assuming a discount rate of approximately 2.5%. A copy of ARM's report is attached hereto as **Exhibit C**.

14. In light of ARM's report, Acheron has agreed to make a cash payment to the Conservator in the amount of \$425,000.00 (the "Lapse Payment") that would be distributed to the Investors and applied against the purchase price under the OPA. After payment of any surrender or termination fees owed to the insurance carrier, any excess cash that has accumulated in the Lapse Policies will be used to fund the Lapse Payment, with any difference being paid by Acheron. Acheron has agreed to be responsible for paying any requisite servicing, surrender, or administrative fees. The Lapse Payment is greater than the net present value of the Lapse Policies, assuming a discount rate of approximately 2.5%.

15. Based on the independent expert reports of Lewis & Ellis and ARM, the Conservator believes that accepting the Lapse Payment in exchange for lapsing or terminating the Lapse Policies is in the best interests of the Investors.

16. The Conservator shall retain all rights and remedies under the Servicing Agreement, including, but not limited to, his right to seek payment of a termination fee for any of the Lapse Policies on the Conveyance Date.

### **RELIEF REQUESTED**

The Conservator and Acheron respectfully request that the Court enter an order approving the Conservator's acceptance of the Lapse Payment in exchange for the Conservator abandoning or permitting to lapse those policies. Two independent experts have determined that the Lapse Payment exceeds the net present value of the Lapse Policies, assuming a discount rate of 2.5%, which the parties believe to be reasonable. Therefore, accepting the Lapse Payment is likely to maximize the value realized by the Investors.

Other than the application of the Lapse Payment to the Purchase Price, the proposed transaction will not, in any way, diminish Acheron's obligation to pay the entire Purchase Price due under the terms of the OPA. While Lewis & Ellis's report estimates that the transaction will result in a small extension of time necessary to pay the Purchase Price, the parties contend that the benefits substantially outweigh any such extension.

In light of the foregoing, the Conservator and Acheron believe that termination or lapse of the Lapse Policies in exchange for the Lapse Payment is in the best interests of the Investors. Accordingly, the Court should enter an order approving such transaction.

### **CONCLUSION**

WHEREFORE, the Conservator and Acheron respectfully request that this Court enter an order permitting the Conservator to accept the Lapse Payment in exchange for allowing the Lapse Policies to lapse or terminate, and for such other or further relief as is just and proper.

Respectfully submitted,



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**CERTIFICATE OF MAILING**

The undersigned certifies that on February 21, 2019, a true and correct copy of the foregoing was mailed by first class mail, postage prepaid, to:

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