

SEP 24 2004

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 Dan Owens

**INTERIM APPLICATION FOR ORDER APPROVING ATTORNEY'S FEES
FOR THE PERIOD OF AUGUST 1, 2004 THROUGH AUGUST 31, 2004**

Conservator, Tom Moran, hereby respectfully applies to this Court for entry of an Order approving the interim application for attorney's fees of Phillips McFall McCaffrey McVay and Murrah, P.C. ("Phillips McFall"), counsel for Conservator for the period of August 1, 2004 through August 31, 2004. In support his application Conservator would show the Court as follows:

1. On February 6, 2002, the Court appointed Tom Moran as Conservator of certain assets of Defendant, Accelerated Benefits Corporation ("ABC"), and its agents, including American Title Company of Orlando and David Piercefield ("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.

2. The Conservator was 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.

3. On February 21, 2002, the Court granted Conservator's application to employ Phillips McFall as counsel and approved its hourly rates.

4. Since its employment as counsel, Phillips McFall has performed certain tasks, which

include:

- a. Representation of Conservator's interests in matters and proceedings arising in, or relating to, this case;
- b. Advising Conservator concerning the administration of the Conservatorship and Conservator's rights and duties, and the claims of investors and other parties in interest;
- c. Investigation of possible causes of action belonging to the Conservatorship; and,
- d. Assisting with such other matters as the Conservator has requested from time to time.

5. Conservator seeks to compensate Phillips McFall at its regular hourly rates, plus Phillips McFall's actual and necessary expenses for work performed for the period of August 1, 2004 through August 31, 2004.

6. Conservator did not pay Phillips McFall a retainer. While Phillips McFall would normally have requested a retainer, Phillips McFall agreed to accept employment on the basis that it would be provided interim compensation.

7. The standards for evaluating this application are set forth in State, ex rel. Burk v. City of Oklahoma City, 1979 OK 115, 598 P.2d 659; and Oliver's Sports Center, Inc. v. National Standard Ins. Co., 1980 OK 120, 615 P.2d 291. Those standards include the following:

- a. **Time and Labor Required.** Phillips McFall has devoted substantial time and effort in its representation of Conservator and seeks compensation for services which are detailed in the statement attached hereto as Exhibit "A".
- b. **Novelty and Difficulty of Questions Involved.** Phillips McFall has provided representation of the Conservator on numerous issues and tasks relating to the preservation of assets, pending litigation, potential litigation and applications to the Court for approval of Conservator's actions.

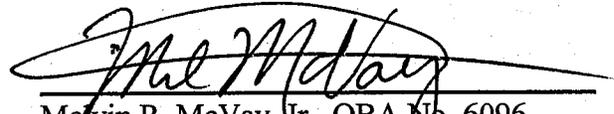
- c. **Skill Requisite to Perform Services Properly.** The Court previously approved the retention of Phillips McFall as general counsel because of the firm's experience and qualifications to render the services required by the Conservator.
- d. **Preclusion of Other Employment.** Phillips McFall has expended the time set forth in this application in representation of Conservator to the preclusion of other employment.
- e. **Fees Customarily Charged.** Phillips McFall has billed for its time on an hourly basis which is well within the professional rates customarily charged in this jurisdiction and which were previously approved by the Court on February 21, 2002.
- f. **Whether the Fee is Fixed or Contingent.** The fees charged by Phillips McFall are well within the professional rates customarily charged in this jurisdiction. The attorney's fees are neither fixed or contingent, but are based upon the reasonableness of such fees in relation to the work performed as a result of the representation.
- g. **Experience, Reputation and Ability of the Applicant.** The Court previously approved the retention of Phillips McFall as general counsel because of the firm's experience and qualifications to render the services required by the Conservator.

8. All professional services for which allowance of compensation is requested were performed by Phillips McFall for and on behalf of the Conservator.

9. This Application covers allowance of compensation for services performed from August 1, 2004 through August 31, 2004. During the period covered by this Application, Phillips McFall expended a total of 83.55 hours for services rendered on behalf of Conservator at hourly rates ranging from \$45.00 to \$240.00 per hour for a total fee of \$15,160.25, and has accrued \$1,212.45 in expenses. Exhibit "A" details the dates services were rendered, hours spent rendering the services and descriptions of the services rendered.

WHEREFORE, premises considered, Conservator, Tom Moran, respectfully requests this Court approve payment of interim compensation to Phillips McFall in the amount of \$16,372.70 for the period of August 1, 2004 through August 31, 2004.

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) 235-4562

ATTORNEYS FOR CONSERVATOR,

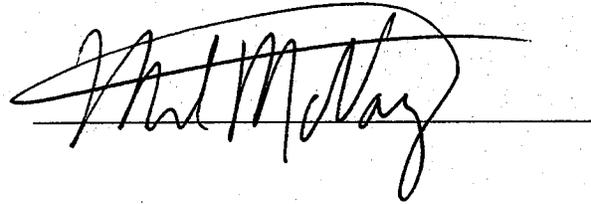
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 24~~th~~ day of September, 2004, a true and correct copy of the foregoing was mailed via First Class Mail, postage prepaid, to the following:

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

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

A handwritten signature in black ink, appearing to read "Art McKay", is written over a horizontal line. The signature is stylized and cursive.

Phillips McFall McCaffrey McVay & Murrah, P.C.
Attorneys at Law
Twelfth Floor
One Leadership Square
211 N. Robinson
Oklahoma City, OK 73102
(405) 235-4100
Tax ID #73-1288529
BILLING STATEMENT

Accelerated Benefits Corporation (ABC)
c/o Tom Moran, Receiver, Heritage
Hertigage Group
3240 W. Britton Rd.
Oklahoma City OK 73120

08/31/2004
ACCOUNT NO: 20861-12201M
34

ATTN: Conservatorship

	HOURS
08/02/2004 MRM Legal Services Interoffice conferences re: motion for disbursement of interplaced funds in Akin case; review and further revisions to same; follow up on various conservatorship issues.	1.40
08/03/2004 MRM Legal Services Meeting with client to discuss conservatorship issues; follow up work re: same; review and revise letter to Paul Verner re: portfolio issues.	1.80
08/18/2004 MRM Legal Services Review and revise Administrative Services Agreement.	0.80
08/19/2004 MRM Legal Services Conferences with Tom Manning regarding appeal by ABC of Order determining ownership interest in Akin Policy; review and revise Appellate pleadings and Counter-Designations regarding same; work on Conservatorship issues; organize files regarding same.	3.70
08/20/2004 MRM Legal Services Review Petitions for Rehearing and Briefs	



		HOURS
	in Support filed by ABC and ATCO; 2 interoffice conferences regarding same; work on receivership issues.	1.60
08/23/2004	MRM Legal Services Meeting with T. Manning re: pending appeals and issues relating to same; Follow-up work re: same.	1.40
08/26/2004	MRM Legal Services Telephone conference with Norwood Beverage re: response to Petitions for Rehearing; Interoffice conferences re: same; Further review of same to prepare responses.	1.80
08/27/2004	MRM Legal Services Review briefing re: Petitions for Rehearing and issues relating to same.	1.30
08/29/2004	MRM Legal Services Organize Conservatorship files.	0.80
08/30/2004	MRM Legal Services Review and revise responses to Petitions for Rehearing.	1.20
08/31/2004	MRM Legal Services Meeting with TPM re: revisions to Responses to Petitions for Rehearing; Review Entry of Appearance, Response and Designation of Record filed by the Oklahoma Department of Securities; Follow-up with KLB re: Response to Petitions for Rehearing.	1.40
	Melvin R. McVay	17.20
08/02/2004	TRP Legal Services Meet with MRM regarding several matters and accounting matters.	0.80
08/04/2004	TRP Legal Services Continue work on conservator tax return	

		HOURS
	issues.	2.80
08/05/2004		
TRP	Legal Services	
	Telephone conference with Tom Moran regarding deposition.	<u>0.80</u>
	T.Ray Phillips, III	4.40
08/27/2004		
CLC	Legal Services	
	Review and edit Response to Appellant's Petition for Rehearing.	4.50
08/30/2004		
CLC	Legal Services	
	Review and revise Response to Motion to Reconsider.	1.50
08/31/2004		
CLC	Legal Services	
	Review and edit Response to Petition for Rehearing on law of the case.	<u>2.50</u>
	Catherine L. Campbell	8.50
08/24/2004		
DC	Legal Services	
	File Response to Petition in Error & Designation of Record; Oklahoma Sup. Ct.	0.75
DC	Legal Services	
	File Notice of Hearing, July Attorneys fees Application; Oklahoma County Court Clerk	<u>0.30</u>
	David Carter, Jr.	1.05
08/02/2004		
TPM	Legal Services	
	Revise Motion for Order of Distribution; draft Affidavit in support of Motion; telephone conference with Ms. Sievert re: Estate of Howard, Estate of Johns, Estate of Moore and Estate of Lopez; telephone conference with Ms. Townsend re: Affidavit; telephone conference with Ms. Townsend re: unused premiums on Akin policy; telephone conference with Mr. Kearney re: same.	4.30
08/03/2004		
TPM	Legal Services	
	Telephone conference with Mr. Moran re:	

		HOURS
	Affidavit; meet with Mr. Moran re: ATCO funds; telephone conference with Ms. Sievert re: Howard.	1.70
08/04/2004 TPM	Legal Services Telephone conference with Ms. Labarthe re: Dr. Payne audit; research re: Orscheln matter.	3.40
08/05/2004 TPM	Legal Services Research re: Mission Insurance regulations.	2.20
08/10/2004 TPM	Legal Services Finalize Akin Motion; file Akin Motion; review documents from Mr. Creedon; telephone call to Ms. Sievert re: same.	1.30
08/11/2004 TPM	Legal Services Review and analyze Petition for Rehearing on Motion to Sell appeal; review and analyze Petition for Rehearing on Order to Pay Expenses; review and analyze Petition in Error on Motion to Construe Conservatorship Order.	1.20
08/12/2004 TPM	Legal Services Telephone conference with Ms. Sievert re: deceased investor.	0.30
08/13/2004 TPM	Legal Services Review and analyze Petition in Error; draft Response to Petition in Error; draft Counter-Designation of Record; draft Entry of Appearance; telephone call from investor re: payments.	1.90
08/16/2004 TPM	Legal Services Telephone call from Ms. Labarthe re: appeals; revise Counter-Designation of Record; revise Response to Petition in Error.	2.90

		HOURS
08/18/2004	TPM	
	Legal Services	
	Telephone call from Ms. Townsend re: accountant request.	0.30
08/19/2004	TPM	
	Legal Services	
	Review correspondence from Ms. Sievert re: Zeitner; telephone conference with Ms. Sievert re: same.	1.10
08/23/2004	TPM	
	Legal Services	
	Review and analyze Petition for Rehearing; draft Response Brief to same; draft Application for July Attorney Fees.	3.50
08/24/2004	TPM	
	Legal Services	
	Draft Response to Petition for Rehearing in Case No. 98663.	2.10
08/25/2004	TPM	
	Legal Services	
	Draft Response to Petition for Rehearing; telephone call from investor re: transfer.	6.90
08/26/2004	TPM	
	Legal Services	
	Draft Response Brief to Petition for Rehearing in Case 98854.	2.10
08/27/2004	TPM	
	Legal Services	
	Appear for hearing on June attorney fees; draft Response to Petition for Rehearing; research re: standard of review; telephone call from investor re: payments; review documents from Ms. Sievert re: Higa; review documents from Ms. Sievert re: Hoopler.	6.10
08/30/2004	TPM	
	Legal Services	
	Draft Response to Petition for Rehearing in Case 98854; telephone call to Ms. Sievert re: Higa and Hoepler; revise Response to Petition in Error in Case 98663; telephone call to Ms. Townsend re: accounting.	5.90

		HOURS
08/31/2004	TPM Legal Services	
	Revise Response to Petition in Error.	4.40
	Thomas P. Manning	51.60
08/03/2004	JDR Legal Services	
	Pick up copies of documents at Oklahoma Court Clerks office.	0.50
08/11/2004	JDR Legal Services	
	Deliver copy to Judge Heaton.	0.15
08/27/2004	JDR Legal Services	
	File documents at Oklahoma Court Clerks office.	0.15
	Jeremy D. Robinson	0.80
FOR CURRENT SERVICES RENDERED		83.55 15,160.25

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
Melvin R. McVay	17.20	\$225.00	\$3,870.00
T.Ray Phillips, III	4.40	225.00	990.00
Catherine L. Campbell	8.50	170.00	1,445.00
David Carter, Jr.	1.05	45.00	47.25
Thomas P. Manning	51.60	170.00	8,772.00
Jeremy D. Robinson	0.80	45.00	36.00

Photocopies	772.35
Postage	205.38
Local Fax	8.75
TOTAL EXPENSES THROUGH 08/31/2004	986.48

07/31/2004	Check to Westlaw Invoice #807063840 re: online research.	217.97
08/03/2004	Check to ALB/petty cash\Outside copies re: reimbursement for copies from Oklahoma County Court Clerk.	3.00
08/03/2004	Check to ALB/petty cash\Outside copies re: reimbursement for copies from	

Accelerated Benefits Corporation (ABC)

(CONTINUED)

08/31/2004

ACCOUNT NO: 20861-12201M

34

Oklahoma County Court Clerk.
TOTAL ADVANCES

5.00
225.97

CURRENT ACTIVITY

16,372.70

BALANCE DUE

\$ 16,372.70