

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.
IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

MAY 21 2004

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

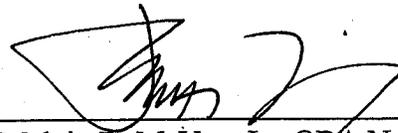
PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

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

NOTICE OF HEARING

Please be advised that a hearing on Conservator's Motion to Enforce Conservatorship Order and Brief in Support has been set for the 2nd day of July, 2004, at 9:00 A.m., before the Honorable Judge Daniel L. Owens.

Respectfully submitted,



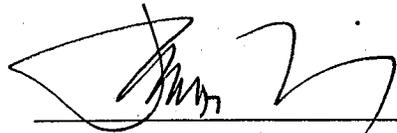
Melvin R. McVay, Jr., OBA No. 6096
Thomas P. Manning, OBA No. 16117
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4562
ATTORNEYS FOR CONSERVATOR,
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 21st day of May, 2004, a true and correct copy of the foregoing Notice of Hearing was mailed, first-class with postage prepaid, to:

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.
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*



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

MAY 21 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 Daniel Owens

**CONSERVATOR'S MOTION TO ENFORCE
CONSERVATORSHIP ORDER AND BRIEF IN SUPPORT**

Conservator, Tom Moran ("Conservator"), hereby respectfully moves the Court to enforce the Court's Order Appointing Conservator and Transferring Assets entered on February 6, 2002, as to Defendants, Accelerated Benefits Corporation ("ABC") and American Title Company of Orlando ("ATCO"). In support of this motion, the Conservator offers the following brief in support.

BRIEF IN SUPPORT

The core litigation underlying this matter was a fraud action brought by the Oklahoma Department of Securities against ABC, ATCO and three Oklahoma residents who offered and sold investments in life settlement policies ("Viaticals") on ABC's behalf. On December 17, 1999, the District Court entered an agreed order and judgment finding that the Oklahoma Defendants, acting as unregistered broker-dealers or agents, had sold unregistered securities in and from Oklahoma.

After extensive negotiations the parties agreed that it was in the investors' best interests to

appoint a conservator to take over administration of the Viaticals, in lieu of a judgment for restitution against ABC. On February 6, 2002, the District Court entered its Order Appointing Conservator and Transferring Assets (the "Conservatorship Order") which named Tom Moran as Conservator of certain assets of ABC, and its agents, including ATCO and David Piercefield (the "Conservatorship Assets"). The Conservatorship Assets include, but are not limited to, the following:

- 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"); ...

The Conservatorship Order further provides:

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, . . . 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.**

See Exhibit "A", Conservatorship Order, pp 5-6 (emphasis added).

Included in the Conservatorship Assets is a policy, issued on or about November 22, 1985, by Prudential Insurance Company of America ("Prudential"), insuring the life of Jean Marie Akin (the "Akin Policy"). The Akin Policy was issued in favor of the Jean Marie Akin Irrevocable Life Insurance Trust (the "Akin Trust") as owner and beneficiary, with a face amount of \$2,000,000.00.

On or about December 20, 1995, the Akin Trust and Southwest Viatical, a Texas Partnership, executed that certain contract (the "Akin Contract"), whereby the Akin Trust sold its

ownership of the Akin Policy to Southwest Viatical, but retained a beneficial interest in the amount of \$650,000.00. A copy of the Akin Contract was provided to Prudential and the Akin Trust was designated as a 32.5 percent beneficiary on the Akin Policy.¹

On or about February 27, 1996, Southwest Viatical and ABC entered into a Portfolio Acquisition Agreement, whereby ABC purchased 67.5 percent of the face value of the Akin Policy, contingent upon the ownership and beneficiary designation being transferred to ATCO, as escrow agent for ABC. This interest in the Akin Policy was conveyed to ATCO, as escrow agent on behalf of ABC. ABC then solicited investments from individuals and other investors (the "ABC Investors") who executed certain purchase request agreements ("PRA's"). Under the PRA's, the ABC Investors were promised, and ABC was contractually obligated to pay to the ABC Investors, a sum certain in return for their investment upon the occurrence of the maturity of the Viaticals to which the ABC Investors had been matched.

Pursuant to such PRA's, ABC matched certain ABC Investors and investor funds to 67.5 percent of the Akin Policy. Each of the ABC Investors matched to the Akin Policy were promised payment of a fixed dollar amount upon maturity of the Akin Policy. The total amount promised by ABC to the ABC Investors was \$1,350,000.00, or 67.5 percent of the face value of the Akin Policy. ABC subsequently reacquired some of the PRA's applicable to the Akin Policy from certain ABC Investors. As a result of this reacquisition, ATCO, as escrow agent on behalf of ABC, was designated as a 16.82699896 percent beneficiary of the Akin Policy. Pursuant to the language of the Conservatorship Order referenced above, the Conservator became the owner

1 Presumably this was determined by dividing \$650,000 by the \$2,000,000 face value of the policy.

of the interest owned by ABC in the Akin Policy held by ATCO.² See Exhibit "B," Affidavit of Tom Moran, ¶ 8. The 16.82699896 percent interest in the policy owned by ABC and held by ATCO, represents a monetary interest in the amount of \$336,539.98 in the \$2,000,000.00 face value of the Akin Policy, or \$316,012.49 in the amount of maturity proceeds asserted by Prudential.

Jean Marie Akin died on or about January 29, 2003. However, the Conservator did not receive notice of such death until June 18, 2003. See Exhibit "B," Affidavit of Tom Moran, ¶ 9. Prudential is presently holding net maturity proceeds from the Akin Policy (the "Maturity Proceeds"), which as of August 1, 2003 were estimated by Prudential to be \$1,878,008.61, or \$121,991.39 less than the \$2,000,000.00 face value of the Akin Policy. See Exhibit "B," Affidavit of Tom Moran, ¶ 9. 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 Akin Policy. See Exhibit "B," Affidavit of Tom Moran, ¶ 10.

Following the death of Ms. Akin, it became apparent to Prudential that a dispute existed between the named beneficiaries to the Akin Policy as to how any maturity proceeds should be allocated. The Akin Trust maintains that in spite of the fact that there are insufficient funds to pay the \$2,000,000.00 in total claims which exist against the Akin Policy, that it is entitled to the full amount of \$650,000.00 from the Maturity Proceeds. The Conservator believes that the funds should be allocated among all beneficiaries, including the Akin Trust, on a pro rata basis. See Exhibit "B," Affidavit of Tom Moran, ¶ 12. As a result of the dispute, Prudential filed an interpleader action in the United States District Court for the Western District of Oklahoma,

² For some unexplained reason, the Akin Policy was one of approximately 30 out of over 1400 policies which

Case No. CIV-03-1444, naming as party defendants, the Akin Trust, the other named beneficiaries on the Akin Policy, the Conservator and ATCO.

In addition to answering Prudential's Complaint in Interpleader asserting the Conservator's interest in the Akin Policy, the Conservator filed a cross-claim against the other named beneficiaries seeking reimbursement for the funds advanced by the Conservator which prevented the Akin Policy from lapsing. ATCO filed its answer to the Complaint in Interpleader and the Conservator's cross-claim, which denied that any interest in the Akin Policy became the property of the Conservator under the Conservatorship Order. See Exhibit "C," Answer of Defendant, American Title Company of Orlando to Cross-claim of Defendant Tom Moran, Conservator.

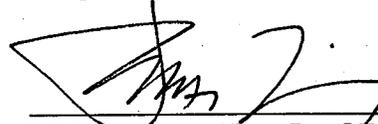
As noted above, the Conservatorship Order required the transfer of all life insurance policies "owned or held beneficially, directly or indirectly, by or for the benefit of ABC and/or ABC Investors." Clearly, the interest in the Akin Policy claimed by the Conservator is owned or held beneficially by or for the benefit of ABC and is, therefore, subject to the Conservatorship Order. Further, ATCO's action in disputing the Conservator's ownership of the ABC portion of the Akin Policy is a violation of the Conservatorship Order which prohibits ATCO from taking any action contrary to the exercise of custody, possession and control of the Akin Policy by the Conservator. The Conservator, therefore, seeks to enforce the terms of the Conservatorship Order by enjoining ATCO from taking any position adverse to the Conservator regarding the ownership of the 16.82699896 percent beneficiary interest in the Akin Policy which was reacquired by ABC from certain ABC Investors. The Conservator also seeks a judicial

had irrevocable beneficiaries named on the policy.

determination of his ownership of the 16.82699896 percent beneficiary interest in the Akin Policy held by ATCO on behalf of ABC.

WHEREFORE, premises considered, Conservator, Tom Moran, 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 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. The Conservator further seeks a judicial determination of his ownership of the 16.82699896 percent beneficiary interest in the Akin Policy held by ATCO on behalf of ABC.

Respectfully submitted,



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

Thomas P. Manning, OBA No. 16117

PHILLIPS McFALL McCaffrey

McVAY & MURRAH, P.C.

211 North Robinson, 12th Floor

Oklahoma City, Oklahoma 73102

Telephone: (405) 235-4100

Facsimile: (405) 235-4562

ATTORNEYS FOR CONSERVATOR,

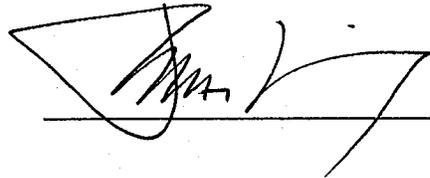
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 21st day of May, 2004, a true and correct copy of the foregoing Application was hand-delivered, 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*



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;

2- 8-02; 1:59PM;
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.

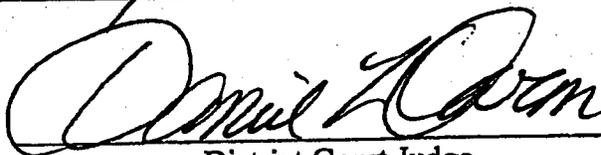
IT IS FURTHER ORDERED that ABC and its agents, including American Title Company of Orlando and David Piercefield, be held harmless from any and all liability, costs and damages arising in connection with each Conservatorship Asset after each such asset has been transferred to the Conservator.

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.

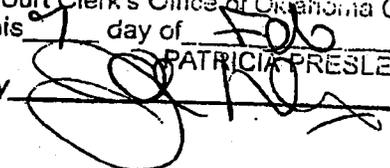
IT IS FURTHER ORDERED that the Conservator may rely on applicable exclusions or exemptions from registration under the Act in connection with the offer and/or sale of securities to institutional buyers in and/or from the state of Oklahoma.

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

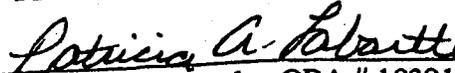
Dated this 6th day of February, 2002.

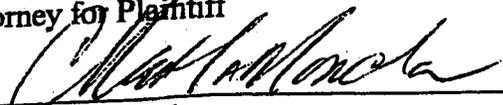


District Court Judge

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 Feb, 2002.
By  PATRICIA PRESLEY, Court Clerk Deputy

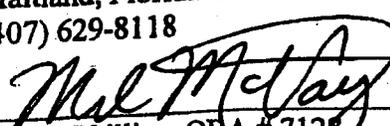
Approved as to form and substance:


 Patricia A. Labarthe, OBA # 10391
 Oklahoma Department of Securities
 First National Center, Suite 860
 120 North Robinson
 Oklahoma City, Oklahoma 73102
 (405) 280-7700 Ext 7735
 Attorney for Plaintiff


 C. Keith LaMonda
 Accelerated Benefits Corporation
 105 East Robinson Street, Second Floor
 Orlando, Florida 32801
 (888) 842-8422


 Jess LaMonda
 Accelerated Benefits Corporation
 105 East Robinson Street, Second Floor
 Orlando, Florida 32801
 (888) 842-8422


 David S. Piercefield
 American Title Company of Orlando
 230 Lookout Place, Suite 200
 Maitland, Florida 32751
 (407) 629-8118


 T. Ray Phillips, OBA # 7128
 Melvin R. McVay, OBA # 6096
 Fred A. Leibrock, OBA # 14146
 Phillips McFall McCaffrey McVay & Murrah, P.C.
 One Leadership Square, 12th Floor
 211 North Robinson Avenue
 Oklahoma City, Oklahoma 73102
 405/235-4100
 405/235-4133 (Fax)
 faleibrock@phillipsmcfall.com
 Attorneys for Conservator

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

AFFIDAVIT

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

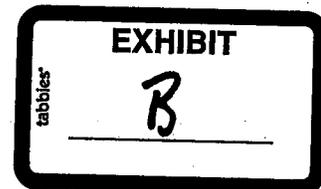
The undersigned, H. Thomas Moran, of lawful age, being first duly sworn, deposes and states as follows:

1. That I am the Conservator of certain assets of Accelerated Benefits Corporation pursuant to an Order Appointing Conservator and Transferring Assets entered in the above-styled action by the Court on February 6, 2002 (the "Conservatorship Order").

2. I have personal knowledge of the matters set forth herein.

3. Under the Conservatorship Order, I was appointed Conservator of certain assets of Accelerated Benefits Corporation ("ABC") and its agents, including American Title Company of Orlando ("ATCO") and David Piercefield (the "Conservatorship Assets").

4. Included in the Conservatorship Assets is a policy, issued on or about November 22, 1985, by Prudential Insurance Company of America ("Prudential"), insuring the life of Jean Marie Akin (the "Akin Policy"). The Akin Policy was issued in favor of the Jean Marie Akin



Irrevocable Life Insurance Trust (the "Akin Trust") as owner and beneficiary, with a face amount of \$2,000,000.00.

5. It is my information and belief that on or about December 20, 1995, the Akin Trust and Southwest Viatical, a Texas Partnership, executed that certain contract (the "Akin Contract"), whereby the Akin Trust sold its ownership of the Akin Policy to Southwest Viatical, but retained a beneficial interest in the amount of \$650,000.00. A copy of the Akin Contract was provided to Prudential and the Akin Trust was designated as a 32.5 percent beneficiary on the Akin Policy.¹

6. It is my information and belief that on or about February 27, 1996, Southwest Viatical and ABC entered into a Portfolio Acquisition Agreement, whereby ABC purchased 67.5 percent of the face value of the Akin Policy, contingent upon the ownership and beneficiary designation being transferred to ATCO, as escrow agent for ABC. This interest in the Akin Policy was conveyed to ATCO, as escrow agent on behalf of ABC. ABC then solicited investments from individuals and other investors (the "ABC Investors") who executed certain purchase request agreements ("PRA's"). Under the PRA's, the ABC Investors were promised, and ABC was contractually obligated to pay to the ABC Investors, a sum certain in return for their investment upon the occurrence of the maturity of the Viaticals to which the ABC Investors had been matched.

7. It is my information and belief that on pursuant to such PRA's, ABC matched certain ABC Investors and investor funds to 67.5 percent of the Akin Policy. Each of the ABC Investors matched to the Akin Policy were promised payment of a fixed dollar amount upon maturity of the Akin Policy. The total amount promised by ABC to the ABC Investors was

¹ Presumably this was determined by dividing \$650,000 by the \$2,000,000 face value of the policy.

\$1,350,000.00, or 67.5 percent of the face value of the Akin Policy. ABC subsequently reacquired some of the PRA's applicable to the Akin Policy from certain ABC Investors. As a result of this reacquisition, ATCO, as escrow agent on behalf of ABC, was designated as a 16.82699896 percent beneficiary of the Akin Policy.

8. Pursuant to the language of the Conservatorship Order, I became the owner of the interest owned by ABC in the Akin Policy held by ATCO.² The 16.82699896 percent interest in the policy previously owned by ABC and held by ATCO, represents a monetary interest in the amount of \$336,539.98 in the \$2,000,000.00 face value of the Akin Policy, or \$316,012.49 in the amount of maturity proceeds asserted by Prudential.

9. Jean Marie Akin died on or about January 29, 2003. However, I did not receive notice of such death until June 18, 2003. Prudential is presently holding net maturity proceeds from the Akin Policy (the "Maturity Proceeds"), which as of August 1, 2003 were estimated by Prudential to be \$1,878,008.61, or \$121,991.39 less than the \$2,000,000.00 face value of the Akin Policy.

10. 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 Akin Policy.

11. The Akin Trust maintains that in spite of the fact that there are insufficient funds to pay the \$2,000,000.00 in total claims which exist against the Akin Policy, that it is entitled to the full amount of \$650,000.00 from the Maturity Proceeds.

12. It is my position that the funds should be allocated among all beneficiaries, including the Akin Trust, on a pro rata basis.

² For some unexplained reason, the Akin Policy was one of approximately 30 out of over 1400 policies which had irrevocable beneficiaries named on the policy.

FURTHER AFFIANT SAYITH NOT.

By:


H. Thomas Moran

Subscribed and Sworn to before me this 21 day of May, 2004, by H. Thomas Moran.

(SEAL)


Notary Public

My Commission Expires: 01/17/2006
Commission #: 02001064

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

THE PRUDENTIAL INSURANCE)
OF AMERICA,)

Plaintiff,)

v.)

BROWN JAMES AKIN, III, TRUSTEE OF)
THE JEAN MARIE AKIN IRREVOCABLE)
TRUST, *et al.*,)

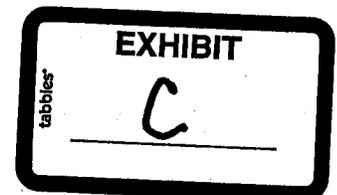
Defendants.)

Case No. CIV-03-1444-HE

**ANSWER OF DEFENDANT, AMERICAN TITLE
COMPANY OF ORLANDO TO CROSS-CLAIM
OF DEFENDANT TOM MORAN, CONSERVATOR**

Defendant, American Title Company of Orlando ("ATCO"), for its Answer to the Cross-Claim of Defendant/Cross-Claimant, Tom Moran, Conservator, generally denies each and every allegation except those hereinafter admitted, and answers the numbered paragraphs as follows:

1. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 1, and therefore denies the same.



2. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2, and therefore denies the same.

3. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 3, and therefore denies the same.

4. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 4, and therefore denies the same.

5. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 5, and therefore denies the same.

6. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 6, and therefore denies the same.

7. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 7, and therefore denies the same.

8. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 8, and therefore denies the same.

9. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 9, and therefore denies the same.

10. ATCO adopts and incorporates the allegations contained in Paragraphs 1 through 9 above in response to Paragraph 10 of Plaintiff's Cross-Claim and further answer as follows:

11. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 11, and therefore denies the same.

12. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 12, and therefore denies the same.

13. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 13, and therefore denies the same.

14. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 14, and therefore denies the same.

15. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 15, and therefore denies the same.

16. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 16, and therefore denies the same.

17. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 17, and therefore denies the same.

18. Denied.

19. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 19, and therefore denies the same.

20. Admitted.

21. Admitted.

22. Denied.

23. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 23, and therefore denies the same.

24. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 24, and therefore denies the same.

25. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 25, and therefore denies the same.

26. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 26, and therefore denies the same.

27. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 27, and therefore denies the same.

28. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 28, and therefore denies the same.

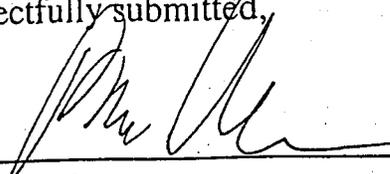
29. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 29, and therefore denies the same.

30. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 30, and therefore denies the same.

31. ATCO is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 31, and therefore denies the same.

WHEREFORE, Defendant ATCO, prays that its interest in the subject insurance policy be judicially determined in accordance with applicable law and that it be paid all proceeds rightfully due under the subject policy, together with interest, costs, attorney fees and such other relief as the Court may find just and proper.

Respectfully submitted,

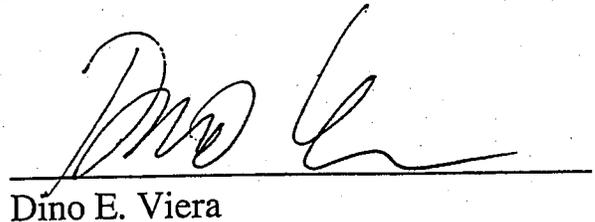


Dino E. Viera
William Whitehill
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
Bank One Tower, Suite 1700
100 North Broadway
Oklahoma City, Oklahoma 73102-8820
Telephone: (405) 232-0621
Facsimile: (405) 232-9659

Attorneys for American Title
Company of Orlando

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2004, a true and correct copy of the above and foregoing was mailed, via U.S. Mail, postage prepaid, to the parties listed on the attached distribution list.



Dino E. Viera