FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

MAY 25 2011

PATRICIA PRESLEY, COURT CLERK
by________________
Deputy

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities, <u>ex rel.</u> Irving L. Faught, Administrator,	)	
Plaintiff,	)	
v.	)	Case No. CJ-99-2500-66
	)	Judge Daniel L. Owens
Accelerated Benefits Corporation, a Florida Corporation, *et al.*,	)	
Defendants.	)	

RESPONSE OF THE CONSERVATOR TO ACHERON PORTFOLIO TRUST'S MOTION FOR AUTHORIZATION TO PURCHASE <u>ABC INVESTORS' INTEREST IN CONSERVATORSHIP ASSETS</u>

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Submitted May 25, 2011

I. INTRODUCTION

The Conservator is in agreement with the Court and Department of Securities that a lump sum payment of the remaining Purchase Price by Acheron would be in the best interests of the ABC Investors *provided* that the amount of the payoff is based on a reasonable discount rate and ensures that the ABC Investors receive a fair return for their interest in the ABC portfolio ("Portfolio"). Acheron's current offer, while it is more than previous offers, falls short of even the minimum threshold enunciated by the Court at the conclusion of the evidentiary hearing on October 28, 2010.

As with its previous offers, Acheron has included the money held by the Conservator in the ABC Investors' premium reserve account ("PRA") as part of Acheron's offer, thus inflating the appearance of what Acheron is offering to pay from $16.2 million (the actual amount that Acheron is offering to pay) to $18 million. Under the terms of the its Option Purchase Agreement ("OPA") with the Conservator, Acheron is required to pay the entire purchase price ("Purchase Price") that Acheron agreed to pay, not the Purchase Price less the amount held by the Conservator for the ABC Investors in their PRA. The OPA does not provide any basis whereby Acheron could assert a valid claim to the PRA. The OPA does not provide any basis whereby Acheron would be entitled to use the money in the ABC Investors' PRA to satisfy its payment obligations to the ABC Investors.

Acheron is offering to pay $16.2 million as satisfaction of its $24.5 million Purchase Price obligation under the terms of the OPA. This payoff represents a nearly 10% discount rate that is well in excess of the maximum discount rate that the Court stated it would consider at the conclusion of the October 28 evidentiary hearing. For these reasons, which are more fully discussed below, the Conservator respectfully requests the Court deny Acheron's Motion.

II. PROCEDURAL HISTORY

A. Acheron Motions.

The present Motion marks Acheron's third request for the Court to revise the terms of the OPA to allow Acheron to make a lump sum payoff, in an amount satisfactory to Acheron and its investors, of the remaining Purchase Price due to the ABC Investors. Each of Acheron's Motions, including the one before the Court, ask the Court to revise the OPA to allow Acheron to pay the remaining Purchase Price on terms that are acceptable to Acheron and the Acheron investors, but which would leave the ABC Investors with a reduced payment that does not fully compensate them for the present value of the remaining Purchase Price due from Acheron under the OPA.

In its first Motion, filed in January 2010, Acheron asked the Court to approve the re-sale of the Portfolio to Acheron on its proposed terms. Under Acheron's proposal, it would pay a total of $10.2 million in a lump sum payment for the Portfolio. At the hearing on the first Motion, the Court indicated that it did not consider the offer to be sufficient and Acheron subsequently withdrew its Motion.

Acheron filed its second Motion in July 2010. In this Motion, Acheron proposed a payoff of $11.5 million plus allowing the ABC Investors to participate in the 2010 maturities (which the Investors were already entitled to receive under the terms of the OPA) up to $1.8 million. The Court set the second Motion for evidentiary hearing on the issue of the reasonableness of Acheron's offer, including discount rate for determining the present value of the ABC Investor's share of future maturities under the terms of the OPA.

B. October 28 Evidentiary Hearing.

At the evidentiary hearing, Acheron announced through the testimony of its Portfolio Manager, Patrick Yan, that Acheron had revised its offer to include the lump sum payment of $11.5 plus participation in the 2011 Portfolio maturities in the amount of $1.8 million. Mr. Yan also testified that Acheron would pay the additional $1.8 million at the closing "if required." Transcript of Hearing on October 28, 2010 ("Tr."), 21:18-25, 22:1-19.[1] The total lump sum payoff under the revised offer totaled $13.3 million reflecting a discount rate of 13.7%. Tr., 27:11-19.

1. Evidence Regarding Reasonable Discount Rate

During the evidentiary hearing, the Court heard from the following witnesses regarding the appropriate discount rate:

a. Patrick Yan, Portfolio Manager for Acheron

Mr. Yan did not offer testimony on the issue of whether the Acheron offer would adequately compensate the ABC Investors for the present value of the remaining amounts due to them under the OPA. Instead, Mr. Yan testified that the amount Acheron was offering as a lump sum payment of the remaining Purchase Price was more than Acheron had paid for other portfolios. Tr., 26:20-25. He also testified that Acheron had never purchased a portfolio of life settlement policies at a discount rate as low its offer; however, Mr. Yan did not address the issue of whether this discount rate was an appropriate rate for the amounts Acheron owes the ABC Investors under the OPA. Tr., 26:17-25, 27:1-20. Mr. Yan further testified that Acheron would receive an economic benefit of $7.3 million if it were allowed to make a lump sum payment for

[1] The relevant portions of the Transcript are submitted with this Response as Exhibit 1.

the remaining Purchase Price and terminate its obligations under the OPA Service Agreement to pay servicing costs for the Portfolio. Tr., 12:24-25, 13, 14:1-4, 37:19-25, 38:1-20.

b. Roger Annin, Senior Vice President of Lewis & Ellis Actuarial Consultants

Mr. Annin testified during his direct examination by Acheron's counsel that he believed a reasonable discount rate would be somewhere around 8, 9, 10 percent. Tr., 77:10-15, 78:1-2. During his cross-examination, Mr. Annin testified that these discount rates were based on the following risk factors: (1) payment of the Purchase Price over the projected period of time for maturities, (2) the potential for significant medical advances in treatment of HIV+ and AIDS that could extend the life expectancies of the insureds ("Insureds") of the policies ("Policies") in the ABC Portfolio, and (3) the possibility of default by Acheron. Tr., 88:6-25, 89, 90:1-9.

As to the second risk factor, Mr. Annin acknowledged that future medical advances were unknown at this point and that the Insureds' life expectancies could actually be shorter than projected due to the long-term effects of HIV/AIDS and drug treatments they have undergone over time. Tr., 88:18-25, 89, 90:1-3. As to the third risk factor, possible default by Acheron, Mr. Annin acknowledged on cross-examination that Acheron had denied any intention of defaulting. Tr., 90:4-9. Mr. Annin also testified that default by Acheron could benefit the ABC Investors. If Acheron defaults, the Conservator would take over the entire Portfolio and would receive 100% of the maturities, which would be greater than the premiums for the Policies. Tr., 93:18-25, 94:1-17. Because the ABC Investors would regain the profit for what is now Acheron's share of the maturities in the event of Acheron's default, Mr. Annin testified that he did not consider the risk of default to be significant. Tr., 94:1-17.1.

Reevaluating the risk factors on which he had based his initial opinion, Mr. Annin testified that the appropriate discount rate for an immediate lump sum payment of the remaining Purchase Price would be 5-6%. Tr., 90:10-24, 91:1-8; 94:18-20.

c. William Scott Page, William Page & Associates, dba The Lifeline Program

Upon Acheron's motion, the Court ruled that Mr. Page was qualified to offer expert testimony on the viatical industry. Tr., 116:18-24. However, Mr. Page admitted that he had no expertise in business valuation and did not offer testimony concerning the appropriate discount rate for a payoff of the remaining Purchase Price owed by Acheron. Tr., 131:16-18.

Instead, Mr. Page opined that it is difficult to arrive at a specific price for a viatical portfolio because the value is set by what the buyer is willing to pay. Tr., 119:14-23. Mr. Page testified that he has been unable to solicit investors for a viatical portfolio that he manages as the "Lifeline Program," stating that "[t]here is no market that I'm aware of for viatical portfolios." Tr., 123-125,126:1-12. He testified that his clients/investors, some of whom had invested the entirety of their retirement funds in Mr. Pages' Lifeline Program portfolio, would "jump on" an opportunity to sell their interest in his Lifeline Program for 13-15 cents on the dollar. Tr., 129:4-14.

On cross-examination, Mr. Page acknowledged that Acheron had agreed to pay the ABC Investors 56 cents on the dollar. Tr., 134:9-21. Mr. Page also admitted that the Tennessee and Florida regulatory authorities had obtained orders prohibiting him from selling viaticals in those states. Tr., 130:6-25, 131:1-15.

Further, following the redirect examination, the Court conducted the following:

> The Court: Mr. Page, you made a comment that was of interest to the Court and that comment was that the price relating to a portfolio should be set by the buyer.

Was that your comment?

The Witness: Yes, sir.

The Court: You're aware in this case are you not, that Acheron was the buyer of this portfolio?

The Witness: Yes, sir.

Tr., 136:12-19.

d. Todd Lisle, Managing Partner BKD Oklahoma

Mr. Lisle is a Certified Public Accountant and has been accredited in business valuation since 1997. Tr., 138. At the Conservator's request, Mr. Lisle prepared an analysis of the present value of the ABC Investors' interest in the Portfolio and remaining maturities under the terms of the OPA. Tr., 141:1-23. Upon the Conservator's motion, the Court ruled that Mr. Lisle was qualified to offer expert testimony concerning the present value of the Investors' interest in the Portfolio, including the discount rate used to determine that value. Tr., 141:24-25, 142:1-7. In determining an appropriate discount rate for the Investors' future income stream, Mr. Lisle considered: (1) the risk of default or nonpayment by the insurance companies that had issued the Policies, (2) the timing of payments to the Investors from maturities; and (3) the time value of money. Tr., 143:18-25, 184:1-13. In looking at the risk of nonpayment by the insurance carriers, Mr. Lisle reviewed the controls in place to ensure that premiums are paid timely to prevent lapse of Policies, along with the strength of the 25 largest insurance carriers for the Portfolio and the diversity of insurance carriers for the Policies. Tr., 144:14-25, 145:1-10. Based on this analysis, Mr. Lisle rated the risk of default or nonpayment by an insurance company to be very low. Tr., 145:11-13.

In assessing the variables for the Investors' income stream from maturities, Mr. Lisle testified that the ABC investment vehicle was comparable to corporate bonds, which have a rate of return of 3.65%. Tr., 145:22-25, 146, 147:1-19. To capture the risk of delayed maturities, Mr. Lisle obtains an alternate actuarial analysis from Roger Annin that extended the life expectancies of the Insureds and payout from maturities 16 to 18 years. Tr., 147:2-15, 148:1-20. Based on these extended projections, and taking into consideration the risk of default, Mr. Lisle concluded that a reasonable discount rate for ABC Investors' share of the future maturities is 5-6%. Tr., 149:2-23.

e. H. Thomas Moran, II, Court-Appointed Conservator

Mr. Moran testified that he considered the appropriate discount rate to be based on the rate of return the ABC Investors would receive if they were to reinvest the money they received from their ABC payments. Tr., 163:4-16. Mr. Moran further testified that the most likely rate of return would be a 3% fixed-rate of return comparable to annuities. Tr., 163:13-17. Nonetheless, in an effort to negotiate a lump sum payment for the benefit of the investors, Mr. Moran offered to recommend a lump sum payoff using a slightly higher discount rate. Tr., 163:17-23, 197:13-18.

2. <u>The Court's Ruling</u>

At the conclusion of the October 28 evidentiary hearing, the Court denied Acheron's Motion to submit its offer to the ABC Investors, finding that the offer was neither reasonable nor fair to the ABC Investors:

> When we started this hearing, I announced and I think I've announced it every time we've talked about this case and what I would do with reducing this to a lump sum payment, that Acheron had an uphill burden; the reason being, there's no doubt in this case, Acheron has bought the investor portion of this portfolio. They've got a contract.

> This isn't going on the open market. And as Mr. Page said, and that's why I asked him again if that's what he said, and that would be that the buyer would set the price if they were to buy this portfolio. And Acheron did that when they bought it. They set the price based upon, I guess, an analysis of the value of the portfolio when they jumped in to this mess.
>
> And the Court approved it because everybody had signed off on it and because everybody believed it was in the best interest of the purchaser, that being Acheron, and the best interest of the investors who are the folks relying on us to make sure their investment is protected; although, they had relied on someone at the outset of these investments and they weren't protected.
>
> But the reality of the evidence in this case, there's no evidence indicating in this case that the offer being made by Acheron is fair and sufficient for the investors in this portfolio, that being the folks who bought them initially.

Tr., 221:5-25; 222:1-4.

The Court further stated that it would consider an offer by Acheron that used a reasonable discount rate and further explained that a "discount rate is to make the opportunity available to the person getting the discount rate to make that much money in the future." Tr., 223:23-25, 224:1. The Court also cautioned that it would not consider any offers of a lump sum payment by Acheron that exceeded an 8% discount rate. Tr., 225:6-13.

III. ACHERON'S CURRENT OFFER

In its third Motion, Acheron states that it has offered to "accelerate its purchase of the Conservatorship Assets for a total of $18 million" which "represents a discount rate of 7.8%...." Motion, at 1. Except that Acheron is not offering to pay $18 million, but $16.2 million. And Acheron's new offer does not represent a 7.8% discount rate, but a nearly 10% discount rate.

A. Acheron is Offering a $16.2 Million Payoff of the $29.5 Million Acheron Owes Under the OPA for the Purchase Price.

As in the past, Acheron has inflated the actual amount of its offer by adding the money held by the Conservatorship in the ABC Investor's PRA. The Conservator established the PRA with the option payment paid by Infinity Capital Services, Inc. ("Infinity") in 2002. Under the terms of the option purchase agreement between Infinity and the Conservator, Infinity paid $2.5 million for the option to purchase the Portfolio, which payment was fully-earned and nonrefundable. Likewise, when Acheron's predecessor, Lorenzo Tonti Trust, entered into the current OPA, it was required to pay $800,000 for the option to purchase the Portfolio. As with the Infinity option payment, Lorenzo Tonti Trust's option payment was fully-earned and nonrefundable.

There is no provision, term or clause in the Acheron OPA that provides any basis by which Acheron would have an arguable claim that it is entitled to any type of credit for the distribution of any monies from the ABC Investors' PRA. The PRA funds belong to the ABC Investors. In fact, in 2009 the Conservator determined that a sufficient number of Policies had matured to warrant the distribution of $700,000 from the PRA to the owners of the PRA monies – the ABC Investors. Acheron did not request, and it would have been absurd for Acheron to ask, that the Court credit this distribution to Acheron and to reduce the amount Acheron is required to pay the ABC Investors by $700,000. Yet, Acheron would have the Court find that $18 million is a reasonable and fair payoff of the remaining Purchase Price, but in so doing credit Acheron with the distribution of $1.8 million from the ABC Investors PRA and reduce Acheron's obligation to pay the entire $18 million that Acheron claims is a reasonable amount to the $16.2 million that Acheron actually intends on paying the ABC Investors.

Acheron has not shown any legal basis to use the monies held by the ABC Investors in the PRA as an offset of Acheron's contractual obligation to pay the entire Purchase Price. The only rationale offered by Acheron is that "maintenance of [the PRA] will no longer be necessary in light of the accelerated payment and termination of the Conservatorship proceeding." *Id.* As

Mr. Yan testified, with a lump sum payment Acheron is offering the ABC Investors the "option" of distributing the PRA funds after termination of the OPA. Tr., 36:20-25, 37, 38:1-6. However, Mr. Yan also testified that Acheron would receive an even more substantial benefit if the OPA is terminated early because Acheron would be relieved of its contractual obligations to pay further servicing costs and other fees, in the amount of $7.3 million, that Acheron is currently required to pay under the OPA and Servicing Agreement. Tr., 12:24-25, 13, 14:1-4.

Aside and apart from the lack of any legal or logical basis for crediting Acheron with $1.8 million that Acheron is not paying and is the ABC Investor's money, there is the disturbing notion that the ABC Investors should provide Acheron with the funds to pay 10% of Acheron's "offer." The ABC Investors and their shared financial history are well known to the Court. By contrast, Acheron Capital Corporation (the parent and beneficiary of Acheron Portfolio Trust) has, as of March 2011, an estimated net asset value of $120.5 million. Acheron's Annual Report for 2010 lists over $10 million in profit for the year. Acheron's attempt to use the ABC Investors' funds to finance Acheron's offer is without legal support and contrary to the core purpose of the Conservatorship to protect the interests of the ABC Investors.

Acheron is offering to pay $16.2 million, and no more, as an accelerated payment of the remaining $29.5 million that Acheron currently owes under the terms of the OPA. Acheron, which has the burden of demonstrating the reasonableness of this offer, has not submitted any evidence that its offer would be a fair or reasonable prepayment of the remaining Purchase Price. In its current Motion, Acheron refers to a letter dated March 9, 2011, from Roger Annin that is attached as an exhibit to the Motion. Acheron states that "Mr. Annin finds Acheron's Offer, which represents a total of $18 million for the Investors (and uses a 7.8% discount rate), to be a fair and reasonable offer for the Conservatorship Assets given the risk components under the

OPA." Motion, at 4. The statements in Mr. Annin's March 9th letter are more carefully parsed than Acheron suggests.

In his letter, Mr. Annin states on page 1: "The value determined for the remaining payments is $17,797,000 at an 8% discount rate." If, as Acheron states, $18 million is a fair prepayment of the remaining Purchase Price owed by Acheron, Acheron's true offer of a lump sum payment of $16.2 million falls well short of the $18 million. However, Mr. Annin does not set out what he understands the details of Acheron's offer to be, much less state that Acheron's offer in its present form is fair or reasonable to the ABC Investors.

Mr. Annin then sets out various present values based on different discount rates between 7-11%, which are the discount rates that Acheron asked Mr. Annin to run despite the Court's admonishment that a discount rate in excess of 8% would not be reasonable. In his "Summary," Mr. Annin states that "the present values offered reflect a fair market value for the remaining participation of the APC Lux." Assuming that Mr. Annin is referring to the Conservatorships 60% participation, which is the Portfolio tranche that Acheron is attempting to acquire, the Court has stated very clearly that the fair market value of the Portfolio is irrelevant because Acheron is contractually obligated to purchase it at the agreed-upon Purchase Price.

B. The Discount Rate for Acheron's Offer Is Not Reasonable.

Acheron's offer of a lump sum payment of $16.2 million is based upon a discount rate of approximately 10%. Before ruling on Acheron's second Motion, the Court allowed Acheron the opportunity to present evidence to support the discount rate used in its offer at a day-long evidentiary hearing. At the evidentiary hearing, Acheron's principal witness was its Portfolio Manager, Patrick Yan. Mr. Yan testified that the amount Acheron was offering at the time and the discount rate it was using was reasonable because they exceeded what the ABC Investors would receive if they sold the Portfolio on the open market. Acheron's expert witness, Scott Page, testified (as Mr. Yan had) that the Acheron offer was reasonable in light of the current life settlement market. As the Court noted during the hearing, current market conditions were irrelevant because Acheron had already agreed to pay the Purchase Price for the Portfolio and was contractually bound to pay that amount.

At the conclusion of the evidentiary hearing, the Court stated that it would not consider a discount rate in excess of 8% in determining a reasonable prepayment of the remaining Purchase Price. Acheron's current offer fails to meet even this minimum threshold set by the Court. Further, Acheron has wholly failed to present evidence to the Court that the appropriate discount should be higher than 5 or 6%, as presented by the Conservator at the evidentiary hearing.

The only testimony offered by Acheron on the issue of the discount rate was that of Roger Annin. Although Mr. Annin testified on direct examination that the appropriate discount rate would be 8-10% based on certain risk factors, on cross-examination he acknowledged that two of the three risk factors were unknowns and that the pertinent risk factor was the payment of money over time. Taking into account the payment of money over time, Mr. Annin testified on cross-examination that the appropriate discount rate was 5-6%.

Acheron now submits the letter from Mr. Annin as a basis for the Court's factual determination of the reasonableness of Acheron's current offer. In his letter, Mr. Annin states that he believes a discount rate of 8% "provides a fair basis for evaluating risk under the agreement." He then identifies two risks: (1) "shifts in the AIDs or general population mortality [that] could defer repayment of the loan," and (2) "risks associated with the credit worthiness of the insurance carrier although believed to be minor) or risks associated with potential non-payment of a claim." In his testimony at the October 28 evidentiary hearing, Mr. Annin acknowledged that the first risk is unknown at this point and that a shift in mortality projections, rather than deferring maturities, could , in fact, result in accelerated maturities. While it may be prudent for an actuary to take into account the downside of a potential but unknown risk, the issue before the Court is whether Acheron's offer is a fair and reasonable payoff of its contractual obligations to the ABC Investors. Assuming that the possible risk of delayed maturities will occur (an assumption that would benefit Acheron by increasing the discount rate), ignores the possibility that maturities will occur sooner than projected. In the interest of fairness to the ABC Investors, the discount rate should not take into account possible risk factors while ignoring other possible factors that warrant a lower discount rate.

At the evidentiary hearing, Mr. Annin did not identify the possible risk of default of nonpayment by any of the insurance carriers. Thus, his cross-examination does not address it. However, Todd Lisle identified a carrier's default of nonpayment as a minor risk and testified in detail as to his assessment of this risk in relation to his opinion that a discount rate of 5-6% was reasonable. Acheron had every opportunity at the evidentiary hearing to elicit Mr. Annin's testimony concerning the risk of nonpayment by the insurance companies that issued the policies. If Acheron had done so, the Conservator's counsel would have had the opportunity to cross-examine Mr. Annin on this issue. Mr. Annin's unsworn statements, which are in many respects ambiguous and raise numerous questions but are not subject to fair or meaningful examination by the Conservator or the Court, should not form the basis of the Court's determination.

IV. CONCLUSION

Acheron entered into the OPA in June of 2006. A year later, Acheron began its efforts to renegotiate the payment terms. When the Conservator did not concede to the new terms proposed by Acheron, Acheron filed its first Motion. When Acheron heard the Court's preliminary comments regarding what was then Acheron's offer of prepayment, Acheron withdrew its first Motion.

When Acheron again failed to persuade the Conservator to agree to its new proposed terms, Acheron filed its second Motion. Even though the Court provided Acheron with the opportunity to present evidence of the reasonableness of its offer, Acheron failed to meet its burden and the Court denied the second Motion.

When Acheron submitted new proposed terms to the Conservator, the Conservator submitted a counter-proposal that the Conservator believes to be in the best interests of the ABC Investors. Acheron's response to the Conservator's counterproposal was to file the Motion presently before the Court.

Acheron has had three Motions and an evidentiary hearing to prove the reasonableness of its offers to make a lump sum payment for the remaining Purchase Price. Acheron has failed to meet its burden and now comes to the Court with an offer that ignores the Court's admonishment that it would not consider a payoff that is based on a discount rate greater than 8%.

The Conservator respectfully requests the Court deny Acheron's current Motion.[2]

[2] The Conservator has not addressed the issues that may arise in the event the OPA and Service Agreement are terminated. These issues, in particular the payment of a termination fee by Acheron, do not impact the ABC Investors. This obligation is Acheron's, not the ABC Investors, and is not an appropriate consideration in determining the reasonableness of Acheron's current offer.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 25th day of May, 2010, a true and correct copy of the foregoing was mailed, first-class with postage prepaid, to:

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities, <u>ex rel.</u> Irving L. Faught, Administrator,	)	
Plaintiff,	)	
v.	)	Case No. CJ-99-2500-66 Judge Daniel L. Owens
Accelerated Benefits Corporation, a Florida Corporation, *et al.*,	)	
Defendants.	)	

EXHIBIT 1

to

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES,)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
vs.) Case No. CJ-99-2500-66
)
ACCELERATED BENEFITS CORPORATION,)
a Florida corporation, et al.,)

Defendants.

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

NOV 19 2010

PATRICIA PRESLEY, COURT CLERK
By Deputy

* * * * *

SEVENTH JUDICIAL DISTRICT OF OKLAHOMA

TRANSCRIPT OF PROCEEDINGS

HAD ON THE

28TH DAY OF OCTOBER, 2010

BEFORE THE HONORABLE DANIEL L. OWENS

DISTRICT JUDGE

* * * * *

Reported By:

Deborah J. Torbert, CSR, RPR
Official Court Reporter
321 West Park Avenue, Room 315
Oklahoma City, Oklahoma 73102
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agreement, Acheron pays the premium cost; is that correct?
A. Yes. That's correct.
Q. And since Acheron -- when did Acheron first become a party to the option purchase agreement?
A. In May 2006.
Q. Since May 2006, how much in premium costs has Acheron paid for the policies?
A. We've paid, up until today, probably 5.8 million.
Q. And Mr. Yan, you mentioned that servicer for the, under the servicing agreement, is Heritage ASG; is that correct?
A. Yes. That's correct.
Q. Can we just have a shorthand that's just ASG just for convenience, counsel?
MS. EMMONS: That's fine.
MR. SZYFER: Great.
Q. (BY MR. SZYFER) Do you have an understanding of who the manager of ASG is, Mr. Yan?
A. Yes, I do.
Q. And who is that?
A. I believe Mr. Moran is the manager.
Q. And Mr. Moran is also the Conservator here; is that correct?
A. Yes. I believe that's correct.
Q. Okay. And Mr. Yan, you mentioned that under the OPA, that Acheron is responsible for the servicing cost; is that

correct?

A. Yes.

Q. And how much since May of 2006 in servicing cost has Acheron paid?

A. We've paid 2.3 million.

Q. And on average, what does Acheron pay in servicing fees per year for the ABC portfolio?

A. We pay probably about 450,000.

Q. Per year?

A. Per year, yes.

Q. And so how does that break down per month?

A. That's about 37,800 a month.

Q. And can you calculate per policy per month how much that figure is?

A. Well, roughly it's about $440 per year per policy. So it's about 36.80, I guess, per policy per month.

Q. Mr. Yan, did Acheron ever ask anyone to estimate what the servicing fees for the portfolio will be over the course of the period of time that the conservatorship is in effect?

A. Yes, we did.

Q. And do you have an understanding as to what the forecasts are for how long the conservatorship is going to be in effect from today?

A. Yes. Lewis & Ellis did the -- we asked Lewis & Ellis in the summer of 2000 and -- or September 2009 to do an estimate on the servicing fees from that point onward.

And they believed it would take close to 16 years and we would be expected to pay 7.3 million in servicing fees.

Q. Thank you, Mr. Yan. Does Acheron have any other investments in viaticals or life settlement portfolios?

A. Yes, we do.

Q. And is Acheron presently paying servicing fees for those policies and portfolios?

A. Yes, we are.

Q. And what is the range per policy per year of those servicing fees in those arrangements?

A. They range from $180 per year to 210.

Q. Okay. And Mr. Yan, did Acheron use ASG to service other policies that Acheron owned aside from the ABC policies?

A. In the past we did, yes.

Q. And approximately how many policies was ASG servicing for Acheron?

A. Outside of the ABC portfolio, over a thousand, probably 1,100.

Q. And was Acheron paying approximately 36, $37 per policy per month for those policies?

A. On the majority of the policies, no.

Q. And what was Acheron paying for those policies?

A. For over the majority of it, a thousand of them, we were

MR. SZYFER: Thank you.
Q. (BY MR. SZYFER) And Mr. Yan, you mentioned that the Conservator had made a counteroffer of $23.5 million?
A. Yes. It's stated in the letter.
Q. And can you read into the record where that is stated?
A. (Reading:) Utilizing a discount rate of 5 percent, the total amount due to the investors in the event Acheron is allowed to prepay the purchase price is 23.5 million.
Q. And what is the 23.5 million comprised of, Mr. Yan?
A. The 23.5 million is comprised of a lump sum payment of 21.7 million and the 1.8 million held in the premium reserve account.
Q. And you read into the record the letter stated that it assumed a 5 percent discount rate for the offer?
A. Yes. That's correct.
Q. Mr. Yan, what are the terms of the current offer that Acheron is seeking to offer now?
A. We had offered, obviously, in March the offer of 11.5 million plus 2010 maturities and the release of the premium reserve. Given that 2010 is pretty much complete, we are willing to extend the offer to 2011. So the current offer is 11.5 million as a fixed lump sum and 2011 maturities with the guarantee that we would make 1.8 million there and the release of the premium reserves. So in total, it's 15.1 million.

Q. Thank you, Mr. Yan. And have you, yourself, calculated what the return would be for the investors in total under this offer?
A. Yes. Based on the information we have, the total return to investors would approximately be 43 percent of the original investment.
Q. So really 43 cents on the dollar?
A. Yes. That's correct.
Q. And is this offer subject to any financing contingencies?
A. No. It is not.
Q. And what happens if the maturity stream for 2011 does not equal 1.8 million?
A. We would -- we provide the remaining amount so that it is 1.8 million.
Q. And would you make this $1.8 million payment at the time of closing of a potential transaction or would you make it at the end of 2011?
A. We can make it at the beginning if it's required.
Q. And if the -- if this is approved, how would the investors learn of this opportunity?
A. Well, we would discuss with the Conservator and the Department on what an appropriate disclosure and notice would be.
Q. And who would pay for that disclosure?

A. We, as we stated earlier, we can reduce our servicing cost. That is the major component of the cost savings.

Additionally, there are negative value policies within the ABC portfolio, and which we can optimize after -- if this agreement is reached.

Q. And approximately how many negative value policies are there in the portfolio that Acheron has looked at?

A. There are about 230 policies which we feel are negative value.

Q. And you're presently paying premiums and servicing on those 200 policies?

A. Yes, we are.

Q. And if I understand correctly, Acheron is willing to buy those policies and an interest in those policies as part of its offer, even though they are negative value to Acheron?

A. Yes. That's correct.

Q. Mr. Yan, Acheron is in the market of purchasing life settlements and viaticals; is that correct?

A. Yes. That's correct.

Q. And how does this offer that Acheron is making compare to other offers that Acheron has made for life settlement or viatical portfolios?

A. It is above what we have always paid.

Q. Meaning it's at a premium?

A. Yes, it is.

Q. And has Acheron ever purchased a viatical portfolio at an 11 percent discount rate?
A. No. We have not.
Q. Have the discount rates been higher?
A. Yes, they have.
Q. Have they been significantly higher?
A. Yes. They have ranged from 15 to 25 percent.
Q. And has Acheron ever purchased a life settlement portfolio at 11 percent?
A. No, we have not.
Q. And Mr. Yan, if you remove the premium reserve account, $1.8 million from the Acheron offer, does that bring the Acheron offer to a total of $13.3 million in cash?
A. Yes, it does.
Q. And have you had an opportunity to calculate the effective discount rate of what that offer is?
A. Yes. That would be approximately 13.8 or 13.7 percent.
Q. And has Acheron ever purchased a life settlement or viaticals portfolio at a discount rate of 13.7 percent?
A. We have not purchased a viatical portfolio at that rate, no.
Q. Mr. Yan, would Acheron be willing to test it's offer for the conservatorship portion in the market?
A. Yes. We would be willing to, you know, put this to an

A. Yes. That was the last offer.
Q. And since that time, that offer has been revised. Correct?
A. You have made a revised offer?
Q. Yes. And it was rejected. Correct?
A. I am not aware of a revised offer.
Q. You're not aware of the offer I just related to your counsel ten minutes ago?
A. Oh, just ten minutes, yes. Okay.
Q. Okay.
A. I thought you meant something previously.
Q. And that offer was rejected. Correct?
A. Yes. That's correct.
Q. Well, going forward with this hearing, there will be testimony that the appropriate discount rate for valuing the investor's future cash flows is five percent and that number equates to, according to Lewis & Ellis most recent projections, to an amount of $21.3 million. And you'll hear that testimony from at least two witnesses.
Now, as I understand, Acheron is now proposing to prepay the purchase price for 13.3 million. In other words, for $8 million less. Correct?
A. Well, I would say that the purchase price includes the release of the premium reserves.
Q. Except that doesn't belong to Acheron, does it? That

belongs to the investors?

A. Well, my understanding of the premium reserve was that is used to protect or there should be at least one year of servicing and premium expenses should something happen to Acheron or any other entity because it's happened in the past.

Based on the Lewis & Ellis projections at year 15 or 16 when this thing finally ends, there should still be $700,000 in the premium reserve account because that's one year of expenses. And based on the Lewis & Ellis projections for the next five years, you'll still need over a million and a half.

I mean, what we're offering is to bring money that is not really releasable, if you can, you know, take the assumption that the conservatorship would maintain at least a year's premiums and expenses. Over the next 15 years, you may release a small portion of it, but it would not be 1.8 million out of one lump sum. And that's what we're offering to give you the option to do.

Q. And again, the release of those funds is up to the Court and the Conservator. Correct? That is not something Acheron has any say in. Correct?

A. Yes. That is correct.

Q. Okay. So the $1.8 million is held by the Conservator on behalf of the investors. Acheron has no ownership interest in it.

So why don't we just set that aside for a minute and talk about the actual payment that Acheron would be making if its offer was accepted, which as I understand now consists of a lump sum payment of 11.5 million, plus an additional 1.8 million paid at the beginning of 2011. Correct?

A. Yes. That's correct.

Q. Okay. So I'd like to stick with that amount and not blur the whole subject with money that is already the investors at this time. Okay?

A. I would just like to point out that there is an economic benefit to releasing the money early.

Q. I'm glad you pointed that out because as you started out your testimony here today, you went into some detail about the economic benefit to Acheron if it's able to persuade the Court to approve this and able to persuade the investors to accept it. And that economic benefit to Acheron is the ability to cut off $7 million, by Acheron's estimation, in servicing fees. Correct?

A. We would be able to reduce the servicing fees, most likely, yes.

Q. I believe your testimony earlier before was that you were going to incur $7 million if this conservatorship concludes to its natural end, and you would be saving that, correct, if you can conclude the receivership with this prepayment you're proposing?

if it was just to be considered a $13.3 million offer?
A. We did.
Q. And what conclusion did you come to as to what that discount rate would be?
A. And that discount rate was 13.7 percent.
Q. And that 13.7 discount rate is less than the 17 to 22 percent discount rate that you've seen for transactions recently; isn't that correct?
A. That is correct.
Q. So in your opinion, would Acheron's offer, would you consider it a better than fair market value offer for the portfolio?
A. Again, I'm going to give a little bit of a qualified statement. What we see in the market in terms of discount rates are for entire portfolios, including the premium-paying element as well as the maturity element.
In the situation here, we have just a case where maturities exist. The premiums are already taken care of. There's an obligation for the premiums to be taken care. That changes the characteristics of the portfolio and I would expect to see a lower discount rate applied to this kind of block.
Is this a reasonable discount rate? You know, that's hard to gauge. I would probably say that a discount rate somewhere around the high single digits, 8, 9, 10 percent,

would be what I would expect for a block such as this because of the dynamics of the Conservator's block.

Q. And 10 percent is pretty close to 11 percent, isn't it, Mr. Annin?

A. That's correct.

Q. And Mr. Annin, one final question: In your opinion, if you're advising a buyer in the market, would you advise them to pay $21.5 million for just the Conservator's portion of the portfolio?

A. I'm sorry. Repeat the question.

Q. Sure. Sure. In your expert opinion, would you advise a buyer of just the Conservator's portion to pay $21.5 million in cash for just the Conservator's portion of the portfolio?

A. No. I think that probably would be a little bit more than what I would advise a buyer to pay.

MR. SZYFER: Thank you, Mr. Annin.

I don't have any further questions.

THE COURT: Thank you. Cross-examination, please.

CROSS-EXAMINATION

BY MS. EMMONS:

Q. Good morning, Mr. Annin.

A. Good morning.

Q. We started off your testimony with a discussion of, a discussion of mortality rates. Do you recall that?

A. Correct. Correct. I think that's properly stated.
Q. And you stated earlier, and I believe we had this conversation yesterday, so I wanted to get into a little bit more detail.
A. Uh-huh.
Q. You stated earlier that you thought a discount rate for the investor's block might be in the eight, nine or ten percent. Correct?
A. Correct.
Q. And I believe we talked yesterday about three different risk factors that you identified in coming to that conclusion. Correct?
A. Correct.
Q. And one of the risk factors was, what we all agree is there, is the payment of money over a 15-year time span. Correct?
A. Correct.
Q. The second risk factor I think you identified is that there could be a vast improvement in the treatment of HIV positive status and AIDS. Correct?
A. Correct.
Q. But, of course, the corollary to that is these insureds have an average age of 50 to 52. Correct?
A. Uh-huh.
Q. And they're approaching, to put it perhaps bluntly,

they're aging like the rest of us. Correct?
A. Correct.
Q. And so compounding the problem of having lived with HIV and AIDS with many of these insureds, they're now facing the problem of aging on top of it all?
A. That's correct.
Q. And we don't know yet, or the medical community doesn't know yet, what really is going to happen in the next 10, 15, 20 years as this bubble of HIV and AIDS individuals reach middle age and start to encounter the normal problems on top of the problems they already have?
A. That is correct.
Q. While there could be vast improvements, we also could see rapid declines in the health of these insureds. Right?
A. Yeah. Actuaries tend to take a, because we're assessing risk, we tend to look at the downside and the extension and what happens there.

But the cumulative impact of living under a regimen of drug treatments over a period of years, there's just no statistics available to show what that means as people age and incur the normal aging process and the ailments that come along with that.

And so, again, we're making projections based on what the current data shows. We could see that mortality increases markedly as people age. We could see continued enhancements in treatments. And it's really a little bit of an unknown because we've not gone through any period where we can measure experience with this disease.

Q. Okay. And the third risk you identified when we were discussing this yesterday was what if Acheron defaults on its obligations. Correct?

A. And that's a risk that Mr. Yan commented on. Of course, they don't expect to default, but we're looking over a 15-year period. So there's a risk component there.

Q. Okay. If we take out those two risk factors that are really unknowns at this point and changes in the treatment and longevity of HIV and AIDS patients, and the third risk factor, which is also pretty much an unknown at this time, Acheron's possible default in the future, and we talk only about the risk factor that everybody agrees is there, the payment of money over a 14, 15, perhaps even 16-year time span, taking just that risk factor, how would you evaluate or determine the discount rate for the prepayment to the investors?

A. What I would do, and I'm not necessarily an expert in all asset classes, but what I would do is look at the indeterminate period of time for these payments.

We don't have a 15-year bond. We have an estimated 15-year period, but some uncertainty as to the timing of the payments over that period of time.

And so I'd be looking at a longer term investment that doesn't have a cash-out option attached to it, as you have to wait until the payments come in, and I'd look at current market rates.

And I'd probably settle somewhere in maybe the five, six percent range, just based on what my knowledge is of double-A, A-rated bonds, junk bonds, and where this kind of asset risk might fall within those categories.

But, again, I'm not necessarily an expert. That's based on some, some expertise, but not a great deal of expertise in the other assets.

MS. EMMONS: May I approach, Your Honor?

THE COURT: Yes.

Do you have awhile longer with Mr. Annin?

MS. EMMONS: I have about five minutes.

THE COURT: I have a 12:15 meeting with all the other civil judges. We're going to have to reapportion some work, take on more work, not less work, because of a problem we have in our district, and that meeting starts at 12:15. I have to be there.

Mr. Annin, are you available after the lunch hour?

THE WITNESS: I have a late afternoon flight, but I should be.

THE COURT: Well, late afternoon, I'll be back on the bench by 1:30. Are you available at that time?

get you out here. If you will, leave all the exhibits with the court reporter.

Court is in recess until 1:30. Thank you.

(Noon recess taken.)

THE COURT: Thank you. Be seated please.

Well, I don't know much more work an Oklahoma trial judge can do, but I guess we're getting ready to find out.

Mr. Annin, will you retake the stand, please, sir.

THE WITNESS: Yes.

THE COURT: And I'll remind you, sir, you're under oath, as you were before we took our break.

I believe, Ms. Emmons, you were doing cross. You may proceed, please.

Q. (BY MS. EMMONS) Mr. Annin, I have one final exhibit to go through with you, which we'll do very briefly, but first I wanted to touch upon something that I actually should have asked a follow-up question before we broke for lunch.

We had spoken about the different type of risks that could attach to the investor's share, and one that being the possibility, however remote, of Acheron's default.

Do you remember that?

A. Yes.

Q. And what I should have asked you, and I'll ask you now is: If Acheron defaults, have you evaluated what the practical impact would be on the investors?

A. Yeah. I thought through that some.

What I think, and I don't have the details of the agreement so I don't know all the ramifications, but what I assume would happen would the Conservator would take over the entire portfolio again and the investors would be, then, required to start making premium payments to support the continuance of the policies, but they'd also participate in the full 100 percent of death benefits or maturities, as opposed to the 60 percent share for a period of time.

And since the cash flow is greater, and has been greater in terms of maturities relative to the premium payments, the premiums could be managed from the existing cash flow.

So that risk, as I at least think about it, is not a, as significant a risk as -- it's not a nightmare scenario by any means. In fact, it actually may be advantageous because the investors would regain the profit in the remainder part of the portfolio.

Q. So we're still back to the five to six discount rate for the investor's share of the portfolio?

A. Correct.

MS. EMMONS: If may I approach, Your Honor?

THE COURT: You may.

(Documents tendered.)

Q. (BY MS. EMMONS) Mr. Annin, I've handed you what we've marked as Conservator's Exhibit 1. Can you identify this

Q. And have you published or been interviewed for any articles regarding the viatical industry?
A. Yes, I have. I have appeared on 20/20, Dateline, The Economists, Wall Street Journal, Business Week, and various other national and international publications.
Q. And have you had any professional, live speaking engagements for state or federal agencies?
A. Yes, I have. I introduced the concept of viatical settlements to the Securities and Exchange Commission in Miami in 1996. I have served as an expert witness for the FBI in a case in the southern district court in 1997, 1998.
Q. And what topics were you asked to testify on at that trial?
A. It was a viatical settlement fraud case.
Q. And were you certified as an expert in viaticals in that case?
A. Yes, I was.

MS. WALSMAN: At this time, Your Honor, we would tender Mr. Page as an expert in the viatical's industry.

THE COURT: Mr. Page has the background, experience, and training to give his opinion in this case.

Again, I'll give it such weight and credibility as I think it deserves under the circumstances.

Proceed, please.

Q. (BY MS. WALSMAN) Mr. Page, over what time period did medical history for viators?

A. They would need an updated HIPAA, which is a request that authorizes access to medical records, and they usually expire in 24 months after original signature.

Q. In your experience, are viators willing to execute updated releases for these purposes?

A. Most viators are very irritated because they feel that they sold their policy and the ongoing obligation for them to communicate and cooperate was never fully addressed with them and a lot of them feel agitated and irritated when they get phone calls from tracking services and tracking companies.

And, you know, some of them take the approach, you know, I'm not dead yet. Leave me alone.

Q. How would you personally value or price a particular viatical portfolio? Is there an objective standard one can use?

A. It's very difficult to arrive at a specific price for a viatical portfolio. I think it's the -- a price for that asset class would be, in the discussions that I've had personally with other portfolios, is about ten cents on the dollar.

Really the value is -- the price should be set by the buyer, what the buyer feels that they will pay.

Q. So when you suggest ten cents on the dollar, it's not an actuarial analysis you've done. It's basically your cents on the dollar relative to the face value of the portfolio?

A. Post the financial collapse of this country, that currently we are actively purchasing life settlement contracts from individuals in the United States and paying between 11 and 13 cents on the dollar for those policies.

Q. Okay. Let's turn to the Lifeline Program.

Do you currently manage your own viatical portfolio?

A. Yes. We are currently managing a portfolio in value of $72 million.

Q. That's the face value of the policies?

A. The face value of the portfolio.

Q. And what was the original face value of the portfolio?

A. 125 million.

Q. And roughly how many investors do you have in that portfolio?

A. Currently there's approximately 1,000 investors.

Q. And what about the approximate number of policies?

A. Approximately 630.

Q. And do you own a portion of the maturity stream for that portfolio?

A. No, I do not.

Q. And what is your role?

A. Our role is the servicer.

Q. Okay. And what was the time period that the viaticals of the

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A. No, I do not.

Q. And what is your role?

A. Our role is the servicer.

Q. Okay. And what was the time period that the viaticals in your portfolio were sold to investors?

A. Between 1996 and the year 2000.

Q. To your understanding, is that the same period that the ABC portfolio was built?

A. Yes.

Q. Okay. Generally speaking, did the different viatical portfolios that were being built in the mid 90s vary greatly in composition or investor profile?

A. No.

Q. And is there anything about your viatical portfolio that's particularly remarkable or outside the norm in any way?

A. No.

Q. Can you describe the average investor in your portfolio?

A. The average investor is a senior citizen, that, in many cases, are having a hard time meeting the ongoing premium obligation of the -- their transaction.

Q. We're hearing a lot that the investors are of an advanced age. Why is that, that the average investor in viaticals tends to be older?

A. At the time that the viaticals were being sold to investors, primarily they were being sold to older individuals. And I think that it was a, again, I fall back to a humanitarian approach, that an investor felt that he or

she could do something good for someone who was dying of this devastating disease and also have the ability to earn a projected return.
Q. What was the average investment size?
A. Our average investor was between 10 and $15,000.
Q. Was there a minimum investment for your portfolio?
A. Ours was $10,000.
Q. Was it fair to say that these are more of a mom-and-pop or kitchen-table type transaction or investment?
A. Yes. They were -- I'd consider it a kitchen-table sale to a mom-and-pop type investor.
Q. And what -- are you aware of what type of investment vehicles the investors came into the transactions through?
A. Many of them used their savings. A large portion also rolled in their -- into a self-directed IRA account.
Q. Okay. And what was the expected return on investment for these investors?
A. 12 percent per year simple interest.
Q. So 12 percent per year. If it was a two-year horizon for that particular viator, would they offer 24 percent?
A. Correct. And if was a four-year, it would be 48 percent.
Q. And what was the longest time horizon expected for any of the investments in a viatical?
A. The longest life expectancy at that time for viaticals

was four to five years at the max.

Q. And have you solicited any additional investors for viatical portfolios within the past ten years?

A. No. I have not.

Q. And why is that?

A. There's been no market that I'm aware of for viatical portfolios.

Q. I misspoke. Not investors in viatical portfolios.

Have you solicited any investors in viatical transactions?

A. No. We stopped participating in HIV policies because of the remarkable new treatments that were available.

Q. The investors that are in your portfolio, have they achieved that 12 percent return on investment that they've expected?

A. Some did in the early years. As I said, the life expectancies were working like clockwork.

There are some that are now upside down because they are paying more premium than they'll get as a return. And there are also a class of our investor pool that came in through self-directed IRAs that were being penalized because they can't take minimum distributions out of the IRA, and they're also being billed fees to keep the IRA account open.

Q. Are there tax consequences for those investors as well?

A. I don't know.

materialize because of a financing problem or the actual person contacting me to sell the -- or to purchase the portfolio wasn't real.

Q. If you were approached -- if you were approached with an offer, like Acheron's, for your viatical portfolio for, let's say, 13 to 15 cents on the dollar relative to the face value, would you consider taking it to your investors?

A. Based on the financing contingencies and institutional purchaser and could provide proof of funds and if they were willing to fund the administrative effort to go to the purchasers and make the offer, absolutely.

Q. And what do you think their response from your investors would be?

A. I think they would jump on it.

MS. WALSMAN: No further questions.

THE COURT: Thank you. Cross-examination, please.

CROSS-EXAMINATION

BY MS. EMMONS:

Q. Mr. Page, I didn't catch the name of your company. Is it William Page & Associates?

A. Yes. And DBA, The Lifeline Program.

Q. Okay. And you stated during your testimony, I believe you stated several times that there was a humanitarian aspect to your participation in these viatical sales. Correct?

A. Yes.

negotiating, advertising, or effectuating, either directly or indirectly, one or more viatical settlement contracts in Florida, from Florida, or with a resident of the State of Florida. Correct?
A. Yes. That was our idea.
Q. You -- it was your idea for the insurance department to investigate you?
A. It was our idea to voluntarily surrender our license and stop doing business in the State of Florida.
Q. After the state initiated an investigation. Correct?
A. Yes.
Q. Okay. Now, I believe you offered -- let me back up one moment. I believe my notes say you got a degree in general studies; is that correct?
A. Correct.
Q. Do you have any formal education or training in business valuation?
A. No. I do not.
Q. Okay. And I think you offered some testimony concerning the increased life expectancy of viators who are either diagnosed with HIV or have AIDS. Correct?
A. Yes, ma'am.
Q. Okay. And so do you feel like you can keep up fairly well with the literature regarding treatment of these conditions?

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Q. Okay. And so do you feel like you can keep up fairly well with the literature regarding treatment of these conditions?

40s and 50s with long-term HIV infection are experiencing symptoms that resemble premature aging."

Correct?

A. Yes, ma'am.

MS. EMMONS: We'd move for the admission of Conservator's 2.

MS. WALSMAN: No objection.

THE COURT: Be admitted.

Q. (BY MS. EMMONS) And do you know how much you talked about the cents per dollar that the typical valuation in these type of portfolios, do you know what the cents to dollar ratio was that Acheron agreed to pay these investors for the ABC portfolio?

A. My understanding is that if their 15.1 percent offer were to be accepted, the investors would be made whole today at 43 cents of their original investment.

And if they -- if this offer was not accepted and the Court decided to allow the projection and the estimate to run over the next, until 2025, that they would receive 50 cents versus 43 cents today.

Q. Well, actually it's 56 cents.

A. 56 cents.

Q. Okay. But you don't know, sitting here today, what the total face value of the portfolio was and what the purchase price was that Acheron agreed to pay. Correct?

A. No.
Q. In your opinion, if there's a potential investor looking to buy someone's viatical transaction, what's the best way to figure out whether an investor would be interested in selling?
A. Could you ask that again?
Q. If there's a potential investor who would be willing in purchasing someone's viatical transaction, how would you figure out whether the investor was interested in selling?
A. I would ask the investor.

MS. WALSMAN: Thank you. No further questions.

THE COURT: Mr. Page, you made a comment that was of interest to the Court and that comment was that the price relating to a portfolio should be set by the buyer.

Was that your comment?

THE WITNESS: Yes, sir.

THE COURT: You're aware in this case, are you not, that Acheron was the buyer of this portfolio?

THE WITNESS: Yes, sir.

THE COURT: All right. Okay. Thank you. You may step down.

Acheron may call its next witness, please.

MR. SZYFER: Your Honor, we have no further witnesses.

THE COURT: You wish to rest at this time?

and counsel, please.
A. Todd Jackson Lisle.
Q. And what is your occupation or profession?
A. I'm a certified public accountant.
Q. And where did you receive your education?
A. University of Oklahoma.
Q. And when did you graduate?
A. In 1984.
Q. After you graduated, can you give us a brief summary of your professional experience?
A. Yes. I went to work for Arthur Anderson in the Oklahoma City office; worked there from 1984 through 1995, at which time I started my own firm here in Oklahoma City and became Lisle, Compton, Cole & Almen.
And then in 2006, I merged that firm to come to the Oklahoma City office for BKD.
Q. And what is your position at BKD at this time?
A. I'm the managing partner of the Oklahoma offices for BKD, which include Oklahoma City, Tulsa, and Enid offices.
Q. Is there any particular focus to your accounting practice, your personal accounting practice?
A. Yes. I focus on valuation services, to a large extent, in addition to the administrative and managerial responsibilities I have; but from a client service standpoint, valuation and some litigation, damage calculation

At the Conservator's request, have you looked at and done an analysis of the present value of the investor's interest in the ABC portfolio at this time?

A. Yes.

Q. Okay. And as part of that process, did you review the contract between Acheron and the Conservator?

A. Yes.

Q. And under the terms of the contract, did Acheron agree to pay a certain price to acquire the ABC portfolio from the Conservator?

A. Yes. Consistent with testimony earlier today, that was my understanding of the terms of that purchase.

Q. Okay. And how is that -- what is your understanding of how the purchase price was to be paid by Acheron to the Conservator?

A. Sure. Understanding it was at $38,050,000 at date of purchase to be paid as policies mature. 60 percent of those maturity payments would be applied towards that $38 million purchase price.

Q. Okay. And as those policies matured and that 60 percent was paid to the investors, would that create a cash flow or income stream for the investors?

A. Yes.

MS. EMMONS: Your Honor, we'd move to have Mr. Lisle certified as an expert on the topics of the present value of that income stream and the discount rate used to determine the present value.

MR. SZYFER: No objection, Your Honor.

THE COURT: He's qualified by education, training, experience and background. I'll give his testimony the weight and credibility it deserves under the circumstances.

Proceed.

Q. (BY MS. EMMONS) Okay. Now, when you were going about determining the present value for this income stream, the income stream arising or resulting from the 60 percent of the maturities, what methodology did you use?

A. A discounted cash flow analysis.

Q. What was the first step in that analysis?

A. It's to estimate or obtain evidence or information that would estimate the future cash flows.

Q. Okay. And what type of research did you do in trying to determine the appropriate discount rate for this particular investment?

A. I spoke with two of my colleagues in our investment services area within our firm, our wealth advisors group. I spoke with a fellow colleague on valuation concepts, as they would apply to this particular case.

I spoke with the head of our forensic and valuation practice to discuss my thought process and methodology being employed in this particular case. I also did analysis and term, default risk, meaning that the investor would not receive payment of their 60 percent share of the life insurance policy proceeds.

The second risk being the risk from a timing standpoint as to when those payments will be received.

I think, you know, those are consistent with what Mr. Annin testified to.

He also mentioned a time value of money, which certainly is inherent in that. That's not necessarily a risk, but just a -- as did Mr. Yan also made similar testimony along those lines, which both were accurate regarding a dollar today is worth more than a dollar into the future, so the time value component to that discount rate.

Q. Okay. Now, the risk of the time component or the element of the time component you've addressed, what about the risk of default? How did you assess that risk?

A. Sure. I looked at a few things and also discussed how this policy works with the Conservator, the controls they have in place to ensure that the premiums are paid when due so the policies stay in effect; that they have, you know, insurance to cover themselves against that risk and protect the investors on that point.

I looked at a listing of the 25 largest investors to give me both a sense as to the diversity of the insurance companies --

Q. You mean the 25 largest insurance companies?

A. What did I say? Investors?

Q. Investors, yeah.

A. I apologize. Thank you for correcting the record.

25 largest insurance companies. Saw them to be, to my recollection, a reputable and well-recognized list of companies.

Also there was not a substantial concentration in a small group of insurance companies, so you've got a diversity factor there that diminishes the risk as well.

Q. Okay. And how would you -- how did you rate the risk of default -- high, medium, low?

A. Very low.

Q. Okay. So basically, what you were looking at in terms of risk factor or a variable was the time value of the money and the possibility that the maturities either occurring late or early, that type of variance?

A. That's the larger component of the risk. I'm not saying that there's zero default risk, but I think the default risk, again, based on my understanding of the way this particular portfolio is working, is very low.

Q. Okay. Would you describe this, this investment vehicle or this cash flow stream to be unique in nature?

A. Based on the research I've done, yes, it's a unique instrument.

Q. Okay. And what did you -- were you able to find some sort of proxy or comparator that was a traditional investment vehicle that you could use?
A. Well, the closest comparable that I was able to use as a point of reference was I went to the corporate bond marketplaces and looked at corporate bond rates of various ratings, considered a triple-A rated bond. I considered an A-rated bond.
I looked at what the junk bond ratings were and considered, again, my understanding of the risk and believed that from a default risk standpoint, the A-rated bond was probably the best proxy to capture any default risk inherent in this portfolio, given, again, my understanding of those risks.
Q. Okay. So at one end of the spectrum, you looked at the triple-A rated bonds, which I think you've described them to me as being Giltedge or --
A. That's often the term used, yes.
Q. And down the entire other end of the spectrum would be the junk bonds that --
A. Yes. And those are double-B rated bonds. And then, like I say, between those two, I looked at the A-rated bonds, which was my primary focus for using as a point of reference, a starting point for the discount rate.
Q. Okay. And the A-rated bond did carry some risk?

A. Yes.

Q. Okay. And you found that to be comparable to the type of risk that these investors would have in receiving their income stream in a timely and expeditious manner.

A. Well, again, as I testified earlier, this is a unique portfolio. So to find them to be comparable may be an overstatement. I considered it to be the best reflection of what is -- for data that exists in the marketplace as a proxy to use as my starting point for the discount rate.

Q. Okay. And if we can cut to the chase, so to speak, looking at the A-rated corporate bond, what discount rate did you come up with for the investor's cash flow?

A. Well, let me refresh my memory. I ran the Bloomberg fair market yield curves as of the 25th.

And as Mr. Annin testified earlier, the midpoint of that 16-year projected cash flow of the portfolio is around an eight-year midpoint. So looking at that as a point of reference, the rate of return in the marketplace for an eight-year A-rated corporate bond is 3.65 percent.

Q. Okay. And we've talked at various times about, you know, if there are breakthroughs and if these insureds do live longer than projected. Did you also carry that analysis out to take an account for another, say, two to three years in maturity?

A. Well, I was able to be provided information regarding two to three years. I didn't analyze it from that direction.

So if I could be -- maybe explain to the Court what analysis I did with the assistance of a representative from Lewis & Ellis, that might help clarify.

What I asked Mr. Annin to do was to provide an alternative actuarial analysis of maturities of this portfolio taking a -- I don't know if the proper word is aggressive or conservative -- but a less favorable to the investor scenario of mortality.

According to Mr. Annin, I asked him to say what -- set a mortality rate at which point anything slower than that would be extremely remote. So kind of the upper end of the range in terms of a reasonable mortality based on all the information that he is the expert in these life studies knows at this point in time.

And so he reduced the mortality rate in his analysis from the -- to 80 percent of what's in the base model. And in doing so, that extended the life to payout of the $38 million from 16 years to 18 years and it increased the midpoint of payment of that portfolio from 8 to 9 years.

Q. Okay. And how did that affect the -- tell us how all this -- taking all this information you gathered, what was your opinion, in your professional, based upon your professional experience and training, what is the appropriate discount rate for these investors and their future cash flow that's at issue here?

A. Well, to frame it up, looking at that level of increase in potential risk of timing being a reasonable outer limit of the cash flow based on all information that's known or knowable as of today, it's a fairly modest increase.

The net present value differential was approximately seven percent less than it was in the base case. So again, a fairly modest risk element related to timing, which, I, in my initial conceptual understanding of this, thought was going to be clearly the most significant risk component.

So after having that information and using as a kind of point reference initially the 3.65 percent yield, looking at the yield curve and the steepness thereof, going to a, say, a 10-year A-rated bond, that yield to maturity goes from 3.65 up to 4.1 percent.

So about a 50-basis point increase there, by increasing two years on the yield curve of a corporate A-rated bond.

So look at that, consider also the default risk component that we talked about within this portfolio, and judgmentally determined that a five, possibly at the outer end, six percent discount rate would be reasonable, given the risk profile and stability of cash stream associated with this 60 percent investor tranche of the portfolio.

MS. EMMONS: Okay. Your Honor, that's all the questions I have.

A. No. I do not.
Q. Okay. And why do you not?
A. It's heavily discounted, like I said.
Q. And you have made certain proposed recommendations to Acheron over the past two, two and a half years. Correct?
A. Yes.
Q. And tell us about the rationale that you've applied at coming to those amounts.
A. Well, we've negotiated for several years, and depending on when it was and what was going on with the economy, what was going on with the AIDS patients and so forth, it's varied.

We -- right now the way I look at it is if someone receives some money, what would they do with that money? The best, the best fixed rate I can find is a little over three percent in an annuity.

I've tried to, in fairness, to negotiate. I've tried to increase the discount rate from three percent even higher.

Typically, as has been stated, these investors are not astute. They are older in many cases. I think the average age is 71 or so. And it's my opinion, and I believe it's this Court's opinion, we just don't want them to be taken advantage of again.
Q. Could you -- you've had various scenarios proposed to you, including the one that was put forth by Mr. Yan on the

A. The problem that I think that you have -- and obviously, this is not my decision. It's the Court's decision.

The problem that you have is if you offer somebody $5,000 and they say, great, they might need money again next year. I don't want these people to get ripped off on some -- what you all say is the 13 percent. I think it's a 16 percent discount rate.

I think that's an absolute rip off. I'm absolutely opposed to it, but I will do what the Judge tells me to do.

Q. So you --

A. It's not my decision.

Q. I understand that it's not your decision and, obviously, we'll all do what the Judge tells us to do.

The question I have is why you're so opposed, if as you've admitted, you can't keep up with 4,500 people's investment --

A. Well --

Q. Let me finish.

A. Okay. All right.

Q. You can't keep up with 4,500 people's investment strategies. You don't know how wealthy or how not wealthy they are. You don't know what their needs are immediately. You don't know all these things about them, why you're opposed to letting them decide what's the best investment strategy for them, even when you've admitted that a lump sum think everybody is uncertain about the market right now.

As a matter of fact, in our dealings with the investment banks that we deal with, all the outside money is looking for investments in -- I can't remember the term -- but it's not, not the equities. It's -- oh, what's the term that's used? It doesn't matter.

So in my opinion, it has made this particular note much, much more valuable than it was back in those days. So...

Q. So with an uncertain economy, the present value, in an uncertain market, having this indefinite payout is better than having cash in hand?

A. Absolutely. I absolutely believe that.

Q. Okay. So even though the portfolio has declined in value due to maturities, you've drastically increased the asking price because the economy has gotten more uncertain?

A. I've increased the, increased the asking price based on what the face amount is and based on the discount rate of anywhere from five to seven percent.

Q. Okay. And in your March 26, 2010, letter rejecting the Acheron offer, you counteroffered with an offer 23.5 million. Right?

A. Right.

Q. And you included as part of that purchase price the 1.8 million in the PRA. Right?

A. I think we reduced the price by that 1.8. So we sophistication of the people who got into these viaticals.

Some put every dime they had in the bank in this opportunity, trusting someone to do what was right, and that trust was poorly placed, to say the least.

When we started this hearing, I announced and I think I've announced it every time we've talked about this case and what I would do with reducing this to a lump sum payment, that Acheron had an uphill burden; the reason being, there's no doubt in this case, Acheron has bought the investor portion of this portfolio. They've got a contract.

This isn't going on the open market. And as Mr. Page said, and that's why I asked him again if that's what he said, and that would be that the buyer would set the price if they were to buy this portfolio. And Acheron did when they bought it. They set the price based upon, I guess, an analysis of the value of the portfolio when they jumped into this mess.

And the Court approved it because everybody had signed off on it and because everybody believed it was in the best interest of the purchaser, that being Acheron, and the best interest of the investors who are the folks relying on us to make sure their investment is protected; although, they had relied on someone at the outset of these investments and they weren't protected.

But the reality of the evidence in this case,

there's no evidence indicating in this case that the offer being made by Acheron is fair and sufficient for the investors in this portfolio, that being the folks who bought them initially.

The only evidence we've heard of that has come from the gentleman that works for Acheron. Mr. Annin didn't testify that it was the best discount rate, and I don't think I heard anybody else in this courtroom testify that it was the best discount rate for these investors.

I have no objection and I wouldn't hesitate to submit a proposal to these investors on an offer that this Court believed was reasonable; but on this evidence and this record, this Court cannot find that the proposal being made by Acheron is reasonable and it's not the best offer of these investors.

And let's be honest about this and I've said this over and over -- I always get in trouble because I'm blunt. But I believe that the only way you can do the job that I do, or any judge does, is to be candid with lawyers. And I've been candid throughout this case.

Acheron doesn't care about these investors. They know that. I know that. Everybody in the room knows that. And I don't expect them to. They're in business to make money. That's what we all do. It may be a different level of money for some of us than others, but we're all here for

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Like all things, it turned it into a money pportunity for greedy people that weren't quite honest, as r. Lamanda wasn't honest.

I will not submit this offer to the investors. If cheron were to come forward with a reasonable discount rate, nd that's not 11 percent, this Court would consider letting go to the investors to make a decision, but this discount ate is not reasonable in light of the circumstances.

And let's look at reality. A discount rate is to ake the opportunity available to the person getting the iscount rate to make that much money in the future. That's

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that purpose.

And I don't begrudge Acheron for trying to reduce this to a lower value, but I'm not going to be pushed into the situation of giving these investors an opportunity to make a decision when they're in their average age of 71 and a half, and the ones I've met and know of are not sophisticated and they're just sick of this whole thing and would take a nickel to get out of this investment.

And I think Mr. Page said that very well. His investors would take ten cents on the dollar. I'm not sure what that says for Mr. Page in getting his investors into that type of investment. That's not for me to determine, if he's the one that got them into the viatical investment opportunity. It was a great thing when it started.

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And let's look at reality. A discount rate is to make the opportunity available to the person getting the discount rate to make that much money in the future. That's the way it works. And making 11 percent in this market in any investment, I think, is brilliant, if you're able to do that.

But the Court will not -- I don't believe Acheron has met its burden. I will not submit this and have this offer submitted to the investors.

Am I saying I wouldn't consider something else? No, I'm not because I think -- I've dealt with Mr. Moran a long time. I've looked at all the bills. I see why most of this money gets spent, and it's on dealing with investors that are calling everyday wondering what's going on and those other type things.

It would be beneficial for everybody, including Acheron, to do a lump sum payoff of this portfolio, but only if it's at a reasonable rate. 11 percent discount rate is not reasonable in this Court's mind based upon the testimony from this record, from the witnesses that were called, all those in opposition to what the employee of Acheron has testified to. And that's understandable.

So with that, I'm going to deny the request; but I'll say again, like I've said it for five or six months now, it would seem to me that there is a common ground that the Conservator and Acheron could reach for a discount rate in this case, to come up with a sum of money that is reasonable that we can take to these investors and let them make a decision on a reasonable offer with some reasonable numbers. But this rate is not reasonable in this Court's mind.

So with that, we'll close the record. I'm not going to tell you what a reasonable discount rate is because I don't get into negotiations. But anything --

I would say this: I think anything above eight percent this Court wouldn't even consider, even if the Conservator brought it to the Court because I know how many million it is. I've been calculating up here as I've listened to this testimony with my trusty solar-powered calculator. But I think there's a reasonable rate here somewhere along that range that everybody could talk to each other about and reach a number that is fair.

So anything else on behalf of the Movant, that being Acheron?

MR. SZYFER: Nothing further, Your Honor.

THE COURT: Anything on behalf of the Conservator?

MS. EMMONS: Nothing, Your Honor.

THE COURT: Anything further on behalf of the Department of Securities, although you weren't involved?

MS. LABARTHE: Nothing, Your Honor.

THE COURT: Thank you for your brevity and I'm sorry we've had to start so late today, but my doctor demands that in-camera or in-office visit once a year and I'm not going to deny him that request.