

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

DEC - 5 2012

PATRICIA PRESLEY, COURT CLERK
DEPUTY

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

Case No. CJ-99-2500-66
Judge Daniel L. Owens
Set for hearing before
Judge Thomas E. Prince
January 11, 2013 at 9:00 a.m.

**HTM CONSERVATOR, LLC'S APPLICATION FOR ORDER
DIRECTING PAYMENT OF POLICY BENEFITS**

HTM Conservator, LLC ("HTM") respectfully requests the Court to enter an order directing Connecticut General Life Insurance Company ("Cigna")¹ to pay HTM the benefits due ("Policy Benefits") under a group life insurance policy issued by Cigna insuring the life of Joe Morris. As demonstrated below, the Policy Benefits are an asset of the conservatorship established in 2003 by order of this Court (the "Conservatorship") and, in accordance with the Court's orders, should be paid to HTM.

A. ESTABLISHMENT OF THE CONSERVATORSHIP AND TRANSFER OF ASSETS TO HTM.

The Oklahoma Department of Securities brought this action in 1999 to protect the interests of the investors in Accelerated Benefits Corporation ("ABC"). On February 6, 2002, the Court entered its Order Appointing Conservator and Transferring Assets ("Conservatorship Order"), which provides in pertinent part:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Tom Moran of Oklahoma City, Oklahoma, ('Conservator') be and is hereby appointed Conservator of the following assets of ABC or its

¹ Connecticut General Life Insurance Company is a subsidiary of Cigna Corporation.

agents, including American Title Company of Orlando and David Piercefield ('Conservatorship Assets'):

1. 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");

....

IT IS FURTHER ORDERED that the Conservator is given the direction and authority to establish the following:

1. to take custody, possession and control of the Conservatorship Assets as they are transferred to the Conservator....

See Conservatorship Order, pp.1-2, Exhibit 1.

The Conservatorship Order also decreed:

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 Asset 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 the 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 therefore.

Id., p. 4.

On February 21, 2002, the Court entered its Order authorizing the establishment of HTM and granting the Conservator authority to transfer title to viatical and/or life settlement policies belonging to the Conservatorship to HTM. *See* Order Authorizing Establishment of Limited Liability Company to Hold Title to Viatical and/or Life Settlement Policies Belonging to Conservatorship, Exhibit 2.

B. ASSIGNMENT AND TRANSFER OF OWNERSHIP IN POLICY BENEFITS TO HTM.

At the time the Conservatorship was established, ATCO was the assignee of a Certificate of Insurance No. 02-0405863 (the "Certificate") that had been issued by Cigna to Joe Morris for Group Universal Life Policy No. M101960 (the "Policy"). The Policy Benefits under the terms of the Policy and Certificate total \$80,000. The Policy was owned by Mr. Morris' employer and, as a benefit of his employment, Mr. Morris was an insured under the Policy. Mr. Morris subsequently assigned the Certificate and all right, title and interest he had in the Policy Benefits to ATCO, which held the Certificate when the Court entered the Conservatorship Order.

In accordance with the Conservatorship Order, ATCO executed an Absolute Assignment of Group Insurance to the Conservator on December 16, 2002, assigning, transferring and setting over absolutely any right, title and interest in and to any life insurance coverage on Mr. Morris under the Policy and Certificate. *See* Absolute Assignment of Group Insurance ("Absolute Assignment"), Exhibit 3. Following ATCO's execution of the Absolute Assignment, HTM designated HRM Conservator, LLC as the sole beneficiary of the Certificate and Policy. *See* Letter dated March 10, 2003 from Cigna to HTM, Exhibit 4.

C. ACCRUAL OF POLICY BENEFITS AND SUBMISSION OF CLAIM.

On April 26, 2010, HTM learned that Mr. Morris had died.² On May 27, 2010, HTM submitted a claim for the Policy Benefits under the Policy and Certificate. With its claim, HTM submitted a completed Life Insurance Claim Statement, death certificate for Mr. Morris, copy of Cigna's March 10, 2003 letter acknowledging receipt of HTM's designation of beneficiary, and the Absolute Assignment executed by ATCO in favor of HTM. *See* Letter dated May 27, 2010 from HTM to Cigna and enclosures, Exhibit 5.

² Although Mr. Morris passed away on June 21, 1999, HTM did not learn of Mr. Morris' death on April 26, 2010.

Additionally, HTM obtained and submitted to Cigna releases executed by individuals whom ATCO had previously designated as beneficiaries of the Certificate and Policy. Prior to the establishment of the Conservatorship by the Court, ATCO had designated certain ABC investors as beneficiaries (the "Former Beneficiaries") under the Policy and Certificate. The Former Beneficiaries have received, and continue to receive, payments from the Conservatorship estate in accordance with the Court's Orders. Each of the Former Beneficiaries, and in one case the trustees of a Former Beneficiary's estate, have executed a Waiver, Consent and Release Agreement ("Waiver"). One of the Former Beneficiaries, John Simos, had passed away and his sons, Michael Simos and Tim Simos, have executed Waivers in their individual capacities and as co-trustees of the John H. Simos Trust UTD 1-20-95 ("Simos Trust"). Copies of the Waivers executed by the Former Beneficiaries, as well as the Waivers executed by John Simos' sons and trustees of the Simos Trust, are attached as Exhibits 6 through 17.

As shown by the execute Waivers, each Former Beneficiary agreed as follows:

2. Waiver. I hereby unconditionally and irrevocably waive any and all right, title, claim, interest and benefit that I now have or hereafter may have in and to the Policy, including without limitation any and all right, title, claim, interest or entitlement I have or may have in the payment of any monies, benefits or proceeds that are due or may become due under the terms of the Policy ('Policy Benefits').
3. Consent to Payment of Proceeds. I further consent to the payment of any and all Policy Benefits to H. Thomas Moran, II, as Court-Appointed Conservator for Accelerated Benefits Corporation in the matter of *Oklahoma Department of Securities v. Accelerated Benefits Corporation, et al.*, District Court of Oklahoma County, State of Oklahoma, Case No. CJ-99-2500.

See Waivers, Exhibits 6-17.

The Waivers executed by Michael Simos and Tim Simos are nearly identical to those executed by the Former Beneficiaries, but reflect their individual and representative capacities:

Waiver. I, individually and as Trustee of the Trust, hereby unconditionally and irrevocably waive any and all right, title, claim, interest and benefit that I or the Trust now have or hereafter may have in and to the Policy, including without limitation any and all right, title, claim, interest or entitlement I have or may have in the payment of any monies, benefits or proceeds that are due or may become due under the terms of the Policy ('Policy Benefits').

See, Exhibits 16 and 17.

Further, each of the Former Beneficiaries acknowledged "that, by executing this Agreement, I will forever and irrevocably waive and relinquish any and all right, title, claim, interest and benefit to which I may now have or could hereafter have in the Policy and any monies, benefits or proceeds I may be entitled to be paid thereunder." *See* Waivers, at ¶ 1(f), Exhibits 6-15. Michael Simos and Tim Simos acknowledged and agreed "that, by executing this Agreement, I individually and as Trustee of the Trust forever and irrevocably waive and relinquish any and all right, title, claim, interest and benefit to which I or the Trust may now have or could hereafter have in the Policy and any monies, benefits or proceeds I may be entitled to be paid thereunder." *See* Exhibits 16 and 17, ¶ 1(f).

Further, ATCO had, when it owned an interest in the Policy and Certificate, named itself as an additional beneficiary. However, as set forth above, the Court previously ordered that any interest ATCO may have had in the Certificate, Policy or Policy Benefits be transferred to HTM. In compliance with the Court's Orders, ATCO executed the Absolute Assignment assigning, transferring and setting over absolutely any right, title and interest in and to any life insurance coverage on Mr. Morris under the Policy and Certificate. *See* Absolute Assignment, Exhibit 3. Thus, no additional release, waiver or consent is required from ATCO with respect to the Policy Benefits that are now a Conservatorship Asset.

D. HTM'S REQUEST FOR ORDER DIRECTING PAYMENT OF POLCIY BENEFITS TO HTM.

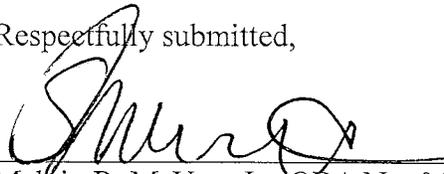
As set forth above, and shown by the Exhibits herein, HTM is the owner of the

Certificate and the Policy Benefits due under the terms of the Policy and Certificate. Any rights, title or interest of ATCO in the Policy benefits were transferred to HTM pursuant to the Court's Order and the Absolute Assignment executed by ATCO. The individuals previously designated as beneficiaries by ATCO, or their successors, have each executed waivers of any interest they may have had in the Certificate, Policy or Policy Benefits and have executed written consents for the payment of these benefits to HTM.

Accordingly, HTM respectfully requests the Court to enter an order directing Cigna to pay the Policy Benefits due under the Policy and Certificate to HTM.

WHEREFORE, for good cause shown, HTM Conservator, LLC requests the Court to enter an order directing Connecticut General Life Insurance Company to pay the Policy Benefits for Certificate of Insurance No. 02-0405863 for Group Universal Life Policy No. M101960 in the amount of \$80,000 to HTM Conservator, LLC within ten (10) days of the date of this order.

Respectfully submitted,



Melvin R. McVay, Jr., OBA No. 06096
Shannon K. Emmons, OBA No. 14272
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*Attorneys for Conservator,
H. Thomas Moran, II*

CERTIFICATE OF SERVICE

The undersigned certifies that on the 5th day of December, 2012, a true and correct copy of the foregoing was sent first-class mail, with postage prepaid, to:

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

William H. Whitehill, Jr., Esq.
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
Bank One Tower
100 North Broadway Avenue, Suite 1700
Oklahoma City, Oklahoma 73102-8820
Attorneys for Accelerated Benefits Corporation

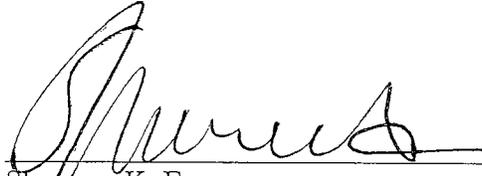
The undersigned certifies that on the 5th day of December, 2012, a true and correct copy of the foregoing was sent certified mail, return receipt requested, with postage prepaid, to:

American Title Company of Orlando
Richard Goldstone, Registered Agent
2717 West Cypress Creek Road
Suite 1106
Fort Lauderdale, Florida 33309

The undersigned certifies that on the 5th day of December, 2012, a true and correct copy of the foregoing was sent FederalExpress to:

Tim Simos, Successor Co-Trustee John M. Simos Trust UTD 01-20-95 3411 N. Highway A1A Fort Pierce, FL 34949-8522	Thomas M. Malcolm, Custodian 73 School Street Millinocket, ME 04462
Scarlett E. Barber 837 Cayce Lane Ft. Myers, FL 33905	Esther A. Cotton c/o Sonja Cotton Lightbody Agent under DPOA dated 5/29/07 8105 Bondage Drive Gaithersburg, MD 20882
Pastor Roger Knudson 1426 G. McNally Drive Winona, MN 55987	Geraldine J. Pagano 1080 Choke Cherry Drive Winter Springs, FL 32708

Anthony Speroni 1337 Settlers Loop Geneva, FL 32732	Thomas L. Spencer 10930 Old Greensboro Road Tuscaloosa, AL 35405
Ruth N. Sundberg, c/o Susan M. Spears, Attorney-in-Fact 24645 Kensington Taylor, MI 48180	W.E. Bishop, Jr., Esq. Personal Representative of the Estate of Murray Bikles 7743 S.W. S.R. 200 Ocala, Florida 34476



Shannon K. Emmons

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