

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES,)
ex. rel. Irving L. Fraught, Administrator,)
Plaintiff,)

vs.)

ACCELERATED BENEFITS CORPORATION,)
a Florida corporation, et al.,)
Defendants.)

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.
Case No. CJ-99-2500-66

DEC 19 2002

PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

**RESPONSE TO CONSERVATOR'S OBJECTION
TO STANDING OF LIFE ALLIANCE, L.L.C.**

Comes now the movant, LifeAlliance, L.L.C. ("LifeAlliance") and responds to the Conservator's objection to its standing as follows:

1. The Court's syllabus in State v. Halley, 12 P.2d 523 (Okla. 1932) holds:

The appointment of a receiver by a district court secures to that court the power to control, at its discretion, all controversies which affect the property placed in his custody as such receiver.

2. State, ex rel., Hunt v. Liberty Investors Life Ins. Co., 543 P.2d 1390, 1396 (Okla. 1975) holds:

A receivership court which has acquired possession of particular items of property... is vested, while it holds possession, with the power to hear and determine all controversies relating thereto.

3. At the invitation of the Conservator, numerous bidders (including LifeAlliance) submitted bids for the sale of insurance policies owned by Accelerated Benefits Corporation, a Florida corporation ("ABC"), and notice of these bids was given to Investors on October 25, 2002.

246

4. The Oklahoma Supreme Court in this case in its Order entered October 3, 2002, held that:

The Investors have standing.

Due process requires adequate notice, a realistic opportunity to appear at a hearing or judicial sale, and the right to participate in a meaningful manner before one's rights are irretrievably altered.

Lack of notice constitutes a jurisdictional infirmity.

5. Forty-eight (48) days after notice was given to Investors of the proposals relating to the sale of ABC's policy portfolio, and the Conservator said to Investors "it would be in the best interest of the ABC Investors to sell the Policies under one of the attached proposals", the Conservator received and recommended a new proposal dated December 12, 2002.

6. A condition made part of this sale was that Investors would be able to express their opinion as to which proposal they favored, and the Motion to Approve Sale states in the Conclusion that it would be in the best interest of ABC's Investors to sell the policies under one of the attached proposals. No Investor has had notice of any proposals other than those attached to the Motion for Order Approving Sale of October 25, 2002.

7. The Investors received notice of and submitted claim forms favoring the LifeAlliance proposals, and LifeAlliance believes the evidence will show that its proposals are financially superior to the proposal being recommended by the Conservator.

8. The Conservator failed to abide by the rules relating to this judicial sale in that he is recommending a proposal that was not submitted to the Investors and of which the Investors have no notice.

9. The California case incorrectly cited by the Conservator, In Re: Pacific Standard Life Ins. Co., 112 Cal. Rptr.2d 50, 53 (Cal. App. 3 Dist. 1992) would support considering the LifeAlliance proposal, and states:

As conservator, the commissioner acts as a minister of the superior court in its statutory responsibility to protect the public interest and conserve the rights of the creditors and policyholders of the conservatee. (Citation omitted.) However, the commissioner's ministerial authority does not extend to sale of assets worth more than \$20,000 absent the court's authorization of the sale and its terms. The superior court holds the exclusive authority in this context. (Citation omitted.) The insurance commissioner and a potential purchaser may not subvert the superior court's statutory authority by agreeing the court may only consider one offer when there are more than one. (Emphasis supplied)

10. It is for the Court to determine after hearing the evidence which proposal is best for the Investors.

11. LifeAlliance should be allowed to participate in the proceedings relating to approval of a proposal for the sale of the insurance policies of ABC as a bidder in the judicial process involved in the sale of ABC's insurance portfolio.

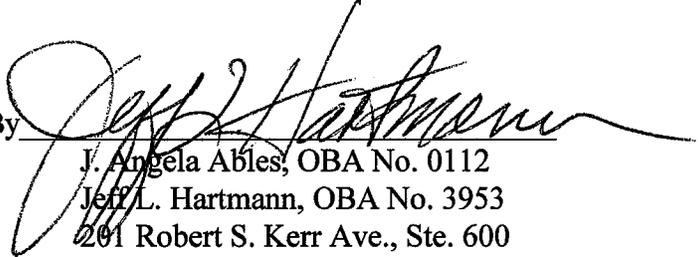
CONCLUSION

Conservator and one bidder (Infinity) cannot subvert the Court's authority to approve the proposal best for the Investors by stating that only one (1) proposal can be considered. LifeAlliance claims to have the proposal that is best for the Investors. The Investors, LifeAlliance and the Court cannot be frustrated by an agreement between Conservator and Infinity to limit the Court's

consideration to only one proposal. LifeAlliance has standing to show the Court why its proposals are best for the ABC Investors.

Respectfully submitted,

KERR, IRVINE, RHODES & ABLES

By 

J. Angela Ables, OBA No. 0112
Jeff L. Hartmann, OBA No. 3953
201 Robert S. Kerr Ave., Ste. 600
Oklahoma City, OK 73102
(405) 272-9221 (Telephone)
(405) 236-3121 (Facsimile)

ATTORNEYS FOR LIFEALLIANCE, L.L.C.

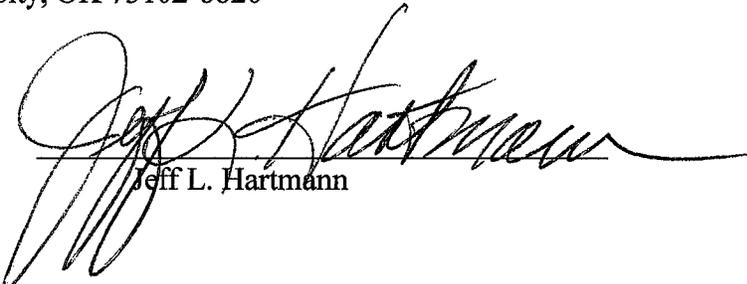
CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing instrument was sent by U.S. Mail, postage prepaid on the 14th day of December, 2002 to:

Melvin R. McVay, Jr., Esq.
Thomas P. Manning, Esq.
Phillips, McFall, McCaffrey, McVay & Murrah
Twelfth Floor, One Leadership Square
211 North Robinson
Oklahoma City, OK 73102

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

Eric Eissenstat, Esq.
Dino Viera, Esq.
William H. Whitehill, Esq.
Fellers, Snider, Blankenship, Bailey & Tippens
100 North Broadway Ave., Ste. 1700
Oklahoma City, OK 73102-8820


Jeff L. Hartmann